

Cleared and Present: Danger in the Personnel Security Clearance System

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By

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## **DEDICATION**

I dedicate this work to my family.

To my husband Stephen Zvolensky, for being my very best friend and knight in shining armor.

To my parents Verda and Irwin Deutscher, for giving me my charmed existence.

To my sister Sara, brother-in-law Forrest, and nephews Eli and Caleb Earl, who promise to love me “with or without a Ph.D.”

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## **ABSTRACT**

### **CLEARED AND PRESENT: DANGER IN THE PERSONNEL SECURITY CLEARANCE SYSTEM**

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This dissertation critically examines the Personnel Security Clearance System, the process by which the federal government incorporates individuals into secret national security work, and how individuals experience the process. The study investigates the phenomenology of the U.S. secrecy system, paying particular attention to the ways in which security clearance practices discipline and transform individuals who are subject to them. The study elucidates the relationship between individual bodies and state power as articulated in the personnel security clearance process—through the voices of the system’s participants.

Tracing the circuit of the culture of the security clearance process from the moment of its production, through revision and rearticulation, allows insight into the multiple layers of meanings that are embedded in and extracted from the way we think about the personnel security clearance process, national security, patriotism and the state.



## INTRODUCTION

This dissertation critically examines the Personnel Security Clearance System, the process by which the federal government incorporates individuals into secret national security work, and how individuals experience the process. The study investigates the phenomenology of the U.S. secrecy system, paying particular attention to the ways in which security clearance practices discipline and transform individuals who are subject to them. The study elucidates the relationship between individual bodies and state power as articulated in the personnel security clearance process—using the voices of the system’s participants and by subjecting their testimony to cultural analyses.

Tracing the circuit of the culture of the security clearance process from the moment of its production, through revision and re-articulation, allows insight into the multiple layers of meanings that are embedded in and extracted from the personnel security clearance process, national security, patriotism and the state.

### **Problem Statement: Motivation for the Research**

All science is part biography. My interest in studying the personnel security clearance system has its genesis in the mix of Cultural Studies coursework and personal experience as a federal worker. I began my civil service career in 1990 working for the United States Information Agency and held various positions with increasing

responsibility in the Departments of State and Defense continuously until I retired from federal service in 2013.

I held and maintained security clearances at various levels throughout my career and have been subject to the system that I describe. I have been investigated (though never polygraphed) and participated in the investigation of others periodically since I began work in the federal service in 1990. I have never lost a clearance nor had one revoked.

Some of my work for DoD was with the Department of Defense Security Service, the entity responsible for administering the National Industrial Security Program, the security clearance processes for the U.S. defense industry and those contractors employed within it. I worked in the Agency's Office for Legislative and Public Affairs so my phone number was online and I was easy to find and contact. Many people called me with complaints about having lost their security clearance and consequently their jobs. I listened to their stories. I heard passion, fear, anxiety and a full mix of human sentiment. Such sentiment suggested to me at the time that the hurt resulting from losing one's security clearance was more than financial. The more I listened, the more I learned that one loses more than a career when one loses a clearance.

Human resources specialists who fire people for a living probably encounter many of the same emotions I encountered during those phone calls. But I think there is something uniquely traumatic about the loss of a security clearance that sets it apart. A national security job is different than others.

A clearance is associated with identity, community, and self. Indeed many individuals who lose a clearance lose their sense of self and community along with it. In some interviews, respondents describe the deep sense of isolation they feel in being separated from their work community.

### **Chapter Summary and Methodology**

In this study, I examine the power relationship between individual government workers and the state by exploring the national security personnel security clearance system and interviewing both individuals who maintain the system and those who have run afoul of it.

In Chapter 1, A Review of Relevant Literature, I survey some of the literature that touches on the topic of the security clearance process, secrecy and the national security state to see how other scholars have approached the subject and to compare and contrast their work with my own research. While some cultural studies texts deal with the failure of the national security state to deliver tangible benefits to citizens, and others explore the often soul-crushing impact of bureaucracies on the human spirit, few examine the impact of the national security state on the hearts and minds of those who work to maintain it.

The study continues with a brief history of perceived national security threats in the United States and the civil service that grew to address them. I make use of the historical information about presidential administrations, and their national security priorities and civil service policies, from historical documentary sources on the Internet that include The White House Web site on presidents, and the United States Office of Personnel Management's site on the history of the U.S. Civil Service.

In Chapter 2, National Security and Perceived Threats in the United States, I explain how, from the birth of the nation to present times, national security priorities, have evolved and fluctuated. I then describe how those policies and priorities, in turn, result in practices that impact government workers. National security priorities are mercurial. They can change on a dime (according to a particular president's personal or political proclivities among other things), leaving federal workers to contend with the human and material costs of administration policies gone wrong.

At times throughout U.S. history, specific groups of people, including some federal workers, have been perceived as threats to national security. War, international alliances, sabotage, surprise attacks, and leaks have all shaped national security perceptions impacting the lives of those entrusted to serve the state.

In the third chapter, I turn to the processes by which individuals are inducted into national security jobs. To describe the system, I use documentary sources from Federal Government websites that include the United States Departments of Defense, State, Treasury, Agriculture and Homeland Security. I also reference legislation, Executive Orders, policy guidance and government security handbooks and other reference materials published by the Government Printing Office.

Also in Chapter 3, The Personnel Security Clearance Process, I review the mechanisms through which individuals are processed through the clearance system, drawing upon some examples from contemporary news reporting, of how the system sometimes fails those within it. I employ news reports as secondary sources. Approached with judicious caution, they provide context to some of the debate

surrounding the personnel security clearance process. And I have tried to choose what seem to me the most reliable sources.

It has been proposed that cultural hegemony is maintained through a mix of force and consent.<sup>1</sup> One can understand that mix when viewed through the prism of the personnel security clearance process, wherein individuals consent to surveillance along with other physical intrusions because their livelihoods depend upon it. But also because they believe the process has merit. Almost without exception, those interviewed for this study determined that some type of personnel security clearance was necessary, even if the current system is flawed.

Indeed much of the clearance process has proven to be flawed. So it is no mystery that spies, leakers, and insider threats remain. One reason that secrets are so hard to keep is that, just like snowflakes, individuals are unique. So finding a system, tool, measurement or process that will consistently apply to everyone may be an impossible task—an ephemeral goal. Even more so, if part of that goal is to predict future behavior. We currently lack a scientifically rigorous and consistent way of judging people.

In the fourth chapter, I interview individuals who have run afoul of the system, some losing clearances. I also interviewed those who support them—lawyers, family members, and councilors. In addition, I interviewed security practitioners and specialists and many individuals who currently hold a clearance.

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<sup>1</sup> This is the theory posited by Antonio Gramsci, Antonio Gramsci, an Italian writer, politician, political theorist, linguist and philosopher. Gramsci notes that under the stewardship of cultural hegemony, ideologies that benefit the ruling class are seen as universal and perceived to benefit everyone. He notes that cultural hegemony is vital to the maintenance of the capitalist state and is maintained through a mix of both force and consent.

The interviews, while illustrating problems with the existing system, solidify much that is written about the national security state, the impact of bureaucracy on social interactions, and the resilience of human agency. The interviews are intimate glances into personal experiences, but they demonstrate larger societal structures at work in the areas of national security and state power. The study investigates, through documentary sources and interviews, how the security clearance process was shaped and also how it shapes identity. All interviews were conducted in confidence. Interview subjects are anonymous. Pseudonyms are used to illustrate participants' responses and experiences.

During my research I interviewed a number of people about their experiences with the national security personnel clearance system. And I used the transcripts of these interviews to bolster my observations. I also tried to glean from the interviews ways that individual experiences can educate us about the power relationship between the individual and the state. My interviews began with lawyers who represent government workers who have had clearances revoked. I spoke with individual clients of those lawyers about their experiences. I also spoke with government security professionals who work within the system, Hill staffers and run-of-the-mill government workers, some of whom are my friends. I interviewed 24 people over a two-year period. I make no claims to have selected a representative sample. To recruit respondents I contacted lawyers, who represent federal workers in security clearance disputes, for interviews and referrals. Some of the individuals referred to me by attorneys also provided further referrals. I contacted congressional committee staffers known to me and they referred me to other staffers. I obtained some interviews by contacting Concerned Foreign Service

Officers, a group of current and former employees of the U.S. Department of State who are concerned about abuses of the security clearance process. And I interviewed some of my friends and former colleagues.

While I am aware of the methodological limitations of my process, I believe, based in part on my own experience working for the federal government, that what these people have articulated illuminates the complex power relationship between individuals and the state that they have chosen (sworn) to serve. Most federal workers never lose a security clearance, so these individual experiences are not the standard.<sup>2</sup>

In Chapter 4, Running afoul of the System, I conduct an examination of the thoughts, feelings and emotions of some of the people engaged in the personnel security clearance process in order to learn how the system impacts individuals who are subject to it. Descriptions of being “blacklisted” by one’s community are a poignant and perhaps ironic portrayal of loss considering the uniquely American reference with which the term is imbued.<sup>3</sup>

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<sup>2</sup> Each participant signed (or verbally consented to the confidentiality procedures outlined in) an Informed Consent Form, approved by the George Mason University Office of Research Subject Protections, that described how confidentiality was to be maintained by basic, yet proven procedures that included that the interviews recorded on audio would not include the respondent’s name or any other personal identifiers. Rather, the connection would be made through a coding process known only to the researcher; on returning from each interview, I saved files at home in a safe locked place at all times. Also, information was saved electronically in Excel and the worksheet was hidden with a password; respondents were given a pseudonym to be used for all further notations, transcriptions, and correspondence about them with my adviser. As approved by the HSRB Committee, I ensured the security of the tapes and only quote people anonymously. Tapes will be destroyed when the research is completed and the dissertation is finished.

<sup>3</sup> Such lists were compiled by the House Subcommittee on Un-American Activities, and the Senate Committee led by McCarthy during the communist hysteria of the 1950s where Hollywood blacklists and others were assembled. The personnel clearance policies, methodologies and regulations established during that singularly paranoid era in the United States (up until the other one ushered in by the terrorist attacks of September, 11, 2001) continue to imbue the process today.

Mention by some respondents of “wearing a scarlet letter” after losing a clearance is another singularly American reference, both literary and historic. The Puritanism that Weber observed underlying the spirit of capitalism<sup>4</sup> also infuses individuals within the personnel security clearance system (which falls squarely within that capitalist system) with the sense of dread that accompanies misplaced or erroneous societal judgment and corresponding punitive measures.<sup>5</sup>

Workers who personally experience the imbalance of power between the individual and the national security state do not soon forget it. Fiction writers, including Nathaniel Hawthorne, Franz Kafka, Arthur Miller and Joseph Heller provide artistic insights into this very real social drama.<sup>6</sup> While my informants agreed that the system should undergo improvements, almost all agreed that such a system is necessary. This concurrence speaks eloquently to the underlying American belief in the national security state and its need to keep secrets as articulated in the national security personnel system, even by those to whom the system has been unkind.

I conclude by offering some recommendations, based on what I learned during my research. By critiquing the personnel security clearance system, my aim is not to

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<sup>4</sup> These themes are also explored in what Max Weber referenced as the “Protestant Ethic” underlying the modern capitalist state. (See Weber’s *The Protestant Ethic and the Spirit of Capitalism*. In the book, Weber wrote that capitalism evolved when the Protestant (particularly Calvinist) ethic influenced large numbers of people to engage in work in the secular world accumulating wealth for investment.)

<sup>5</sup> Nathaniel Hawthorne’s 1850 novel explores themes of legalism, sin, and guilt. It is notable that many of Hawthorne’s same themes were taken up a century later in *The Crucible*, Arthur Miller’s 1953 play about the Salem witch trials that was written as an allegory of McCarthyism.

<sup>6</sup> Fiction can sometimes best describe reality. Authors provide insights into societal truths through art. Such truths may not always be personal. But sometimes they are. Hawthorne may not have been an adulterer. And Miller did not hold a security clearance. But he was questioned by the House of Representatives’ Committee on Un-American Activities in 1956 and convicted of “contempt of Congress” for refusing to identify others present at meetings he had attended. (Loftus, Joseph A. 1953. “Miller Convicted in Contempt Case.” New York Times June 2, 1957.)



imply that a national security apparatus is not important. Nation states have a legitimate need for secrets and secrecy. But what I find in my research is that the personnel security clearance apparatus, like other bureaucracies of power, has the tendency to outgrow its legitimate need. Part of the reason secrecy is problematic is that secrets are so hard to keep. So in addition to various flaws in the current system, the sheer number of clearance holders is, in and of itself, a threat. Without denying the need for some kind of secrecy bureaucracy, I explore the deformations of that bureaucracy that include a proclivity toward capriciousness, imprudence, prejudice, unfairness and intimidation. By interviewing people who have dedicated their careers to the patriotic service of their country, I learned how they react when the national security apparatus of a country founded on constitutional rights and due process eschews those values in the treatment of its own employees. The research suggests that such practices within the security clearance system may contribute to the insecurity that the system is designed to mitigate.

### **Contribution to the Field of Study**

This study contributes to the field of Cultural Studies by contextualizing the personnel security clearance system within the historic parameters of the United States. It describes the processes that individuals must undergo to participate in national security work and provides firsthand accounts of those must who must work within it and have been changed by it.

The study contributes to a more robust understanding of the role of individuals in the security clearance process in order to enhance future discussions of improved

personnel security clearance processes. Recommendations for changes to the system are offered in the final chapter.

## CHAPTER 1. A REVIEW OF RELEVANT LITERATURE

“A case can be made...that secrecy is for losers. For people who don’t know how important information really is.”

– Daniel Patrick Moynihan

### **Introduction: Secrecy and Democracy**

As long as we live in a world of threats, there will be a need for security policy that prevents the disclosure of classified information that would aid enemies of the state. In the same vein, the personnel security clearance system is important to prevent the “entry of into posts of central relevance to national security and internal order”<sup>7</sup> people with subversive intentions and dangerous proclivities.

But secrets are anathema to a democratic system of government that depends on transparent methods of decision-making based on a well-informed electorate. How can we hold our government accountable for work that it does in secret? There is a difficult balance that must be struck and maintained, between keeping necessary secrets and holding the government accountable for its conduct.

Weber<sup>8</sup> noted that those involved in the defense industry stand to make a fortune. And that it is better for imperial capitalists if the weapon-making capabilities lie not only

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<sup>7</sup> Shils, p. 11.

<sup>8</sup> Here I am writing about Weber’s views on the state and bureaucracy, using mostly Hans Gerth and C. Mills Wright’s book “From Max Weber: Essays in Sociology” (Oxford University Press, 1946). But Weber is best known for *The Protestant Ethic and the Spirit of Capitalism*, in which he proposed that ascetic Protestantism was one of the major “elective affinities” associated with the rise in the Western world of market-driven capitalism. Stephen Kalberg refers to Weber’s current relevance in his book, “Max

with the army, but also with the private sector, thereby foreshadowing what President Eisenhower so eloquently termed the military industrial complex.

The material implements of war may be part of the equipment provided by the army itself, as is the case in pure feudalism. But if these implements are furnished by the polity, rather than by the army, then expansion through war and the procurement of armaments to prepare for war represent by far the most profitable occasion for the raising of loans in the largest scale. The profit opportunities of capitalist state creditors then increase.<sup>9</sup>

Weber makes clear that, in his time as in ours, it does not matter to the weapons industry or its creditors who actually wins the war. The important thing is making and selling the weapons. “Where the ultimate state creditors are a mass stratum of state rentiers (bondholders), such credits provide profit opportunities for bond-issuing banks, as is characteristic of our day. In all this, economic forces interested in the emergence of military conflagrations per se, no matter what be the outcome for their own community, are called into life.”<sup>10</sup> So Weber understood, before Eisenhower ever uttered the words, what industrialists like about war.

Today the polity as such is almost the sole agent to order war materials and the engines of war. This enhances the capitalist nature of the process. Banks, which finance war loans, and today large sections of heavy industry are quand meme economically interested in warfare; the direct suppliers of armour plates and guns are not the only ones so interested. A lost war, as well as a successful war, brings increased business to these banks and industries.<sup>11</sup>

Weber also notes that once you have a “defense industry” it is the natural turn of events to let it thrive—weapon makers are permitted to ply their trade to any and all

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Weber's Comparative-Historical Sociology Today: Major Themes, Mode of Causal Analysis, and Applications (Rethinking Classical Sociology) (2012) and Peter Ghosh suggests that The Protestant Ethic is the link which unites Weber's earlier (pre-1900) and later (post-1910) phases of his career in his book “Max Weber and 'The Protestant Ethic': Twin Histories” (2014).

<sup>9</sup> 1946:167.

<sup>10</sup> 1946:167.

<sup>11</sup> 1946:168.

buyers. “The partners within a polity are politically and economically interested in the existence of large home factories for war engines. The interest compels them to allow these factories to provide the whole world with their products, political opponents included.”<sup>12</sup>

Karl, a government employee who works with the defense industry to help keep classified information safe, comments on how difficult it has become for the state to tell arms makers what to do. As a security executive, Karl also worries that, more and more, it is the defense industry and not the government who are holding the reins when it comes to secrecy. And that the objective of national security may take a back seat to corporate profits.

...and now we're even in a position, we see information being exfiltrated, but it's not our mission set to be able to do anything about it. We can't tell industry directly...Because even in the industrial base you have—like at Boeing, for instance, they have a great commercial business. If they're being [cyber]attacked on the defense side, (we) can't make a big deal of that in public, because it might hurt their stocks. And the CEO wants to sell his 787. So we're asking them to report when they're being attacked and we're trying to change the way we're doing it, because now the assumption we're trying to promulgate is everybody's under attack. We all are. So don't feel like it's just your company. But it's hard to change that culture, because as much as they want to, the CEO who wants to sell the Boeing 787s around the world, can't be saying to his shareholders that you're leaking information, because it's being stolen from you out of your systems every day.

Weber leaves no ambiguity as to the effectiveness of imperial capitalism, “In general and at all times, imperialist capitalism, especially colonial booty capitalism based on direct force and compulsory labor, has offered by far the greatest opportunities for

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<sup>12</sup> 1946:168.

profit.”<sup>13</sup> Turning from antiquity to the moment at hand, Weber sees the practice of imperial capitalism afoot in his own time. As readers have in their own ever since.

Increasing opportunities for profit abroad emerge again today, especially in territories that are ‘opened up’ politically and economically, that is, brought in to the specifically modern forms of public and private “enterprise.” These opportunities spring from ‘public commissions’ of arms; from railroad and other construction tasks carried out by the polity or by builders endowed with monopoly rights; from monopolist organizations for the collection of levies for trade and industry; from monopolist concessions; and from government loans.<sup>14</sup>

Weber points out that a government war contract is the best bet for those seeking profits. Indeed it behooves industries to stop what they were doing (or selling) before and jump on the war bandwagon.

Such opportunities for profits may be more important and may be gained at the expense of profits from the usual private trade. The more the public, collective enterprises gain in economic importance as a general form of supplying needs, the more the preponderance increases. This tendency is directly paralleled by the tendency of politically backed economic expansion and competition among individual polities whose partners control investment capital. They aim at securing for themselves such monopolies and shares in public commissions. And the importance of the mere “open door” for the private importation of goods recedes into the background.<sup>15</sup>

The safest way of guaranteeing these monopolized profit opportunities to the members of one’s own polity is to occupy it or at least to subject the foreign political power in the form of a “protectorate” or some such arrangement. Therefore the “imperialist” tendency increasingly displaces the “pacifist” tendency of expansion, which aims merely at “freedom of trade.”<sup>16</sup>

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<sup>13</sup> 1946:168.

<sup>14</sup> 1960:168. The term “colonial booty capitalism” remains fresh even if currently out of favor. It is this concept at work with the declaration, in a brochure presented to the U.S. Chamber of Commerce conference by the U.S. Department of Commerce and then Prime Minister Nuri Kamal al-Maliki, that “Iraq,” is, “Open for Business.” The prime minister attended along with the new ministers of oil, trade, finance and agriculture, and governors of the country’s provinces, all of who promoted investment opportunities. Anbar, once the heart of the Sunni insurgency? “Hidden opportunities.” (Iraq: Open for Business, Steven Lee Mye, The New York Times, October 21, 2009).

<sup>15</sup> 168-169.

<sup>16</sup> 1946:169.

Such observations on imperialist capitalism, evoking current militarized exploits, almost make one nostalgic for the old days of less violent “profit opportunities” of globalization, structural adjustment and privatization.

Weber does not use the word nationalism, but he makes reference to emotional appeals, on the part of the state, to rally the people to war. He also implies that those who serve in the military may not have all that much to lose. As it turns out, “Experience shows that the pacifist interests of petty bourgeois and proletarian strata very often and very easily fail. This is partly because of the easier accessibility of all unorganized ‘masses’ to emotional influences and partly because of the indefinite notion (which they entertain) of some unexpected opportunity somehow arising through war.”<sup>17</sup> “The ‘masses’ as such, at least in their subjective conception and in the extreme case, have nothing concrete to lose but their lives. The valuation and effect of this danger strongly fluctuates in their own minds. On the whole it can easily be reduced to zero through emotional influence.”<sup>18</sup> Conversely, Weber argues that upper classes and rulers fear the outcome of war because they may lose their kingdoms and livelihoods. They do have something to lose namely power and profits.

Weber seems to imply that those within the proletarian strata who do respond to the state’s call to arms are somehow duped into service by a wiser more cynical ruling class with no wish to dirty their own hands. He also points to the “indefinite notion (which they entertain) of some unexpected opportunity somehow arising through war”. But as Frederick has pointed out, in his description of his experience with the clearance

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<sup>17</sup> 1946:171.

<sup>18</sup> 1946:171.

system (and as I have also observed firsthand),<sup>19</sup> opportunities do arise for some who serve the national security state.

I'm extremely disappointed in the Marines that I have encountered. I'm disappointed in Marine Corps behavior off the frontline. And we call it the "support establishment." It means the Pentagon, Quantico, everything that goes on in the United States. The close ties of Marine generals to industry, to the extent that our commandant of the Marine Corps, who just left a couple of years ago, is now on the board of directors of Textron, a monster defense contractor who, if not already, certainly potentially will sell major programs to the Marine Corps. All of these ties are things that connect to what I reported. In other words, what I was reporting was all of that interconnectedness as well. And so instead of reflecting on themselves and saying, "Hey, wait, we're not behaving like Marines," they went after the messenger. "Shut [Frederick] up by any available means." And that's been disappointing.<sup>20</sup>

Weber predicts that imperial capitalism and its associated profits will remain with us into the foreseeable future. "The universal revival of 'imperialist' capitalism, which has always been the normal form in which capitalist interests have influenced politics, as the revival of political drives for expansion are thus not accidental. For the predictable future, the prognosis will have to be made in their favor."<sup>21</sup>

Nowhere in the United States is the bureaucracy, the culture of secrecy and defense related capital more evident than in the National Capitol Region, where, an elaborate apparatus of institutions and individuals work to maintain the personnel

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<sup>19</sup> When I worked for the Department of Defense Business Transformation, I chaired a source selection board for a Major General who was the selecting official. A year later, he retired and became a Corporate Vice President for Contracts and Pricing for The Boeing Company.

<sup>20</sup> As of 07/16/2014, Textron reported total revenues in the quarter were \$3.5 billion, up from \$2.8 billion in the second quarter of 2013 (<http://investor.textron.com/newsroom/news-releases/press-release-details/2014/Textron-Reports-Second-Quarter-2014-Income-from-Continuing-Operations-of-051-per-Share-up-275-Revenues-up-235/default.aspx>). Boeing listed Total Assets (Quarterly) at 92.74Billion for June 30, 2014, <http://ycharts.com/companies/BA/assets>.

<sup>21</sup> 1946:169.



security clearance system in order to monitor and regulate the national security workforce – both in government and in the euphemistically termed “Defense Industry”.

Steven Aftergood,<sup>22</sup> a critic of U.S. government secrecy policy and director of the Federation of American Scientists Project on Government Secrecy, is also the author of the Federation newsletter *Secrecy News*. Aftergood (1999) notes that there are (supposedly) guidelines that determine the classification of government documents.

Specifically, according to Executive order 12958, information that is owned by, produced for, or otherwise controlled by the U.S. government may be “classified” if it concerns one of the following categories: Military plans, weapons systems or operations; foreign government information; intelligence activities; foreign relations or foreign activities of the united states; scientific, technological, or economic matters relating to national security; U.S. government programs for safeguarding nuclear materials or facilities; or vulnerabilities or capabilities of systems, installations, projects or plans relating to the national security.

However, what Aftergood discovers is that the preponderance of classified documents do not fit these categories, rather they fall under what he terms bureaucratic secrecy,

As classically described by Max Weber, this has to do with the tendency of all organizations to limit the information that they release to outsiders so as to control perceptions of the organization. Bureaucratic secrecy appears to be the predominant factor in current classification practice, accounting, in my opinion, for the majority of the billions of pages of classified record throughout government.<sup>23</sup>

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<sup>22</sup> Aftergood is trained in physics and is a critic of U.S. government secrecy most noted for his "Reducing Government Secrecy: Finding What Works" in the *Yale Law and Policy Review*, 27: 399-416 (2009).

<sup>23</sup> 1999:298.

Peter Galison<sup>24</sup> confirms Aftergood's discoveries and asserts that, rather than a rare occurrence applied to a tightly controlled set of knowledge, the classified annals of information are actually larger than the unclassified, "in fact, the classified universe as it is sometimes called is certainly not smaller, and very probably much larger than the unclassified one."<sup>25</sup>

Aftergood (2014) agrees with the White House Office of Management and Budget (OMB) that the growing number of security clearances, particularly in the defense industry, is a threat to national security.

He noted that the number of Americans who have been investigated and deemed eligible for access to classified information rose over the year 2012 to a total of 5,150,379 as of October 2013. This was the fourth consecutive year of growth in the security-cleared population. According to Aftergood, the new total included civilian and military government employees (3.7 million) and contractor personnel (1 million), as well as indeterminate others (0.4 million). It represents an increase of 4.7% from the previous year's total of 4.9 million."

Citing an OMB review on the continuing growth of the security clearance system, he agrees that rise is problematic both for financial and security reasons. "[The] growth in the number of clearance-holders increases costs and exposes classified national security information, often at very sensitive levels, to an increasingly large population," He noted

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<sup>24</sup> In the realm of secrecy, Galison is known for his contributions two documentary films. The first, *The Ultimate Weapon: The H-Bomb Dilemma*, about the creation of the first hydrogen bomb, and most recently, *Secrecy*, which he directed with Harvard filmmaker Robb Moss, about the costs and benefits of government secrecy.

<sup>25</sup> 2003:1.

that, accordingly, the OMB review recommended that the government “reduce [the] total population of 5.1M Secret and TS/SCI clearance holders to minimize risk of access to sensitive information and reduce cost.”<sup>26</sup>

Aftergood also cites the report on security clearance policies completed by the Department of Defense in the wake of the Navy Yard shooting incident, noting that that report also recommended fewer cleared employees. “The continuing expansion of the cleared population has created a culture in which once-rare security clearances are now too often granted by default.” But as Aftergood knowingly points out, “Actually, security clearances have not been “rare” for quite a few decades.”<sup>27</sup>

Sissela Bok<sup>28</sup> acknowledges the ubiquitous nature of secrecy in personal relationships, government, industry and just about everywhere humans meet. “In thus exploring secrecy and openness, I have come up against what human beings care most to protect and probe: the exalted, the dangerous, the shameful; the sources of power and creation; the fragile and the intimate.”<sup>29</sup> In her observations of the dangers of secrecy she notes that secrecy is of use to power holders such as the state, but that it can also hurt power holders.

Secrecy can harm those who make use of it in several ways. It can debilitate judgment, first of all, whenever it shuts out criticism and feedback, leading people to become mired down in stereotyped, unexamined, often erroneous beliefs and

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<sup>26</sup> TS is a Top Secret Clearance, SCI is Secret Compartmentalized Information clearance.

<sup>27</sup> “Security-Cleared Population Rises to 5.1 Million”, Secrecy News, Steven Aftergood, March 24, 2014.

<sup>28</sup> I am using material from Bok’s most famous writings on the subject of secrecy which are *Lying: Moral Choice in Public and Private Life* (1978) and *Secrets: on the Ethics of Concealment and Revelation* (1982) but she also has written on the topic of war and militarism in works like *A Strategy for Peace: Human Values and the Threat of War* (1989).

<sup>29</sup> xviii.

ways of thinking. Neither their perception of a problem nor their reasoning about it then receives the benefit of challenge and exposure.<sup>30</sup>

Bok notes that scientists, for example, working in secret facilities complain that secrecy stifles their judgment and creativity.<sup>31</sup> While recognizing that secrecy, like any other form of power, has the ability to corrupt, she also examines its propensity to spread, noting that people seek more control when they can, and rarely give up what control they do have. Bok likens the initiation of clandestine and covert workers to that of the members of secret societies, noting that, “A person, a group, or a government agency dominated by secrecy, enveloped in it, runs special risks. And all who have dealings with such groups then have legitimate cause for concern.”<sup>32</sup> Bok is referencing covert organizations like some parts of the Central Intelligence Agency or Defense Intelligence agencies. Interviews that I conducted with individuals employed by such organizations have experienced the cause for concern that she observes.

One example of such causes for concern is given by David, a lawyer who represents individuals, in very secret agencies, who have run afoul of the clearance process. He describes the particular and unique pain of those in the clandestine services, noting that a clandestine worker who is ousted from the government for losing a security clearance virtually has no resume, no demonstrable work experience, no way to start over.

Without a doubt, here in the intelligence world, in an agency such as DIA, CIA, NRO, NGA, orgs like that, it's fundamental. If you don't have your access, whether it's suspended or revoked, you're out of the community...those who are

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<sup>30</sup> 25.

<sup>31</sup> 25.

<sup>32</sup> 55.

NOCs, Non-Official Cover CIA, you lose your clearance, you've lost your entire identity. No one knows where you work, that you really worked for the U.S. Government in the first place, and now you're completely on the outs. You're a pariah. You can't do anything with anybody. That's the worst situation.<sup>33</sup>

Bok alludes to the subject of public secrets in her discussion on secrecy and self-deception, noting that ignorance and avoidance of knowledge blend and that we are particularly likely to deceive ourselves when we see no clear moral obligation to intervene or to know.<sup>34</sup> She also thinks that secrecy has its place. Just as secrecy is at times antithetical to scientific advancement, so at times is it necessary both to science and to government, "Many processes of research and creation require a chance to mature, to be tested and varied, without publicity. It is in the nature of such efforts to be tentative at first. Creativity requires freedom to do the unexpected, to risk failure, to pursue what to others might seem farfetched and even pointless."<sup>35</sup>

Bok observes that the nation state and secrecy have grown up together and remain close friends.

Government leaders still rely on it; the secular state religions draw on it through the veneration of constitutions and of wartime and revolutionary leaders, sharing thereby their aura of distance and sacredness. The more thoroughly government leaders control secrecy and openness, the more they resort to ritual and hierarchy to reinforce such an aura.<sup>36</sup>

Bok agrees with Weber's observation that bureaucracies like to increase the superiority of the informed by keeping knowledge and intentions secret. She believes

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<sup>33</sup> The agencies referenced are the Defense Intelligence Agency (DIA), the Central Intelligence Agency (CIA), the National Reconnaissance Office (NRO) and the National Geospatial Agency (NGA).

<sup>34</sup> 68.

<sup>35</sup> 159.

<sup>36</sup> 173. Her reference is to Robert Goodin's discussion of manipulation through "magico-religious rituals" in manipulatory politics but such references are also to be found in the work of Benedict Andersen (later in the text). And one need only walk through the Pentagon to see such ritual and hierarchy, in the form of portraiture, flags, and other manifestations of heraldry and pageantry to see this phenomenon in action.

that the guarantee of public access to government information is indispensable for any democratic society and points to the importance of legislation guaranteeing access like the Freedom of Information Act in the United States.<sup>37</sup>

Given developments in the United States since the terrorist attacks of September 11, 2001, Bok appears prescient in her observation that

Under conditions of crisis, when nations feel beleaguered, military secrecy is likely to spread, invite abuse, and undermine the very security it is meant to uphold. The burden of excessive secrecy can be heavy; and the suffering it inflicts, domestically and abroad, may far outweigh even the strict military objectives it was meant to ensure.<sup>38</sup>

Bok points to the ultimate dilemma for governments in their attempt to enforce secrecy and that is that the more they try to keep secrets, the more they fail. This problem is amplified when as more information is classified, there is information that can leak out. She acknowledges that many of the complex problems that I have identified in the personnel security clearance system are also intrinsic to the practice of government secrecy in general.

Always difficult to maintain, and therefore always prone to deteriorate and spread, such practices are especially vulnerable and problematic in large collectives. In modern states, the systems of classification, encodement, loyalty tests, and camouflage have grown immensely complex. That they are thereby often self-defeating is hard to deny; but most efforts to cut back on unnecessary or harmful military secrecy meet with the failure of so many assaults on the bureaucracy. Mountains of worthless information are stamped top Secret; levels of secrecy multiply; individuals are scrutinized from the point of view of loyalty

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<sup>37</sup> 179.

<sup>38</sup> 194. Dana Priest's observation (later in the text) of the perceived crisis of the terrorist attack on the United States on September 11, 2001 unleashed such abuses in what she describes as the development of "Top Secret America". Other examples include the blacklisting of government and other workers during the "Red Scare" of McCarthyism, the "Violet Scare" inspired by the perceived threat of gays in the federal workforce and the ramp up of "insider threat" cautions and preparedness after disclosures of abuses at the NSA by whistle blower Edward Snowden.

even when their work brings them in no contact with secret military information. And still genuine security is out of reach.<sup>39</sup>

“Mountains of worthless information stamped top Secret” was a pet peeve for Daniel Patrick Moynihan, who was born in 1927 and died in 2003 and was an American politician and sociologist. He was first elected to the United States Senate (representing New York) in 1976, and was re-elected three times. Prior to his years in the Senate, he was the United States' Ambassador to the United Nations and to India, and was a member of four successive presidential administrations, beginning with John F. Kennedy and continuing through Gerald Ford.<sup>40</sup>

Moynihan's term on the U.S. Senate Intelligence and Oversight Committee deepened his skepticism about the worth of secrecy in protecting national security and gave him an interest in the subject of secrecy as a problem in democratic government.<sup>41</sup> He believed that secret information was a weakness in government decision-making, which led to his introduction of legislation in 1994 establishing the Commission on Protecting and Reducing Government Secrecy. Part of the work of the Commission was to improve existing personnel security procedures.

The Commission made six formal recommendations that included establishing better procedures for classification and declassification of information and the establishment of a national classification center to oversee declassification.

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<sup>39</sup> 197.

<sup>40</sup> I am writing here about Moynihan's work on the Hill, but he was a prominent academic and sociologist well known for his works on ethnicity and American family life and values that include “Beyond the Melting Pot, an influential study of American ethnicity, which he co-authored with Nathan Glazer (1963); The Negro Family: The Case for National Action, known as the Moynihan Report (1965); “Maximum Feasible Misunderstanding: Community Action in the War on Poverty” (1969) and “Pandaemonium: Ethnicity in International Politics.”

<sup>41</sup> 3.

The Commission agreed with Weber in noticing that secrecy is a form of government regulation. Just as the government regulates how clean our water or air, or what drugs are legal or illegal to use, so does it determine which secrets are to be public.

The Commission determined that excessive secrecy has significant consequences for the national interest. When the public and even legislators are not fully informed, the government is not held accountable for its actions, and the public cannot engage in informed debate. Moynihan points to the divide during the “Red Scare” between academics and government officials (FBI) surrounding the Communist threat to the United States. He contends that if news of soviet espionage had not been kept secret, the public debate surrounding the threat would have been more informed and productive.

The Committee noted that some secrecy is required to minimize the dangers of diffusion of details of weapon systems design and on-going security operations. And it saw that secrecy may also be needed to enable some public servants to secretly consider a variety of policy options without fear of public criticism.

Ultimately, the Commission warned that the best way to ensure that important secrets remain secret, is for secrecy to be contained within a very limited but necessary role. Secrets can be protected more effectively if secrecy is reduced overall.

Moynihan, influenced by the role of McCarthyism and Cold War politics on the security clearance system, included in the Commission’s report an eighty-six page appendix, “Secrecy: A Brief Account of the American Experience” that explores the concept of government secrecy in the U.S., looking at the historical significance of



legislation like the Espionage Act of 1917 and the Sedition Act of 1918 and how such legislation has been historically used to censor the press and others.<sup>42</sup>

In his book *Secrecy* Moynihan notes that the threat to national security is often construed in regard to “the other” but also has much to do with the “threat from within,” noting that with its origins in the 1917 legislation,

Twentieth-century war requires or is seen to require measures directed against enemies both “foreign and domestic.” Such enemies, real or imagined, will be perceived in both ethnic and ideological terms. Second, government responds to domestic threats within the government bureaucracy and the security of government secrets, with similar regulations designed to protect against disloyal conduct on the part of citizens and, of course, foreign agents.<sup>43</sup>

In contrast to the culture of secrecy, Moynihan longs for a culture of openness but notes that many efforts in that direction have been thwarted, citing attempts by the Clinton administration among others. Moynihan is also prescient regarding our current circumstances when he notes that “The Cold War has bequeathed to us a vast secrecy system that shows no sign of receding. It has become our characteristic mode of governance in the executive branch. Intelligence agencies have proliferated and budgets grown even as the military has subsided. As old missions fade, the various agencies seek new ones.”<sup>44</sup>

Moynihan ends his book with a discussion of how America ultimately won the Cold War with an open society as opposed to the Soviet culture of closed access.

A case can be made...that secrecy is for losers. For people who don’t know how important information really is. The Soviet Union realized this too late.

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<sup>42</sup> 106.

<sup>43</sup> 127.

<sup>44</sup> 214. So Moynihan would hardly be surprised in the growth of secrecy and secret institutions that Arkin and Priest observed in the wake of the terrorist attack on the United States on September 11, 2001 as the development of “Top Secret America”.

Openness is now a singular, and singularly American, advantage. We are put in peril by poking along in the mode of an age now past. It is time to dismantle government secrecy, this most pervasive of Cold-War regulations. It is time to begin building the supports for the era of openness that is already upon us.<sup>45,46</sup>

Among the advantages of openness that the Commission cites is the ability of lawmakers and the public to hold the executive branch accountable. But they also make the point that openness helps policy makers and administrations make better-informed choices. Noting that, apart from aspects of nuclear energy subject to the Atomic Energy Act, secrets in the Federal Government are determined to be secrets by the very bureaucrats who keep them, the Commission found this arbitrary system produces problems where even the President of the United States may make mistakes that might have been avoided with more openness.

Daniel Ellsberg,<sup>47</sup> a former United States military analyst, while employed by the RAND Corporation, precipitated a national political controversy in 1971 when he released the Pentagon Papers, a top-secret Pentagon study of U.S. government decision-making in relation to the Vietnam War, to The New York Times and other newspapers.

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<sup>45</sup> 227. Moynihan's warning for U.S. democracy to shed its Cold War ideology, lest it fall victim to it, seems almost quaint in light of the doubling down on the national security ethos that has occurred through all subsequent administrations.

<sup>46</sup> Erwin, one of my interview respondents, worked on Capitol Hill for many years before he became a scholar and an activist on the topic of government secrecy. In our discussion of the Moynihan Commission, he bemoaned the fact that such a bipartisan effort would not be possible in the current political climate. "Well, the Moynihan Commission was remarkable in many respects. It had Moynihan, it had Jesse Helms, who was about as far to the right as you could get. You had John Deutch, a former CIA director. You had John Podesta, a White House chief of staff. It was an extraordinary gathering of diverse people who worked productively together. And apparently that's all but impossible today."

<sup>47</sup> Ellsberg is currently affiliates with the San Francisco-based Freedom of the Press Foundation, a 501(c)3 non-profit organization dedicated to helping support and defend public-interest journalism focused on exposing mismanagement, corruption, and law-breaking in government. The organization recently appointed Edward Snowden to join Ellsberg and others on the Press Foundation's Board of Directors in January of 2014.

In his book *Secrets: A Memoir of Vietnam and the Pentagon Papers*, he describes the kind of dangerous arrogance and cynicism that develops in the minds and behaviors of clearance holders who come to believe that they know best, or at least certainly better than those without access to classified information. He gives a chilling first-hand account of the culture of secrecy in action.<sup>48</sup>

Once I was inside the government, my awareness of how easily and pervasively Congress, the public, and journalists were fooled and misled contributed to a lack of respect for them and their potential contribution to better policy. That in turn made it easier to accept, to participate in, to keep quiet about practices of secrecy and deception that fooled them further and kept them ignorant of real issues that were occupying and dividing inside policy makers. Their resulting ignorance made it all the more obvious that they must leave these problems to us.<sup>49</sup>

Ellsberg demonstrates how dangerous secrecy can be as it contributed to the “group think” that escalated the Vietnam war even after it became obvious, to all but the most casual observers, that the war was unwinnable.<sup>50</sup>

Washington Post journalists Dana Priest<sup>51</sup> and William Arkin (2011) look at the unprecedented growth of anti-terror activities in the United States following the terrorist

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<sup>48</sup> Shils, Edward A., *The Torment of Secrecy: The Background and Consequences of American Security Policies*, Ivan R. Dee Publisher, Chicago, 1956.

<sup>49</sup> 44.

<sup>50</sup> As noted in Chapter 1, Ellsberg points out, there is a major drawback to holding clearances and that is it inhibits free flow of information, "You will deal with a person who doesn't have those clearances only from the point of view of what you want him to believe and what impression you want him to go away with, since you'll have to lie carefully to him about what you know. In effect, you will have to manipulate him. You'll give up trying to assess what he has to say. The danger is you'll become something like a moron. You'll become incapable of learning from most people in the world, no matter how much experience they may have in their particular areas that may be much greater than yours."

<sup>51</sup> I am writing here about Priest's work on national security issues but she is also well known for her work in 2007 with Anne Hull exposing the horrendous conditions at Walter Reed Army Medical Center. The story caused an uproar on the Hill and resulted in the resignation of Secretary of the Army, Francis J. Harvey and many other heads in the Department of Defense medical community rolled as a result of that story.

attacks on the U.S. in 2001. Priest and Arkin argue (as Moynihan did before them) for a culture of transparency, stating that instead of more secrecy, their book

offers a counterproposal: that only more transparency and debate will make us safe from terrorism and the other serious challenges the United States faces. Terrorism is not just about indiscriminate violence. As its name suggests, it is about instilling paranoia and profound anxiety. It aims to disrupt economies and inspire government clampdowns. It is time to close the decade-long chapter of fear, to confront the colossal sum of money that could have been saved or better spent, to remember what we are truly defending, and in doing so, to begin a new era of openness and better security against our enemies.<sup>52</sup>

Just as Ellsberg describes the impetus for government to mislead the press, Priest describes how journalists are seen by government secret holders as the enemy, “The deep layers of secrecy were to keep terrorists, foreign spies, and reporters away. We were in terrible company and often treated accordingly, especially by President Bush’s cabinet members, conservative members of Congress, and cable television pundits who especially liked to label us traitors.”<sup>53</sup>

The authors note that irrespective of campaign promises by the Obama administration, the anti-terror juggernaut unleashed by the previous administration continues.

As a result of his predecessor’s response to 9/11, the government Barack Obama was about to inherit had really become two governments: the one its citizens were familiar with, operated more or less in the open, the other a parallel top secret government whose parts had mushroomed in less than a decade into a gigantic, sprawling universe of its own visible to only a carefully vetted cadre – and its

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<sup>52</sup> xxiii. In retrospect, Priest and Arkin’s plea for less government secrecy in their time seems as naïve as Moynihan’s in his. Their book, which was the result of articles accumulated during more than a decade of “the war against terror” purports to close out the decade with secrecy reforms. This is understandable as the book was published only two years into the current administration which, at first, did make reference to such reforms, but has since reneged on them.

<sup>53</sup> 19.

entirety, as pentagon intelligence chief James Clapper admitted, visible only to God.<sup>54</sup>

“Covert operations stayed the centerpiece of the new president’s plan of attack. As the glow of the inauguration faded, Obama embraced the intelligence-military-corporate apparatus, too, and the enduring hidden universe continued to grow larger and more secret every day.”<sup>55</sup>

Priest and Arkin note that in 2004 thirty new corporate or government organizations were created or redirected toward a counterterrorism mission.

That was followed by thirty four more the next year and twenty-seven the year after that; twenty-four or more each were added in 2007, 2008 and 2009. After years of investigating, Arkin had come up with a jaw dropping 1,074 federal government organizations and nearly two thousand private companies involved with programs related to counterterrorism, homeland security, and intelligence in at last 1700 locations across the United States – all of them working at the top secret level.<sup>56</sup>

The authors make the argument that extreme secrecy serves capital and precludes adequate oversight of the government’s activities and that the secret bureaucracy is constantly expanding. “By 2010, in the middle of the longest recession ever, the budget for intelligence had become 250 percent larger than it was on September 10, 2001, without anyone in government seriously trying to figure out where the overlaps and waste were.”<sup>57</sup> This expansion happened during a time when many other government agencies were having their budgets cut.

Priest and Arkin note that the current administration is particularly ruthless toward those clearance holders within the government seeking to shed light on top secret

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<sup>54</sup> 52.

<sup>55</sup> 55.

<sup>56</sup> 86.

<sup>57</sup> 103.

America, “President Obama’s Justice Department has taken a more aggressive tack against the unauthorized disclosure of classified information by pursuing more co-called leak investigations than the Bush administration.”<sup>58</sup>

### **Secrecy and Bureaucracy**

Weber noted that bureaucracies tend toward secrecy as a form of regulation: “Every Bureaucracy seeks to increase the superiority of the professionally informed by keeping their knowledge and intentions secret. Bureaucratic administration always tends to be an administration of ‘secret sessions’: in so far as it can, it hides its knowledge and action from criticism.”<sup>59</sup> Such practices tend to increase the power and the elite status of the bureaucracy and bureaucrats. It also creates a strong in-group versus out-group dynamic that increases the pressure for loyalty thus allowing those with special knowledge to remain inside the group.

Some of the individuals that I interviewed lost clearances specifically because they criticized the bureaucracy within which they worked. And individuals were often surprised by the vehemence with which their “chain of command” or bureaucratic superiors reacted to such criticism.<sup>60</sup>

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<sup>58</sup> xxii.

<sup>59</sup> 1946:233.

<sup>60</sup> Andy was surprised at the reaction of his superiors to his disclosures that ultimately caused them to take his clearance. “It’s like, ‘Yeah, he’s our enemy. We hate him because he rebelled against us’ ...cause they were so wanting to make me suffer. They wanted to make it punitive... They completely misinterpreted by just being so, ‘Oh yeah, he’s bad. He’s really, really bad.... And then leadership backed ‘em up. The leadership should’ve said, ‘Stop this. This is just insane.’ Instead, they backed up their bureaucrats and then they doubled down on stupid and it’s gotten worse. It’s kind of like they helped make me who I am by being so mean about it. So I just take it in stride.”

Michael Herzfeld<sup>61</sup> observes, “Skilled actors that they are, bureaucrats put a face of unemotional neutrality on their every action. It is only when one makes a conscious effort to contrast their practices with those of everyday sociality that the systematic oddity of what they do begins to emerge with any clarity.”<sup>62</sup> Herzfeld questions the anthropologist’s penchant for focusing on the exotic at the expense of studying the mundane, like Western bureaucracies. And indeed, when the bureaucracy’s participants point to its systemic oddities, they often fall victim to those oddities.

Andy relayed his experience testifying to Congress about the effects of whistleblowing on his career, noting that removing his security clearance was the first salvo of governmental reprisal for causing embarrassment by revealing inconvenient truths. He also noted that he is far from alone in such bureaucratic assaults. “And I...actually testified...that, you know, the security clearance system is used as a punitive measure of management’s tools, rather than on trying to determine reliability.”

According to Herzfeld, state bureaucracies claim to be rational, yet are infused with religious characteristics and demand something like religious faith from their adherents.

It treats rationality as distinct from belief, yet demands an unquestioning faith not radically different from that exacted by some religions. Even critics of the state bureaucracy implicitly accept its idealized self-presentation. The nation-state represents perfect order; only the human actors are flawed. This has all the marks of a religious doctrine.<sup>63</sup>

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<sup>61</sup> 1992:46.

<sup>62</sup> 1992:46.

<sup>63</sup> 1992:17.

Kathy Ferguson decries the dysfunctional pattern in which specific bureaucratic abuses are frequently noted and lamented, but bureaucracy itself is never brought into focus as the object of critique, noting that

The “debates” that commonly go on within the literature on administration center on small questions, questions that beg the larger issues of coercion and control. Authors habitually and endlessly discuss the merits of different administrative ratios, of overlapping versus exclusive jurisdictions, of more or less centralization of mechanistic versus organic organizations.

But Ferguson claims that such discussion around public administration merely serves to obviate serious analyses of the real and very human problems that bureaucracies foster by their very existence.<sup>64</sup>

Ferguson critiques the academic community’s willingness to accept the precepts of public administration on its own terms. The inability to address deep problems from within the federal bureaucracy is evident to anyone who has worked in it.

Daniel, an attorney who represents clients who have had security clearances revoked, makes the point that even those who have run afoul of the system tend to seek leniency within the system, never a way around it. Individuals rarely if ever question the necessity of the system itself.

Having dealt with many people who’ve lost their clearance or had their clearance under scrutiny, I don’t think I’ve ever heard anybody actually criticize the need for the process or say, “The system shouldn’t care about that.” Now, they may complain about the individual circumstance, like, “They’re being too strict with the rule. They’re not being fair to me.” But there seems to be pretty universal understanding that we need the system, and that the rules are in place the right way.

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<sup>64</sup> Kathy Ferguson, *the Feminist Case Against Bureaucracy*.



## Empirical Studies of Secrecy

Edward A. Shils,<sup>65</sup> a sociologist, who died in 1995, was a Distinguished Service Professor in the Committee on Social Thought and in Sociology at the University of Chicago. He was known for his research on the role of intellectuals and their relations to power and public policy. But in his book *The Torment of Secrecy* he attempts to understand the origins of the hysterical behavior surrounding McCarthyism in the United States and to learn what that period meant to the nation and to the future of the country.

Shils points to some of the problems that I have also identified that face workers who are cleared for national security work. He describes how such workers, because they hold secrets, are already always assumed disloyal. Like interviewees I met who felt they were assumed to be “guilty” of something that must be confessed during polygraph exams, Shills observes that secret holders must be indoctrinated into an “undifferentiated ideological community” wherein privacy is the price of public trust and comfort.

The combination of secrecy which protects and publicity which destroys gratifies the ambivalence which at bottom is characteristic of all extremist orientations. Given the hatefulness and fascination of secrets, the mere idea of persons entrusted with vital, crucial secrets on which the life of the supremely valuable community depends, transforms them into objects of a passionate play of excited sentiment. A great aura of fantasy, of destruction and salvation plays about those who have been entrusted with secrets and whose special knowledge puts them in a position where they must be entrusted with secrets. Since secrecy is so damaging to solidarity the mere possession of the secrets gives rise to the suspicion of disloyalty. Hence, their privacy must be dissolved and they must be completely and unreservedly absorbed into an undifferentiated ideological community.<sup>66</sup>

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<sup>65</sup> Shils was also a specialist in the works of Max Weber, and he also served with the British Army and the United States Office of Strategic Services during World War II.

<sup>66</sup> 35.

Shils describes some of the problems that we have encountered with the personnel security clearance system and processes noting that part of the problem with trying to keep secrets is that it is “so extraordinarily difficult to do it well.”<sup>67</sup>

He points to the centrality of ambiguity that surrounds the human dilemma of predicting individual behavior when explaining the problem of administering personnel security clearances,

It is not a matter of putting a guard at a given place and preventing documents from being removed. It is rather a matter of entrusting documents to a person whose probability of disobeying the security rules must be estimated. The estimate must be made on the basis of very poor and fragmentary data and uncertain reliability in accordance with principles of interpretation which are extraordinarily primitive at best, which have never been formulated and which perhaps can never be adequately formulated. Moreover the standards of conduct to be avoided are vague and unstable. The confusion of loyalty and security-reliability adds to the unmanageability of the task.<sup>68</sup>

Shils agrees with Bok that secrecy grows exponentially in times of perceived crises, “Periods of crisis make men feel the need for protection; they also make them need to feel loyal to some powerful protective institution such as a mighty national state.”

But he further points to one of the many ironies surrounding government secrecy which is that the more individuals, within a bureaucracy, perceive the need for secrets, the less they trust each other to keep them. “The less they are bound by professional and local loyalties, the more they will feel the need for the more inclusive loyalty and the more suspicious they will be of the genuineness and sufficiency of the loyalty of others.”<sup>69</sup>

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<sup>67</sup> 74.

<sup>68</sup> 75.

<sup>69</sup> 79.

Shils understood, as I learned from my interviews, that losing a clearance is devastating to careers and punishing to reputations. In his discussion of the House Un-American Activities Committee's impact on individuals called to testify, he outlines what is at stake for those whose refusal to testify, incriminate others or otherwise mollify the committee resulted in loss of clearance, "Thus one of the major consequences of the investigative committees' work has been the punishment of individuals through dismissal from private or public employment, the citation, indictment, and conviction for contempt of Congress, and the obstruction of the subsequent careers of the persons so punished."<sup>70</sup>

Like Bok, Shils notes the problems with secrecy and its antipathy to scientific pursuits, "The communication of scientist takes place through publication in scientific journals, through the distribution of offprints, through private correspondence and conversation. This has been harshly misunderstood by the custodians of loyalty and security."<sup>71</sup>

In a discussion of the personnel security clearance system under the Eisenhower administration Shils' critique is fresh and relevant because it applies to the clearance system still used today. Shils addresses one of the lingering issues with which the state must come to terms, which is specifically how to balance the personnel security clearance system so that it screens out potential threats while protecting innocent workers.

It is this narrow doctrinarianism which makes the present personnel security system so inefficient, even though it might well be fairly effective. Although it might catch a few potential spies, it hurts many innocent persons. The resources marshaled against the potential spy are usually almost equally dangerous to the

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<sup>70</sup> 165.

<sup>71</sup> 177.

innocent; the conception of potentiality is so wide and so vague that many of the innocent are treated as if they were likely to become spies.<sup>72</sup>

Like Bok, Shils concedes that secrecy has its place but also thinks that the government tends to go overboard, resulting in a love of secrecy for its own sake.

There remains, of course, many specific matters which must be kept secrets, e.g., cryptographic and cryptanalytic knowledge. The size of stockpiles might well be kept secret although there are definitely situations in which accurate knowledge by the enemy of one's own resources might be a powerful deterrent to the enemy from any aggressive action. Tactical plans in diplomacy and military operations must be kept secret. All of these, however, constitute a far smaller area of the secret than is demanded by the psychological fascination of secrecy and the passions of maximal loyalty.<sup>73</sup>

Shils is an advocate of pluralistic society and notes that

Functional secrecy too, of course, can and must have its place in such societies. The self-protection of the society in periods of genuine external danger needs a certain amount of secrecy; so does the internal protection of the society from the conspiracy to use violence to subvert the social order. Security and counterespionage are both necessary. The need is functional; it is a practical necessity, to be assessed by sober and responsible judgment. Such secrecy is a far cry from the secrecy which is required by paranoid ideological extremism. The latter is not functional but symbolic. It is part of the war of fantasy which the pure and good conduct incessantly with corruption and evil until the Last Judgment.<sup>74</sup>

Biblical analogies are apt as Shils also sees Puritanism, along with hyperpatriotism, xenophobia, isolationism, fundamentalism and populism as integral components making up both the American psyche and political landscape.<sup>75</sup>

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<sup>72</sup> 214.

<sup>73</sup> 221.

<sup>74</sup> 235.

<sup>75</sup> Kevin noted that his experiences reminded him of the McCarthyist era: "Now, I wasn't a history minor. However, I took lots of history classes, and I'm an amateur historian. I'm aware of all the abuses that occurred in the fifties, with the McCarthyist era, and I can imagine the mindset of the FBI counterintelligence people under Hoover... But the attitude in the counterintelligence agencies that I was forced to, that I was abused by, and I include the FBI and DIA, was a shock to find out that this mentality still existed. Xenophobia, ignorance, arrogance, and bullying was prevalent."

In his book *The Torment of Secrecy* Shils attempted to understand the origins of the hysterical behavior surrounding McCarthyism in the United States. In his book, *The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government*, David K. Johnson is surprised that such historians of the McCarthy era have given “stunningly little attention” to the Lavendar Scare which led to the dismissal and ended the careers of thousands of gay and lesbian federal workers. Contrary to popular belief, Johnson explains that the fear of homosexuals in the State Department’s Foreign Service, for example, was not that they could be blackmailed if discovered, but rather that they created a “moral problem”.

In its internal study of the problem of homosexuality, the [State] department articulated several rationales for removing homosexuals, none of which involved the threat of blackmail or any other link to national security. Instead, the department feared that homosexuals created a “moral problem” because most ‘normal’ men did not want to work or associate with them. Sexual perversion was unacceptable in the department because it was “repugnant to the folkways and mores of our American society.”<sup>76</sup>

According to Johnson, in the two years between May 1953 and June 1955, as the purge accelerated, over eight hundred federal employees either resigned or were terminated with files containing information about sex perversion - about four hundred per year. During the height of the witch-hunts in 1953, Undersecretary of State Donald B. Lourie testified before a congressional committee that homosexual firings were averaging about one a day from his department alone. By the 1960s, the State

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<sup>76</sup> 74.

Department, the most aggressive federal agency in ferreting out homosexuals had fired approximately one thousand suspected homosexuals.”<sup>77</sup>

Johnson describes how the purge of homosexuals that took place in the government also happened in the defense industry. “Almost no corporation or other private business will hire a man with such a stigma on his record”, warned a prominent Washington psychiatrist, “If the present wave of public sentiment continues, certain male and female homosexuals will become persons without a country, since they may find it practically impossible to earn a living.”<sup>78</sup>

Johnson describes how the State Department went about strengthening its internal security systems to deal with the lavender Scare. When applicants were screened for employment,

Every applicant was checked against the State Department’s master list of alleged homosexuals, a list which included anyone ever implicated in any interrogation or investigation of homosexuality...numbering some three thousand names by 1950. All male applicants were subject to a personal interview by security personnel who specialized in uncovering homosexuals. If suspicions were raised, the applicant would be given a lie detector test.<sup>79</sup>

The perceived insider threats of the 1950s were clearly different than those perceived by the national security state of today. Presidents Clinton’s 2013 Executive order stating “The United States Government does not discriminate on the basis of ... sexual orientation in granting access to classified information”, was helpful in turning the tide against discrimination against the LGBT community as federal workers. The facts that the CIA now actively recruits lesbians and gay men by holding networking events

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<sup>77</sup> Johnson:166.

<sup>78</sup> Johnson:168.

<sup>79</sup> 2004:73.

co-sponsored by Gay and Lesbian organizations, leads one to wonder if there are other societal barriers in place for granting clearance that may also fall by the wayside in time.

Michael Taussig in his book, *Defacement: Public Secrecy and the Labor of the Negative*, asks what happens when something precious (like a secret) is spoiled. It begins with the notion that such activity is attractive in its very repulsion, and that it creates something sacred even in the most secular of societies and circumstances. In specifying the human face as the ideal type for thinking through such violation, he raises the issue of secrecy as the depth that seems to arise with the tearing of surface. This surfacing is made all the more subtle and ingenious, not to mention every day, by the deliberately partial exposures involved in ‘the public secret’—defined as what is generally known but, for one reason or another, cannot easily be articulated.

Arguing that this sort of knowledge (“knowing what not to know”) is the most powerful form of social knowledge, Taussig works with ideas and the ethnography of unmasking in so-called primitive societies in order to explore defacement and the idea that the public secret is the search for a mode of truth telling that unmasks, but only to re-enchant, thereby underlines Walter Benjamin’s notion that ‘truth is not a matter of exposure of the secret, but a revelation that does justice to it.’”<sup>80</sup>

The concept of the public secret, of knowing what not to know, may be demonstrated in Brian’s description of the polygraph exam. Brian suspects that all involved know that a polygraph in-and-of-itself cannot actually differentiate between fact and fiction. Nevertheless, there is the presumption of guilt that comes with the need for

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<sup>80</sup> <http://www.sup.org/book.cgi?id=432>

confession. Brian describes the “incentive to cooperate” when the “polygraph god” requires appeasement. While it may seem outrageous to think that individuals submit false confessions in order to “pass” a polygraph exam, it makes more sense in the context of what is at stake if they don’t.<sup>81</sup>

Tuassig describes a “primitive” culture in which tribal elders, depicting themselves, in costumes, as gods to the community, perform ceremonies that instantiate and promote a sense of kinship and community. Adults understand, and children soon learn (as they do about Santa Claus) that the gods are not gods, but rather their brothers, fathers and uncles depicting gods. It is the shared understanding of the public secret that creates community in this tribe. In the tribe of the cleared government worker, it is the understanding that the polygraph god must be appeased (even if that Santa is wearing no clothes – to mix metaphors) in order to prove one’s belonging to the national security state’s undifferentiated ideological community.

This belonging is not without sacrifice as Hugh Gusterson observed in his book *Nuclear Rites: A Weapons Laboratory at the End of the Cold War*. In his ethnographic study of scientists at the Lawrence Livermore National Laboratory, he found that employees perceive that they live under a constant threat of surveillance. In addition,

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<sup>81</sup> “If you’re in that position where it’s like, ‘Oh, my God. I have to pass this thing.’ And they’re telling you, ‘There’s something wrong. There’s something that keeps coming up.’ I think it would make a person disinclined to turn to the polygrapher or whoever is asking the questions and say, ‘No, there really isn’t. I don’t know why your machine is doing this, but there is nothing. I have not done anything wrong.’ Because you know that your job is on the line. So there is real strong incentive to cooperate. Your job’s on the line. If you don’t pass the polygraph, you don’t get a job. If you don’t pass the clearance process, you don’t get a job. I would think any reasonable person realizes going into that, that you hold no cards; they hold all the cards. There’s really no sense in arguing. ... In my personal experience, I wrack my brain, and I come up with a thing that, ‘Well, maybe it’s this.’ And I tell ‘em. So they formulate the question, and then they ask me. And then, after that, they will either say yes or no—you have satisfied the polygraph “. You have appeased the polygraph god. Or not, in which case you have to make another sacrifice. ‘Let me cough up this bit of information....’”



Gusterson found this perception led to increased self-surveillance on the part of the scientists, “For example, one scientist told me that because of signs around the laboratory warning people not to discuss classified information on the telephone, she presumed, though she did not know for sure, that calls from within the laboratory were randomly monitored.”<sup>82</sup>

Gusterson observed that the self-surveillance that individuals experience around clearance can negatively impact a sense of political agency and civic freedom. For example, he found that internalized surveillance had a chilling effect on laboratory employees signing petitions. “In one example, an older scientist who tried to circulate a petition protesting new drug-testing rules found many younger scientists sympathetic but too nervous to sign” because they feared their clearance may be revoked.<sup>83</sup>

### **The Role of the Polygraph**

Johnson describes how the State Department went about strengthening its internal security systems to deal with the Lavender Scare. Noting that by 1950, “all male applicants were subject to a personal interview by security personnel who specialized in uncovering homosexuals. If suspicions were raised, the applicant would be given a lie detector test.”<sup>84</sup>

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<sup>82</sup> 1998:85.

<sup>83</sup> 1998:86. In the interview with Kerry in the previous chapter, he states that he practiced self-surveillance in refraining from some activities in high school. He didn’t say what those things were, but he did say that he was worried about his record and his ability to gain a security clearance. “I think there was some deterrent effect in knowing that adverse things showing up on your record could potentially jeopardize your ability to get a clearance. I will say that there were a lot of things I didn’t do in school, knowing that this was a potential path for me and that I was thinking about government service and so didn’t wanna ruin the opportunity by having some type of blemish on my record that might prevent getting employment here.”

<sup>84</sup> 2004:73.

In his book, *Gatekeeper: Memoirs of a CIA Polygraph Examiner*, John Sullivan points out that in addition to Communism, the main focus of the polygraph program from its inception at the CIA was on identifying homosexuals. He posits that the intrusion into the employees' sexual lives was part of what made the polygraph unpopular among CIA workers at the time.

In the early years of CIA's polygraph program, polygraph tests focused on detecting Communists and homosexuals. Early tests had more questions dealing with Communism than other issues, but the homosexuality issue was pursued equally vigorously.... Rarely were any significant admissions obtained during interrogations on the Communism issue. Examiners were much more successful in pursuing the homosexual issues. When they interrogated a subject on the homosexual activity issue, some examiners stepped over the line by delving into heterosexual relationships. This practice significantly contributed to the negative image Agency employees had of the polygraph.<sup>85</sup>

Scholars have discredited the lie detector, or polygraph, because it cannot be proven to scientifically deliver what it claims.

In 2002, the National Academy of Sciences declared that polygraph examinations are dangerously unreliable and the federal government should cease depending on them to screen for security risks. The Academy's 18-month, federally-funded study found that the polygraph not only incorrectly deems large numbers of people who are telling the truth to be liars, but may have allowed spies and others posing security risks into sensitive positions because they were able to pass polygraph tests.

Ken Alder, in his book, *The Lie Detectors: The History of an American Obsession*, notes that part of the magic of the polygraph (as anyone knows who has tried to summon Tinker Bell) is in the believing.

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<sup>85</sup> Sullivan, John, F., Potomac Books Inc., 2008, page 12.

Of course, the machine's proliferation in twentieth-century America shows that the public believed the tests served some purpose. But in the case of the lie detector something additional was required, because persuading Americans of the machine's potency was itself a prerequisite for the machine's success. As its proponents acknowledged, the lie detector would not distinguish honest American from deceptive ones unless those same Americans believed the instrument might catch them. In short, the lie detector depends on what medical science has dismissively termed "the placebo effect." At the same time, as its proponents also acknowledged, the lie detector did not test whether people were actually telling the truth so much as whether they believed they were telling the truth. So either way, America's obsession with the lie detector poses the most troubling question of all: What do we believe?<sup>86</sup>

David Lykken in his book, *A Tremor in the Blood: Uses and Abuses of the Lie Detector*, contends that the machine is easy to thwart for those who are trained to do so. Indeed there are many ways that people train others to "pass" an exam. Lykken also notes what some of my interviewees have observed, specifically that once you are in with the in crowd, once you have passed an exam, you are more likely to be accepted in subsequent exams. Lykken also makes the point that although the polygraph is a tool, like other technologies, it is dependent upon all-too-human people to run it.

Aldrich Ames and Harold Nicholson apparently passed CIA polygraph tests so convincingly that their superiors turned a blind eye to, for example, Ames's unexplained wealth, his luxurious home and fancy car. It is reminiscent of the story of the Emperor's New Clothes – once you have passed the polygraph, your associates can no longer see the naked truth.<sup>87</sup>

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<sup>86</sup> Alder, page xiv.

<sup>87</sup> Lykken, page 214. While the "Emperor's New Clothes" effect may apply to the famous spies Lykken references, it does not apply to those interviewees in the previous chapter like Kevin who, after a lengthy and successful career was dismissed because of a recurring polygraph exam ("...when I would hear about someone being, ... a negative polygraph, I would always assume it was something behind it. You know, a normal, conservative person, and not knowing that much about it, I'd say, 'well, it must be something there, if he's having security problems.'") Or Brian who said he always felt he needed to reveal ever more of himself to the polygraph examiners in order to pass his recurring exams. ("Now, I passed every polygraph I ever had, so I'm not one of these people who are saying, 'Oh yeah, the polygraph is all screwed up.' It was never a pleasant experience. It was always intrusive.")

## **Secrecy and Hegemony**

Antonio Gramsci, an Italian writer, politician, political theorist, and a founding member and onetime leader of the Communist Party of Italy, wrote about culture and political leadership and was particularly attracted to Marxist observations on the relationship between state power and capital. He is known for his concept of cultural hegemony as a means of maintaining the state in a capitalist society. Cultural hegemony is the concept that demonstrates how a society can be ruled or dominated by one social class, with the consent of other classes, if dominant ideologies can be made compelling. It is the dominance of the hegemonic ruling class over all other classes that cause bourgeois ideas to be seen as the norm. Gramsci notes that under the stewardship of cultural hegemony, ideologies that benefit the ruling class are seen as universal and perceived to benefit everyone. He notes that cultural hegemony is vital to the maintenance of the capitalist state and is maintained through a mix of both force and consent.

Gramsci contends that, contrary to what actually existing capitalist states would have us believe, the private and social spheres are actually one. And this is a feeling that hits home for many government employees who undergo the rigors of the personnel security clearance process. The intrusion of the government into what we may think of the “private” spheres of familial and marital relations or household finances is one that

has taken employees aback, at times wondering if there is any private sphere for them at all.<sup>88</sup>

For government workers, there are few social collectives established to help them once they have run afoul of the clearance system and the national security state. Many government workers are not represented by trade or labor unions. The U.S. Department of Labor runs the whistleblower protection program for the executive function of the government. But many of the government whistleblower protection policies promised by the administration (and all of those preceding it) fall far short of what is required.

Some legal collectives, like the Government Accountability Project (GAP), a public interest law firm with the mission of helping whistleblowers, take on some pro bono cases when government employees witness abuses of power. And the Concerned Foreign Service Officers (CFSO) is a group of current and former Foreign Service and Civil Service employees of the U.S. Department of State who document and expose misuse of the security clearance process by the State Department's Diplomatic Security Service (DSS).

But if Gramsci were around today, he'd recognize that most organizations ostensibly set up to assist government workers are actually hegemonic power structures that work against them, while giving the impression that they work on their behalf.

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<sup>88</sup> In the previous chapter Laura was surprised at the intimate nature of the questioning on the part of the security officers when informed her clearance was being suspended, "So they came and they interviewed me and it was one of the most traumatic experiences of my life basically, because they were so invasive". She did not go into much detail regarding the invasive nature of the questions that she was forced to answer, though she did say that agents asked her where she had had sex, and in which sexual position(s).

## Governmentality and Biopower

Foucault<sup>89</sup> explains how the development of statistics and other public administration technologies were instrumental in moving monarchical states of the seventeenth century into mercantilism and then beyond it.

The schematic presentation of the notion and theory of the art of government did not remain a purely abstract question in the sixteenth century, and it was not of concern only to political theoreticians. I think we can identify its connections with political reality. The theory of the art of government was linked, from the sixteenth century, to the whole development of administrative apparatuses of the territorial monarchies, the emergence of governmental apparatuses: it was also connected to a set of analyses and forms of knowledge which began to develop in the late sixteenth century and grew in importance during the seventeenth, and which were essentially to do with knowledge of the state, in all its different elements, dimensions and factors of power, questions which were termed precisely statistics, meaning the science of the state; finally as a third vector of connections, I do not think one can fail to relate this search for an art of government to mercantilism and the...science of police.<sup>90</sup>

The focus on statistics is prominent in Foucault's discussion of governmentality as it leads to the concept of population. He explains that, prior to statistical techniques of measuring people, the concept of a national economy was based on the family, but that after the invention and use of statistics, families were grouped into something else – the population – to be collectively surveyed and quantified.

The perspective of the population, the reality accorded to specific phenomena of population, render possible the final elimination of the model of the family and the re-centering of the notion of the economy. Whereas statistics had previously worked within the administrative and thus in terms of the functioning of

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<sup>89</sup> A French philosopher, sociologist, and historian, whose major works include "Discipline and Punish: The Birth of the Prison", 1997; "Power/Knowledge: Selected Interviews and Other Writings, 1980; "Society Must Be Defended, Lectures at the College De France, 1975-76,; and "The History of Sexuality" 1978. In their book, "Michel Foucault: Beyond Structuralism and Hermeneutics" (1983) Hubert L. Dreyfus and Paul Rabinow, try to provide a coherent analysis of Foucault's work as a whole. For this research, I also found useful Graham Burchell, Colin Gordon and Peter Miller's book "The Foucault Effect: Studies in Governmentality, 1991.

<sup>90</sup> 1991:96.

sovereignty, it now gradually reveals that population has its own regularities, its own rate of deaths and disease, its cycles of scarcity, etc.; statistics shows also that the domain of population involves a range of intrinsic, aggregate effects, phenomena that are irreducible to those of the family, such as epidemics, endemic levels of mortality, ascending spirals of labor and wealth; lastly it shows that, through its shifts, customs, activities, etc. , population has specific economic effects: statistics by making it possible to quantify these specific phenomena of population, also shows that this specificity is irreducible to the dimension of the family. The latter now disappears as a model of government, except for a certain number of residual themes of a religious or moral nature. What, on the other hand, now emerges into prominence is the family considered as an element internal to population and as a fundamental instrument in its government.<sup>91</sup>

In Foucault's *History of Sexuality* he examines how power is administered to reproduce hegemonic norms. His insights are particularly useful as they relate to the way the nation state is formed and its power maintained through state sponsored violence. He examines the historical shift from sovereign power to state power arguing that the tools used by the state are those of bodily surveillance and manipulation in the name of "the people" or the nation state and that a natural outcome of the shift has been an increased acceptance of warfare. "Wars are no longer waged in the name of a sovereign who must be defended; they are waged on behalf of the existence of everyone; entire populations are mobilized for the purpose of wholesale slaughter in the name of life necessity: massacres have become vital."<sup>92</sup>

Foucault further argues that the call upon citizens of the nation state to die for one's country is in natural relationship to the state's new status as defender of life. The result is that nation states behave in the realm of international relations as if war was a natural option when "the people" are threatened and it has indeed become natural for

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<sup>91</sup> 1991:99.

<sup>92</sup> 1978:137.

citizens to be called upon to die for the state. “The principle underlying the tactics of battle – that one has to be capable of killing in order to go on living – has become the principle that defines the strategies of states.”<sup>93</sup>

What Foucault has described in his observations on governmentality and biopower is how the state has evolved to wield more complete power over its citizens. Whether through its tools of surveillance or its predictive remedies for perceived social maladies, by deploying a political economy on behalf of “the people” or instilling national pride through festivals, the state controls bodies and minds as never before. Because the democratic state permits, and in some instances appears to encourage dissent, citizens feel in control of their states, while at the same time being controlled by them.

Foucault’s observations on state power provide a useful starting point in analyzing the current normative ways of thinking about the security clearance system and state sponsored secrecy which include the normalization of individual citizen’s bodies to be used in warfare, presumably so that others of “the people” may continue to live. “Power would no longer be dealing with legal subjects over whom the ultimate dominion was death, but with living beings, and the mastery it would be able to exercise over them would have to be applied at the level of life itself; it was the taking charge of life, more than the threat of death, that gave power its access even to the body.”<sup>94</sup>

Foucault has also observed how the state maintains control of historical and political discourse. He finds that, while states are composed of nations who are seen fit to

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<sup>93</sup> 1978:137.

<sup>94</sup> 1978:143.



rule themselves, they are not composed for the purpose of defense against Others.

Rather, the main focus of the state is the control of its own,

...the greater a nation's Statist capacity, or the greater its potential, the stronger it will be. Which also means that the defining characteristic of a nation is not really its dominance over other nations. The essential function and the historical role of the nation is not defined by its ability to exercise a relationship of domination over other nations. It is something else: its ability to administer itself, to manage, govern and guarantee the constitution and workings of the figure of the State and of state power. Not domination, but State control.<sup>95</sup>

Foucault's observations on the state's use of statistical science to control populations and his point about state control are both evident in the Department of Defense's Personnel and Security Research Center (PERSEREC) development and production of statistical models and information systems (such as the Automated Continuous Evaluation System (ACES) that identify "insider threats" in the form of government workers.

PERSEREC claims to have "developed and validated an assessment instrument that efficiently assesses dysfunctional aspects of personality" and such an instrument may have been used to develop the profiles related to the current administration's new insider threat policies. "With regard to response to the insider threat, when fully operational, ACES will offer to the DoD earlier detection and intervention and an increased range of issues for determining vulnerabilities. Human resources will be required only when issues of concern are discovered."<sup>96</sup>

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<sup>95</sup> 1997:223.

<sup>96</sup> Defense Personnel and Security Resource Center,  
<http://www.dhra.mil/perserec/currentinitiatives.html#ACES>.

Foucault's discussion of the state's need to discipline history is focused on creation of the Ministry of History in France established to ensure the history sanctioned by the state. He sees the eighteenth century as the time when all knowledge became disciplined, when philosophy was removed from the sciences and when the state sought control over the disciplines it found useful. Foucault reminds us that truth is always somebody's truth. Historical truths are told for a reason. Because they are always subjective, historical truths are important in the creation of the nation state and perceptions of national security.

Foucault's observations on state power help describe the current normative ways of thinking about state surveillance and the personnel security clearance system by showing how states are not only composed for the purpose of defense against Others, but also for control of those within it. In *Discipline and Punish*, he explores the development of highly refined forms of discipline that he suggests developed a new economy and politics for bodies. His argument is that discipline creates "docile bodies," ideal for the economics, politics and warfare of the modern industrial age. He has shown, and I have found the same in my interviews, that by allowing for the constant possibility of surveillance, internalization of discipline is accomplished.<sup>97</sup>

Foucault reminds us that history will be sketchy when sanctioned by the state and an accurate historical truth in the national security state that is the United States is very hard to come by. Even with the Freedom of Information Act, Peter Galison asserts that the classified annals of information are actually larger than the unclassified "in fact, the

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<sup>97</sup> Foucault is also interested in the incessant search to characterize, identify, and monitor deviants.

classified universe... is certainly not smaller, and very probably much larger than the unclassified one.”<sup>98</sup>

Historical truths, state sponsored education, literature, festivals, ceremonies, holidays and other public activities are ways that states can foster, in individuals, a sense of unity with people they’ve never met “the people”.

### **A Summary of Relevant Literature**

Many of Weber’s observations about the state, national security, war and capital are based on his historical analyses and are ones that we could just as easily make today. He reminds us that underlying all authority is the threat of violence. “All political structures use force, but they differ in the manner in which and the extent to which they use or threaten to use it against other political organizations.”<sup>99</sup>

Anderson argues that the state is “an imagined political community...because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion.”<sup>100</sup> Coinciding with Weber’s observations on nationalism, Anderson’s work shows how national consciousness is created. In so doing we can understand how citizens and federal workers have come by their sense of patriotism, what we all understand that to mean, and the importance of patriotism to the national security state and the personnel security clearance system.

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<sup>98</sup> 2003:1.

<sup>99</sup> 1960:159.

<sup>100</sup> 1983:6.

Campbell<sup>101</sup> analyzes how fear, in addition to national consciousness, is also required to sustain the normative framework of national security in the US. To do this he explores the influence of the Puritan jeremiads on texts that exhibited an ‘evangelism of fear’ designed to incite the ‘new chosen people’ to their ‘destined progress’ in the ‘city on a hill’, ‘New Eden’, or ‘American Jerusalem.’”<sup>102</sup> His approach informs the examination of how fear feeds the personnel security clearance system and the perceived need for state secrecy.

Foucault’s observations on state power help describe the current normative ways of thinking about state surveillance and the personnel security clearance system by showing how states are not only composed for the purpose of defense against Others, but also for control of those within it. In *Discipline and Punish*, he explores the development of highly refined forms of discipline that he suggests developed a new economy and politics for bodies..<sup>103</sup>

Simmel<sup>104</sup> reminds us of our tendency to believe that just because something is secret, it is inherently valuable. Pointing to the penchant of children to sing “I know something you don’t know” he notes that “Out of this secrecy which throws a shadow over all that is deep and significant, grows the logically fallacious, but typical, error, that everything secret is something essential and significant.”<sup>105</sup>

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<sup>101</sup> Here I am talking about David Campbell’s work, “Writing Security: United States Foreign Policy and the Politics of Identity, 1992. But he is also known for “National Deconstruction: Violence, Identity, and Justice in Bosnia, 1998.”

<sup>102</sup> 1992:107.

<sup>103</sup> As noted earlier, Foucault is also interested in the incessant search to characterize, identify, and monitor deviants.

<sup>104</sup> Weber was an acquaintance of Georg Simmel and influenced Simmel’s work on secret societies.

<sup>105</sup> 465.

Bok acknowledges the ubiquitous nature of secrecy in government noting that secrecy is of use to power holders such as the state, but that it can also hurt them pointing to the ultimate dilemma for governments in secrecy - the more they try to keep secrets, the more they fail.

Taussig's concept of defacement examines the deliberately partial exposures involved in the public secret —defined as what is generally known but, for one reason or another, cannot easily be articulated. Arguing that this sort of knowledge (“knowing what not to know”) is a most powerful form of social knowledge. This theory may be applied to explore whether there are things about the personnel security clearance system that the national security state may not admit to knowing – even to itself. For example, the intelligence community insists on using polygraph technology, to determine security clearance suitability, even though it has been unequivocally debunked.<sup>106</sup> When interviewed for this study Tim, a security officer for a DoD agency, expressed frustration with the intelligence community's dogged determination to maintain the polygraph program.

I'm not a big fan of the polygraphs. I think they're a waste of money. I think if you took that money that was in the polygraphs and people that support it and you put it to do those annual reviews, you'll get a bigger hit on the people that are actually doing or are more subject to a possible threat of espionage or criminal activities, ... You're gonna catch that. But polygraphs don't. Tell me what polygraphs stop?

Aftergood notes that the preponderance of classified documents fall under what he terms bureaucratic secrecy, and Galison confirms Aftergood's discoveries and asserts

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<sup>106</sup> In the “Scientific Validity of Polygraph Testing: A Research Review and Evaluation, A Technical Memorandum by the Washington, D.C.: U.S. Congress, Office of Technology Assessment, OTA-TM-H-15, November 1983, among others.

that rather than a rare occurrence applied to a tightly controlled set of knowledge, the classified annals of information are actually larger than the unclassified.<sup>107</sup>

Moynihan joins Shils in his attempts to understand the origins of the hysterical behavior surrounding McCarthyism in the United States. In his discussion of the personnel security clearance system, that evolved under the Eisenhower administration and is still in effect today, Shils worries about the human circumstances if not the efficacy of constant surveillance.<sup>108</sup>

Ellsberg describes a kind of dangerous arrogance and cynicism that developed in clearance holders who came to believe that they knew best.<sup>109</sup>

Simmel studied secret societies, noting that those organizations had many of the same characteristics associated with maintaining government secrecy such as the need to initiate new members and to play upon loyalties, fears, and discipline to maintain them.

Bok likens the initiation of clandestine and covert workers to that of the members of secret societies noting that both elicit a certain amount of angst in their cohort, “A person, a group, or a government agency dominated by secrecy, enveloped in it, runs special risks. And all who have dealings with such groups then have legitimate cause for concern.”<sup>110</sup>

Gusterson studied security clearance holders also citing the security clearance rituals as rites of passage, noting that the purpose of participation in such rites may be, to the initiate at least, somewhat ambiguous “If we accept that investigation for a security

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<sup>107</sup> 2003:1.

<sup>108</sup> 214.

<sup>109</sup> 44.

<sup>110</sup> 55.

clearance is a bureaucratized kind of initiation ritual, it seems that the rationale for the process is as much to unnerve, discipline, and transform as to evaluate candidates.”<sup>111</sup>

Just as Simmel worried that resources marshaled against the potential spy are equally dangerous to the innocent,<sup>112</sup> Gusterson<sup>113</sup> points to some of the emotional distress scientists feel when undergoing the security clearance process, “If, as it not infrequently does, an investigation drags into its second year, the applicant begins to feel increasingly anxious.”<sup>114</sup> As Simmel also noted Gusterson finds that classified work takes on an aura all its own. That is, it becomes important because it is secret. “The rituals of secrecy lend an air of dramatic importance to all the work, no matter how mundane, carried out at the laboratory.”<sup>115</sup>

Priest and Arkin<sup>116</sup> look at the unprecedented growth of anti-terror activities in the United States following the terrorist attacks on the U.S. in 2001 noting some of the dangers of such growth that include massive expenditures conducted, in secret, of taxpayers’ dollars. They argue for a culture of transparency, stating that instead of more secrecy, only more transparency and debate will make us safe.<sup>117</sup>

### **Puritanism and Secrecy**

A related theoretical claim and perspective that I explore in this thesis is that of puritanism and secrecy.

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<sup>111</sup> 74.

<sup>112</sup> 214.

<sup>113</sup> In his book *Nuclear Rites: A Weapons Laboratory at the End of the Cold War*.

<sup>114</sup> 74.

<sup>115</sup> 88.

<sup>116</sup> “Top Secret America: The Rise of the new American Security State.”

<sup>117</sup> xxiii.

In his book, *House of War: The Pentagon and the Disastrous Rise of American Power*, James Carroll, an ex-seminarian looks to Paul's Letter to Ephesians (6:10-12) to try to articulate one of the fundamental problems with the national security state. That problem is that while the state professes to (as the U.S. Constitution demands), provide for the common defense, it is very hard on the human beings.

“For we are not contending against flesh and blood” Paul wrote in his letter... “but against the principalities, against the powers, against the world rulers of this present darkness.” These are not fallen angels, and they are not individual villains. They are “sovereignities,” in his word, and the thing to understand about them is that they are constitutionally hostile to human beings.

Carroll further notes that “Scholars tell us [Paul] is surely thinking of the Roman tyrants and the crushing force of an uncaring imperial bureaucracy, but he is pointing to something about the human condition.”<sup>118</sup>

Weber noted that behind all authority lies the threat of violence. Execution under the Espionage Act is one means of the state's monopoly on violence. But there are other more subtle forms of violence towards individual bodies that the State wields in the name of national security. By exploring the economic consequences associated with the loss of a clearance and the emotional anxiety accompanying the clearance process some of these more subtle forms of violence have been exposed.

Weber also argues that ascetic Protestantism was one of the major "elective affinities" in determining the rise of capitalism, bureaucracy and the nation state.<sup>119</sup>

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<sup>118</sup> Carroll, James, *House of War: The Pentagon and the Disastrous Rise of American Power*, Houghton Mifflin Company, Boston, New York, 2006, p. 306.

<sup>119</sup> 1930.



Shils points to puritanical origins in the personnel security screening process and its disdain for privacy as a phenomenon of religious revivalism where “privacy is waywardness...and waywardness is wickedness.”<sup>120</sup> Shils, in his search for the roots of McCarthyism and its covalent hysteria in America came to the conclusion that we are predisposed to such mean-spirited behaviors by a “nativist tradition” that has been with us since the founding of the country – “the tradition of rancorous intolerance, a parochial jealousy, of intellectual inferiority, of the dislike of foreigners, of the distrust of urbanity, of the paranoid fear of subversion - ...it is not to be expected that this frame of mind will in the foreseeable future disappear in the united States.” However, Shils is optimistic that this tradition need not prevail in the same way, going forward, as it did during the Red Scare. “This tradition need not, however, always be as harmful as it has been in recent years in the United States. There is no reason why it cannot be confined to the alleys and bars and back streets and to the hate-filled hearts of the miserable creatures who espouse it.”

But as Lancaster had pointed out, in his description of the “carceral state” in America in which both official bureaucracies and civil society collude to keep the prison systems growing, this uniquely American mean streak shows no sign of receding, indeed, it is becoming more apparent.

No legitimate theory of corrections, crime, or social order justifies this approach, which can only be understood as vindictive. This spirit of vindictiveness – the idea that the law exists not to correct or balance but to punish...we perform these

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<sup>120</sup> 1956:207.

acts of barbarism because, like every other prefascist society, we adore punishment; we have become obsessed with it, addicted to it.<sup>121</sup>

Ironically, as Markos Kounalakis explains, writing for the Sacramento Bee, it is America's punitive penal system that may be protecting Edward Snowden.

The punishment meted to traitors can include death. And nearly all our allied nations and many others refuse to extradite criminal suspects to the United States if they are potentially subjected to capital punishment. That's why Attorney General Eric Holder wrote a letter to the Russian justice minister last year saying that he would not seek the death penalty in his case. The letter, which accused Snowden of theft and espionage, was intended to erase the death penalty extradition hindrance. Holder went on to clarify that 'the United States would not seek the death penalty even if Mr. Snowden were charged with additional death penalty-eligible crimes.<sup>122</sup>

Bok observes that the nation state and secrecy have grown up together and remain close friends. She contends that secrecy is one of the tools of the bureaucracy of "secular state religion" which is particularly apparent for those who work in the Pentagon, where military pageantry, heraldry, and insignia are all but unavoidable.

Government leaders still rely on it; the secular state religions draw on it through the veneration of constitutions and of wartime and revolutionary leaders, sharing thereby their aura of distance and sacredness. The more thoroughly government leaders control secrecy and openness, the more they resort to ritual and hierarchy to reinforce such an aura.<sup>123</sup>

Examining these claims and perspectives have proven to be useful as respondents report experiences in running afoul of a system that makes them feel like "wearing a

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<sup>121</sup> Lancaster, Roger, *Public Fear: The Rise of Punitive Governance in America* in Gusterson and Besteman's *The Insecure American*: p. 66.

<sup>122</sup> Death penalty in the U.S. protects Edward Snowden, Jan. 09, 2014, Markos Kounalakis, *The Sacramento Bee*.

<sup>123</sup> 173.

scarlet letter” in reference to the puritan practice of exposing evil-doers like adulterers to public ridicule.<sup>124</sup>

Campbell, in his analysis of the need for fear to sustain the normative framework of national security in the U.S., explores the influence of the Puritan jeremiads that “exhibited an ‘evangelism of fear’ designed to incite the ‘new chosen people’ to their ‘destined progress’ in the ‘city on a hill’, ‘New Eden’, or ‘American Jerusalem’”<sup>125</sup> and recounts the use of such rhetoric to bolster a national identity surrounding such diverse projects as manifest destiny and the first Gulf war.

The binary nature of relationships of western puritan thought—good/evil, truth/lie, with us/against us—are made material in the personnel security clearance process. And they serve to fuel the imaginations of those who monitor and are monitored by the system.

### **Conclusion**

Some of the canonic texts of Cultural Studies, sociology, and political thought have touched upon national security and the role of the state in maintaining control of bodies in service to it. Many have observed the relationship between state power and capital, noting that cultural hegemony is vital to the maintenance of the capitalist state and is maintained through a mix of force and consent and that fear also plays an important role. One can observe that mix when viewed through the prism of the

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<sup>124</sup> As noted in Chapter 3, a reference to respondents’ feeling as though they had a “scarlet letter” on one’s chest referencing the 1850 work by Nathaniel Hawthorne in which Hester Prynne, who conceives a child through an adulterous affair, is forced to wear a scarlet “A” for adulterer on her dress as a symbol of having broken the communities ethical standards and as a sign of shame.

<sup>125</sup> 1992:107.

personnel security clearance process, wherein individuals consent to surveillance and other intrusions because their livelihoods depend upon it.

Such consent to the hegemonic norm surrounding the personnel security process is glamorized in spy novels, blockbuster movies and action TV shows which may also imbue a sense of pride and patriotism. But, as scholars have shown, such consent also has costs that play out in increased anxiety, self-censorship and limited political voice.

Revelations and public concerns surrounding the untenable growth and untamable reach of secret government work abound. Congressional Committees have cited the need for a more unified, coordinated, smaller apparatus to help keep America's secrets safe. Nevertheless, the proliferation of security-related activities has continued unabated with ever more bodies deployed to perpetuate what Moynihan and Weber before him have termed "the culture of secrecy."<sup>126</sup>

Weber noted that bureaucracies tend toward secrecy as a form of regulation.<sup>127</sup> He also noticed, what President Eisenhower later articulated, that those involved in the defense industry stand to make a fortune. Nowhere in the United States is the bureaucracy, the culture of secrecy and defense related capital more evident than in the National Capitol Region, where an elaborate apparatus of institutions and individuals work to maintain the personnel security clearance system, which monitors and regulates the bodies and behaviors of the national security workforce.

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<sup>126</sup> 1998.

<sup>127</sup> 1991:233.

While some cultural studies texts deal with the failure of the national security state to deliver tangible benefits to citizens, few examine the impact of the national security state on the minds and bodies of those who work to maintain it.

By being critical of the process, I do not mean to give the impression that the United States and other countries do not need secrets or national security bureaucracies. Clearly countries face real threats to their national security, and there are legitimate secrets (for example the design details of nuclear weapons) that need to be protected. But the literature that I have referenced here points to the tendency of national security bureaucracies to outgrow their scale of legitimate need, the dynamic by which prudent security measures give way to imprudent paranoia, and the superimposition onto legitimate processes for conserving secrets of practices riddled with prejudice, capriciousness, unfairness, spite intimidation and irrationality disguised in the garb of scientific method. Without denying the need for some sort of bureaucracy of secrecy, in this thesis I explore the deformations of bureaucracy and secrecy that Shils, Moynihan, Weber, Ellsberg, Bok and others identified and warned against. What happens when a process constructed around tropes of rationality turns irrational? What happens when the national security apparatus of a country dedicated to constitutional rights and due process tramples the due process rights of its own employees? How do people who have given their careers to the patriotic service of their country's ideal react when, in the name of that ideal they see their careers destroyed by its inverted double? How do systems of security promote insecurity? These are the questions explored in succeeding chapters.

## CHAPTER 2. NATIONAL SECURITY AND PERCEIVED THREATS IN THE UNITED STATES

“Every kind of service necessary to the public good becomes honorable by being necessary.” – Nathan Hale

### Introduction

Benedict Anderson in his 1983 book *Imagined Communities* observed that states foster in individuals a sense of unity with people they’ve never met - “The people” - through state sponsored education, literature, festivals, ceremonies, holidays and other public activities. Anderson defines the state as “an imagined political community – and imagined as both inherently limited and sovereign. It is imagined because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion.”<sup>128</sup>

David Campbell, and others have noted that the United States of America has always articulated its imagined community in terms of threats to national identity and that the way the state and state actors address these threats is through planning for “national security.” He also observes that perceived threats to the nation further serve to instantiate and solidify our always malleable “selves” in relation to “others” observing that,

Inescapable as it is, identity – whether personal or collective – is not fixed by nature, given by God, or planned by international behavior. Rather, identity is constituted in relation to difference. But neither is difference fixed by nature,

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<sup>128</sup> Anderson’s definition is in contrast to Foucault’s observance of the state as “no more than a composite reality and a mythicized abstraction” (1983:6).

given by God, or planned by international behavior. Difference is constituted in relation to identity. The problematic of identity/difference contains, therefore, no foundations that are prior to, or outside of, its operation. Whether we are talking of the “body” or “the state,” or of particular bodies and states, the identity of each is performatively constituted. Moreover, the constitution of identity is achieved through the inscription of boundaries that serve to demarcate an “inside” from an “outside,” a “self” from an “other,” a “domestic” from a “foreign.”<sup>129</sup>

The concepts of inside and outside are particularly visible in the security clearance system. Those who hold a clearance are “insiders” in a rarified (though increasingly less so) fraternity of those trusted to keep the nation’s secrets. Yet it is never far from the collective imagination that such an insider can at any moment betray the nation by sharing secrets with outsiders such as foreign agents, terrorists, or god forbid – journalists.<sup>130,131</sup>

Campbell’s analysis of the need for fear to sustain the normative framework of national security in the U.S. includes an exploration of the influence of the Puritan jeremiads that “exhibited an ‘evangelism of fear’ designed to incite the ‘new chosen

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<sup>129</sup> 1998:9. Campbell and others see the current generally accepted notion - of the nation state as an inevitability - as based on the Hobbesian tradition that he describes as, “...the construction of a political theory in which the security of individuals and their ability to engage in commodious living is threatened by their existence in a state of nature, but achieved through their mutual surrender of sovereignty to a common power” (1992:53). Campbell notes that Hobbes includes plenty of descriptions of Others – that must be distinguished from civilized man. “The implication is that unless the power of the sovereign is re-inscribed, ‘we’ run the danger of becoming like ‘them’” (1992:59). He goes on to say that “The strategy of otherness is not just an occasional rhetorical devise employed by Hobbes to make a point with clarity; it is at the very heart of his political writing” (1992:59).

<sup>130</sup> Priest and Arkin in their book, *Top Secret America*, describe how journalists are seen by government secret holders as the enemy, “The deep layers of secrecy were to keep terrorists, foreign spies, and reporters away. We were in terrible company and often treated accordingly, especially by President Bush’s cabinet members, conservative members of Congress, and cable television pundits who especially liked to label us traitors” (Priest, Dana, and M. Arkin, William, *Top Secret America: The Rise of the New American Security State*, Little, Brown and Company, 2011, page 19).

<sup>131</sup> More recently, a directive issued by James R. Clapper Jr., the director of national intelligence, restricted the circumstances under which intelligence-community employees can talk to the news media, even about unclassified information. The directive, No. 119, “Media Contacts,” prohibits unauthorized “contact with the media about intelligence-related information, including intelligence sources, methods, activities and judgments,” without regard to whether it is classified. Those who violate the directive may be subject to punishment. Only top officials of the intelligence agencies can now decide who may talk to journalists. See *The Washington Post*, “The U.S. intelligence chief’s gag order does not stir trust” April 23, 2014).

people' to their 'destined progress' in the 'city on a hill', 'New Eden', or 'American Jerusalem'"<sup>132</sup> and recounts the use of such rhetoric to bolster a national identity surrounding such diverse projects as manifest destiny and the first Gulf war. As we explore the personnel security clearance system we will see that many of the underlying ideologies and principles of the security clearance system are also based on fear. Indeed the system is designed to both mitigate and enhance fear. The state fears whistleblowers, leakers and spies. Civil servants fear running afoul of the system and losing clearances. In both instances, the system (re) generates existing normative ways of thinking about the dangers surrounding national secrets and those who are sworn to protect them.

Weldes, Laffey, Gusterson and Duvall assess the phenomenon of national security through analyses of the discipline of security studies noting that it

stereotypically takes the form of positioning the existence of certain entities – often but not always states – within an environment in which they experience threat(s). The nature of those entities is assumed to be both given and fixed, at least for all practical purposes, and security is thus understood to mean securing these fixed entities against objective and external threats. These foundational assumptions naturalize those actors and their insecurities, while rendering contingent and problematic their actions and strategies for coping with the insecurities.<sup>133</sup>

My observation, like Weldes, Laffey, Gusterson and Duvall's, is that the security clearance system demands that all participants in the system take for granted foundational assumptions that naturalize the security clearance system and processes.<sup>134</sup>

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<sup>132</sup> Campbell, David, *Writing Security: United States Foreign Policy and the Politics of Identity*, University of Minnesota press, Minneapolis, 1992:page 107.

<sup>133</sup> 1999:9.

<sup>134</sup> During my interviews, virtually all subjects, while agreeing that the system should undergo improvements, agreed that such a system is necessary. This concurrence speaks eloquently to the underlying American belief in the national security state and its need to keep secrets as articulated in the national security personnel system, even by those to whom the system has been unkind. Interviewees take



In this section, I will briefly explain how, from the birth of the nation to present times, the evolution of national security priorities, as derived through perceived threats and articulated by the documents and sentiments of presidential administrations, have evolved. And how those priorities, in turn, result in policies and practices that impact government workers. National security priorities are a mercurial target however and often federal workers and others are left to deal with the human and material costs of administration policies gone wrong.

At times throughout U.S. history, specific groups of people, including federal workers, have been perceived as threats to national security. War, international alliances, sabotage, surprise attacks, and leaks have all shaped national security priorities and shaped the lives of those entrusted to serve the state. In addition, media coverage of secrets gone wrong has helped shape public perceptions and cultural productions around the culture of national security and those who maintain or betray it.

### **The Birth of a Nation: “Sending Trusty Persons”**

In this section I will explore the national security concerns of presidential administrations to determine where perceived threats have been identified in the United States and how they have contributed to the current national security state.

Even before President George Washington worried about “the insidious wiles of foreign influence,” perceived threats to the security of the nation had existed and evolved. To protect against those threats, there evolved the concomitant need for secrecy and trusted individuals to maintain it.

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for granted certain matter-of-fact assumptions about the state for which they have sworn allegiance. The discipline of Cultural Studies is uniquely positioned to unpack these assumptions.

According to the CIA, “George Washington was a skilled manager of intelligence. He utilized agents behind enemy lines, interrogated travelers for intelligence information, and launched scores of agents on both intelligence and counterintelligence missions.”<sup>135</sup>

In a letter dated July 26, 1777, Washington asks that his associates respond “by sending trusty persons” to gather military and naval intelligence.

The necessity of procuring good Intelligence is apparent and need not be further urged — All that remains for me to add is, that you keep the whole matter as secret as possible. For upon Secrecy, Success depends in Most Enterprizes of the kind, and for want of it, they are generally defeated, however well planned & promising a favourable issue.<sup>136</sup>

When Paul Revere rode to warn Samuel Adams and John Hancock at Lexington that they were facing imminent attack, Revere arranged to hang warning lanterns in Boston’s Old North Church to alert patriot forces, and then set off on his famous midnight ride.<sup>137</sup>

Other “trusty persons” were not so lucky. Nathan Hale embarked on his espionage mission into British-held Long Island as a volunteer, armed with a strong sense of patriotism. According to Owen, this was a particularly dangerous mission wherein a

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<sup>135</sup> <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-monographs/intelligence/pers.html>.

<sup>136</sup> Written, 8 Miles East of Morris Town July 26: 1777. Intelligence in the War of Independence, CIA Publications, <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-monographs/intelligence/letter.html>.

<sup>137</sup> When Joseph Warren, chairman of the underground Patriot movement’s Committee on Safety, asked Paul Revere to warn Samuel Adams and John Hancock at Lexington that they were facing imminent attack, Revere arranged to hang the lanterns in the Old North Church to alert patriot forces, and then set off on his famous midnight ride. He completed his primary mission of notifying Adams and Hancock. Then he rode on to alert Patriots at Concord, but was caught by the British en route. Revere was interrogated and subsequently released, after which he returned to Lexington to warn Hancock and Adams of the proximity of British forces. Intelligence in the War of Independence, CIA Publications, <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-monographs/intelligence/letter.html>.

spy had little chance of survival, but that was not the reason other officers would not volunteer. “The real reason was that spying was not considered honorable. Because of the cultural norms of the time, no officer or gentleman would engage in such an underhanded activity. No one respected a contemptible spy.” After consulting with fellow officers who assured him that he would die an ignoble and ignominious death, because “no one respects the character of a spy” he reportedly told a fellow officer, “I wish to be useful, and every kind of service necessary to the public good becomes honorable by being necessary. If the exigencies of my country demand a peculiar service, its claims to perform that service are imperious.” Hale was captured, convicted as a spy and hung. Witnesses to the execution reported the dying words that gained him immortality (a paraphrased line from Joseph Addison's play *Cato*) “I only regret that I have but one life to lose for my country.”<sup>138</sup>

General George Washington did not talk about “insider threats” but he certainly had them. The most famous was Benedict Arnold, a general during the Revolutionary War who originally fought for the American Continental Army, but became disgruntled after being passed over for promotion and defected to the British Army. While a general on the American side, he obtained command of the fort at West Point, New York, and planned to surrender it to the British forces. But the plan was exposed and he was unable to carry out his traitorous intent.<sup>139</sup>

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<sup>138</sup> Olson, James M., *Fair Play: The Moral Dilemmas of Spying*, Potomac Books, Inc., 2006, page 34.

<sup>139</sup> For more on Washington and trusted intelligence personnel see Brian Kilmeade and Don Yaeger’s “George Washington’s Secret Six: the Spy Ring that Saved the American Revolution.

## **Adams, the Sedition Act and the Press as National Security Threat**

When in 1797, John Adams became President, he continued to build the nation and sought demonstrable ability in candidates for political appointment. But Adams' national security priorities were different from the previous administration's. His national security concerns were shaped by a war between the French and British that caused intense partisanship among contending factions within the United States. Adams feared political unrest abroad might influence secession movements at home. He voiced his national security concerns to Congress who authorized raising a provisional army. It also passed the Alien and Sedition Acts, intended to frighten foreign agents out of the country and stifle attacks on the administration by the opposition press.

Among other things, the Acts forbade any individual or group to oppose "any measure or measures of the United States." Under the Sedition Act, it was illegal to speak, write, or print any statement about the president that brought him "into contempt or disrepute." Four major newspapers were charged with sedition just before the presidential election of 1800, and several foreign born journalists were threatened with expulsion. The Attorney General charged seventeen people in all with sedition, and ten were convicted.<sup>140</sup>

Benjamin Franklin Bache, grandson of Benjamin Franklin and editor of the *Philadelphia Aurora* newspaper, was charged with "libeling the President and the Executive Government in a manner tending to excite sedition and opposition to the laws." Bache had written an editorial referring to the president as "old, querulous, bald, blind,

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<sup>140</sup> <http://www.sparknotes.com/history/american/firstyears/section2.rhtml>.

crippled, toothless Adams." While one can understand why Bache was not a "trustworthy person" to that administration, it is easy to see why his arrest led to a public outcry against the Alien and Sedition Acts and contributed to the election, in 1800, of Thomas Jefferson. Jefferson pardoned all those convicted under the Sedition Act and Congress restored all fines paid with interest.<sup>141</sup>

Bache did not need a government insider to leak information about the president's baldness, but the event calls to mind similar actions on the part of the current Obama administration, which has threatened journalists and their sources that report things that embarrass it. In a case involving a Fox News journalist James Rosen, the administration invoked the Espionage Act to obtain Rosen's e-mails. The Justice Department suggested he was a criminal by calling him a "co-conspirator" in a leak case.<sup>142</sup>

There are other ghosts of Adam's Sedition Act that linger in the current administration's (ab)use of the Espionage Act to intimidate journalists.<sup>143</sup>

During Thomas Jefferson's administration, a political appointee's politics came to be an important factor in his qualification. In coming into his term, Jefferson, a Democrat-Republican, found most government posts filled with Federalists and felt compelled to "redress the balance." Redressing the balance meant that while he would

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<sup>141</sup> <http://www.sparknotes.com/history/american/firstyears/section2.rhtml>.

<sup>142</sup> "DOJ invoked Espionage Act in calling Fox News reporter criminal 'co-conspirator'" by Judson Berger, Published May 22, 2013 FoxNews.com.

<sup>143</sup> "One Washington attorney, who represents two defendants recently charged under that Act, told FoxNews.com that the decision by the Justice Department to invoke the Act is "beyond chilling" -- and could set a dangerous precedent for going after reporters. "This kind of puts us into the deep freeze," attorney Jesselyn Radack said. "I feel like we're back to the Dark Ages." (Berger, Judson, "DOJ invoked Espionage Act in calling Fox News reporter criminal 'co-conspirator'", May 22, 2013, FoxNews.com).

maintain high standards of qualifications, he would only appoint Democrat-Republicans until a balance between his party and the Federalists had been attained.<sup>144</sup>

President James Madison, being of the same political party as Jefferson, saw no need to modify or "redress the balance" of the civil service policy of his predecessor. But in 1809, during the first year of Madison's Administration, national security priorities shifted dramatically. In 1810, Madison went to war against the British.

But before doing so, he went public with the fact that a captain in the United States Army had confessed to being a spy for the British. He made the disclosure in a special message to Congress that was covered by the papers, creating excitement surrounding spying and espionage throughout the country.<sup>145</sup>

I lay before Congress copies of certain documents... They prove that at a recent period, whilst the U. States... ceased not to observe the laws of peace and neutrality towards G. Britain... a secret agent of that government was employed in certain states, more especially at the seat of government (Boston) in Massachusetts, in fermenting disaffection to the constituted authorities of the nation, and in intrigues with the disaffected, for the purpose of bringing about resistance to the laws; and eventually in concert with a British force, of destroying the Union...<sup>146</sup>

The War of 1812, also known as "Mr. Madison's War" by the opponents of the President, lasted two and a half years. After a few notable military victories, Americans were under the impression that the War of 1812 had been "gloriously successful" and an upsurge of nationalism resulted. At the time, just as now, the media covered stories of

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<sup>144</sup> The Complete Guide to Hiring and Firing Government Employees, Stewart LIFF, AMACOM Div American Mgmt Assn, Dec 9, 2009 – page 5.

<sup>145</sup> Remember that Madison Together with Jefferson had organized the Democratic--Republican Party, and in 1798 wrote the Virginia Resolutions that declared that Adams' Alien and Sedition Acts were unconstitutional assertions of federal power that threatened the Union. See book review of Lynne Cheney's "James Madison American Architect" By Gordon S. Wood, New York Times, May 1, 2014.

<sup>146</sup> The Sentinel, Gettysburg, Pa , March 25, 1812, Congress – House of Representatives, Monday, March 9, 1812, The following message was delivered by the President to the Senate and House of Representatives.

state treatment for trusty persons gone bad. *The Sentinel* newspaper in Gettysburg, Pennsylvania, reported on November 4, 1812 on the fates of those suspected of siding with the enemy.

Yesterday William Henman, a soldier of the 15th United States' regiment, in pursuance of the sentence of a Court Martial, was shot. His crime was desertion with intent to go over to the enemy. Another soldier of that regiment, who deserted at the same time, was brought out for execution, but pardoned by Gen. Bloomfield; it having appeared that he was enticed away by Henman.<sup>147</sup>

National Security priorities shifted again when in 1823, Adams' son, Secretary of State John Quincy Adams, wrote the Monroe Doctrine for President James Monroe's seventh annual State of the Union. Monroe perceived the national security threat to be further European intervention on the American continent. By stating that "The citizens of the United States cherish sentiments the most friendly in favor of the liberty and happiness of their fellow men on that side of the Atlantic," he created a continental alliance between the United States and its southern neighbors, hoping to fend off any further European annoyance.

In the Doctrine, Adams and Monroe presented the hemispheric community as natural and given, "With the movements in this hemisphere we are of necessity more immediately connected, and by causes which must be obvious to all enlightened and impartial observers" (Monroe, 1823).

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<sup>147</sup> [http://genealogytrails.com/main/military/warof1812\\_spies.html](http://genealogytrails.com/main/military/warof1812_spies.html).

But the Monroe Doctrine is in direct opposition to Washington's admonitions in his farewell speech to the nation that, "a passionate attachment of one nation for another produces a variety of evils."<sup>148</sup>

In her book *Hemispheric Imaginings: The Monroe Doctrine and Narratives of U.S. Empire*, Gretchen Murphy, demonstrates how literary inspirations for the Doctrine, using themes of hemispheric unity and transatlantic separation, were already evident in Nathaniel Hawthorne's novels and other popular cultural products of the day contributing to the Doctrine's cultural composite and easy acceptance.<sup>149</sup>

### **Spoils System and Civil Service Reform**

In addition to the Monroe Doctrine, presenting a unified hemisphere against perceived European threats, the Tenure of Office Act of 1820 was passed, during Monroe's administration, marking the beginning of the spoils system for federal employment. Under the Act, the terms of many officials were limited to four years, to correspond with that of the President. One of the purposes of the Act was to compel a regular submission of accounts from officials handling public monies. It was also a convenient way to remove unsatisfactory officials. The Act however, would make the removal of all incumbents, whether satisfactory or not, customary for the incoming President.

In the 1830s President Andrew Jackson had no policies in place that could be considered similar to the security clearance system of today. But he was participating

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<sup>148</sup> George Washington Farewell Speech to the Nation, 1796.

<sup>149</sup> *Hemispheric Imaginings: The Monroe Doctrine and Narratives of U.S. Empire*, Gretchen Murphy, Duke University Press, 2005.



wholeheartedly in the Patronage or “Spoils” System of doling out federal government jobs and responsibilities.

Gone were Jefferson’s and Madison’s redressing of the political balance in the federal workforce while maintaining high standards of qualifications. Now, political affiliation was the only thing that mattered. “They see nothing wrong in the rule that to the victor belong the spoils of the enemy,” said Senator William L. Marcy in an 1832 debate with Senator Henry Clay over Jackson's nomination of Martin Van Buren as Ambassador to Great Britain.<sup>150</sup>

The spoils system meant that each change in administration was marked by massive removals of officials working for the departing administration. This necessitated that the incoming president, his cabinet, and the head of agencies had to put aside all other business and focus on settling the claims of office seekers who came to Washington in search of a political appointment. With political sympathies and partisan activity now the only requisite for federal employment, the quality of public service began to diminish.<sup>151</sup>

Even so, Jackson had a healthy mistrust of bureaucratic fiefdoms. He also believed that trained officials in Washington constituted a dangerous bureaucracy, and that continuance in an office would lead to the establishment of a proprietary right to that office. He did not find federal work particularly specialized or demanding. In fact, in his first annual message, he stated that the "duties of all public offices are, or at least admit of

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<sup>150</sup> The Idea of a Party System: The Rise of Legitimate Opposition in the United States, 1780-1840, Richard Hofstadter, University of California Press, 1970, page 260.

<sup>151</sup> American Government and Politics Today: The Essentials, By Barbara Bardes, Mack Shelley, Steffen Schmidt, 2008 Edition, the Cengage Corporation, Belmont CA, 2009.

being made, so plain and simple that men of intelligence may readily qualify themselves for their performance." He added: "I cannot but believe that more is lost by the long continuance of men in office than is generally gained by their experience."<sup>152</sup>

### **Big Government and the Birth of the Civil Service**

But by the time Jackson came to office in 1829, with the belief that any intelligent (and politically right-minded) person could handle any government job, government services had actually become relatively complex. There was need for at least a few government experts. The country had expanded, population had grown, wealth had increased, public lands had been acquired, and trade increased. The rotation system, however, placed individuals (all men at the time) with little or no experience in specialized positions, creating inefficiency and corruption in some, if not many, government posts.<sup>153,154</sup>

The dearth of technical expertise in Washington coupled with the inefficiency and corruption of the spoils system continued through subsequent administrations (Van Buren, Harrison, Tyler, Polk, Taylor) until in 1851, during Millard Fillmore's administration, Congress passed a resolution requesting Cabinet officers to formulate "...some plan of classifying the clerks in the several departments; for apportioning their salaries according to their services" and also to "develop some plan to provide for a fair

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<sup>152</sup> For more see "The Civil Service and the Patronage by Carl Russell Fish, Longmans, Green, and Company, 1905 and Jackson Presidential Papers, 1829.

<sup>153</sup> [http://archive.opm.gov/about\\_opm/tr/history.asp](http://archive.opm.gov/about_opm/tr/history.asp).

<sup>154</sup> Cheats and fraudsters in public office were ubiquitous and making headlines during the Jackson administration. For example, Samuel Swartwout, Collector of the Port of New York, embezzled \$210,000 during his first term of office under Jackson. Nevertheless, he was reappointed by the next administration and absconded to Europe stealing over \$1,250,000 of public funds.

and impartial examination of the qualifications of clerks and for promoting them from one grade to another, upon due regard to their qualifications and services.”<sup>155</sup>

The resolution was designed to remedy the ill effects of the spoils system on the civil service. It was the first federal attempt to secure the appointment of qualified employees in a systematic method. The major departments were required to establish examining boards to hold "pass examinations" for applicants in four clerical grades in the Washington service.

"Pass examinations," however, proved to be of little value in terms of reform. The "examining board" usually consisted on one person and the requirements for identical positions varied according to the person giving and taking the "exam."<sup>156</sup>

While pass examinations were not an effective means of reform, further legislation indicated that there was increasing disenchantment with the spoils system. The public had become disgusted with the scandals and costs of the Federal government under the existing practices.

In his first inaugural address on March 4, 1861, President Abraham Lincoln had specific national security priorities in the form of imminent civil war. Still operating under the spoils system, he told potential secessionists that, while he could not employ those who posed a threat to the union, he would also not employ individuals, through the spoils system, that local populations found abhorrent.

...Where hostility to the United States in any interior locality shall be so great and universal as to prevent competent resident citizens from holding the Federal

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<sup>155</sup> The Senate of the United States, First Session, Thirty-Second Congress, 1851-2.

<sup>156</sup> U.S. Office of Personnel Management, History of the Civil Service,  
[http://archive.opm.gov/about\\_opm/tr/history.asp](http://archive.opm.gov/about_opm/tr/history.asp).

offices, there will be no attempt to force obnoxious strangers among the people for that object. While the strict legal right may exist in the Government to enforce the exercise of these offices, the attempt to do so would be so irritating and so nearly impracticable withal that I deem it better to forego for the time the uses of such offices.<sup>157</sup>

In 1865, after Lincoln's death, it fell to President Andrew Johnson to shore up the powers of federal government after the Civil War. One of his national security priorities was to reconstruct the former Confederate States. Part of the strategy was to pardon all former belligerents who would take an oath of allegiance to the United States of America.<sup>158</sup>

By 1870 the movement to reform the civil service system was well under way. During the next 20 years, at least one civil service reform bill was introduced in each session of Congress.<sup>159</sup>

In 1871, President Ulysses S. Grant was elected on a platform that included a promise of civil service reform. Grant took his campaign promise seriously and endeavored to gain legislative cooperation.

In March 1871, Congress passed an appropriations bill that gave the president authority to regulate the civil service. "The President is authorized to prescribe such regulations for the admission of persons into the civil services of the United States as

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<sup>157</sup> Lincoln, First Inaugural Address, 1861.

<sup>158</sup> After 1862, Congress required a two-part oath for civil servants. The first part, referred to as a "background check," affirmed that individuals were not supporting and had not supported the Confederacy. The second part addressed future performance establishing for all federal employees a publicly sworn accountability. In 1873, Congress dropped the first part of the Ironclad Test Oath, and in 1884 adopted the wording in use today. ([http://archive.opm.gov/constitution\\_initiative/oath.asp](http://archive.opm.gov/constitution_initiative/oath.asp)).

<sup>159</sup> U.S. Office of Personnel Management, History of the Civil Service, [http://archive.opm.gov/about\\_opm/tr/history.asp](http://archive.opm.gov/about_opm/tr/history.asp).

may best promote the efficiency thereof, and to ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability....”

Under the Act, President Grant appointed an "Advisory Board of the Civil Service" to examine and solve the issues of competitive examinations for entrance, position classification, competitive promotion and efficiency ratings.

The Board recommended the following rules for reforming the civil service system: 1) classification of all positions into groups according to the duties to be performed, and into grades for purposes of promotion. 2) competitive examinations for appointment to all positions within the lowest grade of each group; 3) competitive promotion examinations to fill positions in grades above the lowest; 4) a 6-month probationary period following appointments 5) boards of examiners in each department to do the actual work of examining candidates and maintaining lists of qualified applicants.<sup>160</sup> Grant issued directives stating that appointments for the Treasury Department, Patent Office, the Census Bureau and the Indian Affairs Office were to be made on the basis of competitive examinations. In April 1872, the first competitive examinations under the Commission's rules were held for appointments in civil service positions in the cities of New York and Washington, DC.

Grant's successor, President Rutherford B. Hayes requested a renewal of funding for the Commission but none was granted.

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<sup>160</sup> <http://www.nytimes.com/learning/general/onthisday/harp/1207.html>.

Hayes' successor, James A. Garfield also advocated Civil Service reform, but was assassinated by a rejected (and slightly deranged) office seeker before he could reconstitute a merit-based civil service.<sup>161</sup>

But Garfield's successor, President Chester Arthur, took up the cause of Civil Service reform and was able to lobby Congress to pass the Pendleton Civil Service Reform Act in 1883. The law was passed in part due to public outcry over the assassination of President Garfield and renewed discussion over the problems with patronage.

The Pendleton Act renewed funding for the Civil Service Commission stipulating a commission to run the Civil Service whose commissioners were chosen by the President. The Civil Service Commission was specified, under the Act, to administer the civil service of the United States federal government. The Pendleton law required applicants to take the civil service exam in order to be given jobs. It also prevented elected officials and political appointees from firing civil servants, thereby removing civil servants from the influence of political patronage and partisanship.

President Arthur and succeeding Presidents continued to view a professional civil service as a national security priority and continued to expand the authority of the Civil Service Commission and federal departments that the Commission covered.

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<sup>161</sup> Even though Garfield's assassin had virtually no qualifications for federal service, and had no connections in Washington, he nevertheless wrote the White House requesting an ambassadorship to Paris, "What do you think of me for Consul-General at Paris? I think I prefer Paris to Vienna, and if agreeable to you, should be satisfied with the Consulship at Paris... I presume my appointment will be promptly confirmed." For more see "The Murder of James a Garfield: The President's Last Days and the Trial and Execution of His Assassin, James C. Clark, McFarland & Company, January 1994.

The first person appointed under the merit law was Ovington E. Weller of Maryland. On August 29, 1883, he was appointed to a post office clerkship at a salary of \$1,000 a year. Miss Mary F. Hoyt of Connecticut was the second appointee and the first woman appointee. On September 5, 1883, she was appointed to the Treasury Department as a clerk in the Bank Redemption Agency at salary of \$900 a year.<sup>162</sup>

President Grover Cleveland was a strong advocate of the Civil Service Act. As Governor of New York State, he signed the state's first civil service law to be enacted, which had been introduced by Assemblyman Theodore Roosevelt (more on him later). The New York State Civil Service Act of 1883 was the first state civil service act and gave young Roosevelt national attention for his bold reforms that challenged the corrupt machine politics of New York.<sup>163</sup>

After his election in 1889, Benjamin Harrison's national security priorities were focused on foreign policy. The first Pan American Congress met in Washington in 1889, establishing an information center that later became the Pan American Union. At the end of his administration Harrison submitted to the Senate a treaty to annex Hawaii; to his disappointment, President Cleveland later withdrew it.

Substantial appropriation bills were signed by Harrison for national security improvements that included naval expansion. For the first time, except in war, Congress

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<sup>162</sup> U.S. Office of Personnel Management, History of the Civil Service, [http://archive.opm.gov/about\\_opm/tr/history.asp](http://archive.opm.gov/about_opm/tr/history.asp).

<sup>163</sup> Cleveland increased the number of positions in the civil service by one-third by placing the 5,320 Railway Mail Service positions under the civil service rules during his first term (Report of the United States Civil-Service Commission (1887)).

appropriated a billion dollars. When critics attacked "the billion-dollar Congress," Speaker Thomas B. Reed replied, "This is a billion-dollar country."<sup>164</sup>

By 1896, a total of 87,000 positions out of 205,000 civil service jobs were under the competitive civil service rules, approximately 42 percent of the federal government workforce.<sup>165</sup>

With the assassination of McKinley, Vice-President Theodore Roosevelt became the 26th President. A strong advocate of civil service reform (remember his work as an assemblyman in New York), President Roosevelt set about to expand and modernize the federal government, based on his philosophy that opportunity be made equal for all citizens; that only those who had merit be appointed to federal jobs; and that public servants should not suffer for their political beliefs. Roosevelt's reforms set the foundation of the modern merit system of the United States.<sup>166</sup>

The early 1900s was a period of major governmental expansion. Under Roosevelt's administration, the Departments of Commerce and Labor were created in 1903. The Pure Food and Drugs Act and a Federal Meat Inspection Act were passed in 1906 and Roosevelt added almost 150,000,000 acres of public lands as public conservation areas. This expansion increased the necessity of obtaining more efficient organization and administration of the executive branch. With the addition of the new government responsibilities and positions, the competitive service was increased from

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<sup>164</sup> National university: Hearings before the Committee on education, House of representatives, Sixty-third Congress, second session on H. R. 11749, a bill to create a national university at the seat of the federal government ... Page 184.

<sup>165</sup> [http://archive.opm.gov/about\\_opm/tr/history.asp](http://archive.opm.gov/about_opm/tr/history.asp).

<sup>166</sup> U.S. Office of Personnel Management, History of the Civil Service, [http://archive.opm.gov/about\\_opm/tr/history.asp](http://archive.opm.gov/about_opm/tr/history.asp).



110,000 to 235,000, approximately 63.9 percent of the whole executive civil service. For the first time, the merit system surpassed the spoils system in numbers of jobs in the executive service.<sup>167</sup>

As part of Roosevelt's reforms, the Civil Service Commission drafted and implemented: 1) definitions for "just cause" for which an employee could be dismissed; 2) requirements for stricter compliance of the restrictions against political activity by federal officials; 3) regulations forbidding disbursing officers from paying the salaries of persons illegally appointed to civil service positions; 4) establishment of the modern job survey in the Federal service; 5) a position-classification plan based on duties.

Growing modernization of the Federal system was aided in 1906 by the various Civil Service Commissions of the States and cities that met in Washington at a conference forming a permanent organization originally named the Civil Service Assembly of the United States and Canada, today known as the International Personnel Management Association.

As a continuation of Roosevelt's policies, President William Howard Taft created a provision for a Federal training program to increase the efficiency of Federal employees and to prepare them for more responsible work. Also under Taft, the Civil Service Commission established a Division of Efficiency to set up a system of uniform efficiency ratings for the departmental service, for use as a basis for promotions, demotions, and dismissals.<sup>168</sup>

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<sup>167</sup> U.S. Office of Personnel Management, History of the Civil Service, [http://archive.opm.gov/about\\_opm/tr/history.asp](http://archive.opm.gov/about_opm/tr/history.asp).

<sup>168</sup> [http://archive.opm.gov/about\\_opm/tr/history.asp#federalist](http://archive.opm.gov/about_opm/tr/history.asp#federalist).

## **World War I, the Espionage Act, and More Civil Service Modernization**

Espionage was the national security priority for President Woodrow Wilson, who signed the Espionage Act of 1917 two months after the United States entered World War I. The Act was a response to an incident when German agents blew up a munitions dump in New York Harbor. Just as during previous wars, hysteria surrounding foreign agents ensued.

In addition to the Espionage Act, in 1918, Congress passed another Sedition Act, criminalizing, among other things, “abusive language” about the government.<sup>169</sup>

In addition to the Sedition Act, which kept the opposition press on the defensive, Wilson’s administration employed fellow citizens to keep tabs on his opponents. Many citizens felt duty-bound to report on their fellow citizens’ behavior that may impact negatively on national security. The same year the Sedition Act was passed, Wilson’s Attorney General boasted that the assistance of volunteer citizen’s organizations such as “The Boy Spies,” Knights of Liberty” and “Sedition Slammers” “enable us to ...investigate hundreds of thousands of complaints and keep scores of thousands of persons under observation.”<sup>170</sup>

Unlike the tactics of the later Ministry for State commonly known as the Stasi in East Germany, whose task was to spy on the population, mainly through a network of citizens turned informants, Wilson’s tactics were entirely public. So much so that H.L. Mencken observed at the time “between Wilson and his brigades of informers, spies,

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<sup>169</sup> We observed how President John Adams responded to fear of foreign agents by passing the Alien and Sedition Acts, intended to frighten foreign agents out of the country and stifle attacks on the administration by the opposition press.

<sup>170</sup> Cooper, 2008:197.

volunteer detectives, perjurers and complaisant judges...the liberty of the citizen has pretty well vanished.”<sup>171</sup>

While there had previously been scandals surrounding waste, fraud and abuse in the civil service, it is in the Wilson administration that we begin to see the evolution of civil servant as national security threat.

In his 1917 Executive Order 2587A – “Federal Employees Removal on Security Grounds,” Wilson gives wide latitude for federal managers to dismiss an employee “by reason of his conduct, sympathies or utterances, or because of other reasons growing out of the war” noting that “Such removal may be made without other formality than that the reasons shall be made a matter of confidential record, subject, however, to inspection by the Civil Service Commission.”<sup>172</sup>

Wilson did not specify, as subsequent administrations did, which “reasons of conduct” were to be considered in the removal of federal employees, but in 1918, when Marguerite Harrison petitioned the Army’s Military Intelligence Division to employ her as a spy, she foreshadowed some current personnel security clearance parameters in stating her qualifications “five feet six inches tall, weighing 125 pounds; using no stimulants, tobacco or drugs; and without physical defects.”<sup>173</sup>

### **Inventing the Polygraph**

While Marguerite Harrison was applying to be a spy, William Moulton Marston was getting his degree from Harvard. As a graduate student, he had created a systolic

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<sup>171</sup> Cooper 2008:197.

<sup>172</sup> Executive Order 2587A, Federal Employees Removal on Security Grounds, Woodrow Wilson, April 7, 1917.

<sup>173</sup> See “Women of the Four Winds by Elizabeth Fagg Olds, Mariner Books, Boston, 1999.

blood pressure test, “the sphygmomanometer.” Using the device that physicians use to take patients’ blood pressure, he conducted experiments by taking intermittent readings of blood pressure while asking people to describe experiences. Dr. Marston is said to have coined the phrase “lie detector” though it may have come from a reporter to whom he described his device.<sup>174</sup>

Three years later, in 1921, John Augustus Larson, a medical student at the University of California and a police officer of the Berkeley Police Department, was at work on his own lie detector machine. Larson’s machine differed from Marston’s in that, in addition to registering changes in pulse rate and blood pressure, it also concurrently measured respiration. He called it his “polygraph.” Larson developed an interviewing technique he called the R/I (relevant/irrelevant) procedure. Whereas Marston had taken intermittent blood pressure readings while subjects recounted experiences, Larson took continuous readings while subjects answered specific questions. In his book, *The Lie Detectors*, Ken Alder observes that the advantage of Larson’s method was that it appeared to offer a more scientific approach. “The automated device minimized the examiner’s judgment in taking the readings, thereby fulfilling one criterion of the scientific method, which was to ‘eliminate all personal factors wherever possible’. This was particularly important in cases where the examiner might be led astray by his own feelings about the test.”<sup>175</sup>

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<sup>174</sup> Vigluicci, Vincent V., “Note, Calculating Credibility: State v. Sharma and the Future of Polygraph Admissibility in Ohio and Beyond”, 42 Akron L. Rev. 319, 321 (2009).  
<http://lawprofessors.typepad.com/evidenceprof/2010/11/i>.

<sup>175</sup> Alder, Ken: *The Lie Detectors: The History of An American Obsession*. New York: Free Press, 2007, page: 5.

In 1925, Leonarde Keeler, a Stanford University psychology major also working at the Berkeley Police Department, developed two significant improvements to Larson's polygraph: a metal bellows (tambour) to better record changes in blood pressure, pulse and respiration patterns, and a kymograph, which allowed chart paper to be pulled under the recording pens at a constant speed.<sup>176</sup> In 1931, Keeler invented the Keeler Polygraph which he started using for criminal investigations at the Scientific Crime Detection Laboratory at Northwestern University.

### **World War II, The Manhattan Project and the Hatch Act**

In 1933 Franklin D. Roosevelt assumed the Presidency at the depth of the Great Depression, asserting in his Inaugural Address, “the only thing we have to fear is fear itself.”

He also sought, through neutrality legislation, to keep the United States out of the war in Europe, yet at the same time to strengthen nations threatened or attacked. In 1939, Roosevelt authorized the Manhattan Project, a research and development project that eventually produce atomic bombs. When France fell and England came under siege in 1940, he began to send Great Britain all possible aid short of actual military involvement. Widespread allegations that local Democratic Party politicians used employees of the Works Progress Administration (WPA) during the congressional elections of 1938 provided the impetus for the passage of the Hatch Act. In 1938, a series of newspaper articles exposed WPA patronage and political contributions in return for employment, prompting an investigation by the Senate Campaign Expenditures Committee. The Hatch

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<sup>176</sup> <http://www.argo-a.com.ua/eng/history.html>.

Act of 1939, officially “An Act to Prevent Pernicious Political Activities” prohibits employees in the executive branch of the federal government (except the president, vice-president, and certain other designated officials), from engaging in partisan political activity.<sup>177</sup>

At the signing ceremony for the law, Roosevelt made the point that while federal executives should not be spending time campaigning, their rights as citizens should not be diminished,

it seems clear that the Federal Government has the power to describe as qualifications for its employees that they refrain from taking part in other endeavors which, in the light of common experience, may well consume time and attention required by their duties as public officials...such qualifications cannot properly preclude Government employees from the exercise of the right of free speech or from their right to exercise the franchise.<sup>178</sup>

## **World War II and The Manhattan Project**

When Japanese planes attacked Pearl Harbor on December 7, 1941, Roosevelt’s national security priority shifted to organizing the Nation for global war.

Before Pearl Harbor, the FBI was already tracking elements and organizations that were suspected of loyalty to Germany, Japan or Italy, and many people were arrested in the weeks after. 7000 German and Italian aliens (who were not U.S. citizens) were moved back from the West Coast, along with 110,000 people of Japanese heritage who were put into "War Relocation Camps." Roosevelt authorized the internments with Executive Order 9066, issued February 19, 1942, which allowed local military commanders to designate "military areas" as "exclusion zones," from which "any or all

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<sup>177</sup> The Hatch Act of 1939.

<sup>178</sup> Roosevelt, Signing statement, 1939.

persons may be excluded." This power was used to declare that all people of Japanese ancestry were excluded from the entire Pacific coast, including all of California and much of Oregon and Washington states except for those in internment camps.<sup>179</sup>

The Manhattan Project to develop an atomic bomb, under the direction of Major General Leslie Groves of the US Army Corps of Engineers, had begun modestly in 1939, but grew eventually to employ more than 130,000 people. Procuring the required number of highly skilled workers, in competition with other wartime programs was difficult. So the project obtained a special temporary priority for labor from the War Manpower Commission and the War Production Board, who gave the project their highest priority.

As the war continued, in 1944, at the Papago Park, Arizona prisoner of war camp, a captured German submarine crewman was found strangled to death. Investigators could not solve the crime. Colonel Ralph W. Pierce, the camp's commander called in Leonarde Keeler and his polygraph. Keeler was able to pick out seven prisoners with the help of the polygraph, all of whom were said to have then confessed to the murder and were executed. Impressed by the outcome, Pierce bought the first Army polygraph machine for the Chicago Counter-Intelligence Corps School.

A year later, in 1945, the polygraph was used for the first time to screen government employees. Keeler and other polygraphists were brought in to Fort Getty, Rhode Island where several hundred German prisoners had volunteered for police work

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<sup>179</sup> It is ironic that Americans of Japanese descent were also banned from joining the military at the time. For example, Daniel Inouye, future Medal of Honor recipient, United States Senator from Hawaii, and President pro tempore of the United States Senate, could only serve as a medical volunteer in his home state of Hawaii when the war broke out. But In 1943, when the U.S. Army dropped its enlistment ban on Japanese Americans, Inouye enlisted in the 442nd Regimental Combat Team, a U.S. Army unit of second-generation Japanese Americans. See "Rising Sons: The Japanese American GIs Who Fought for the United States in World War II", by Bill Yenne, St. Martin's Press, New York, 2007.

with occupation forces in Germany. Several weeks of polygraph examinations screened out a third of the group as pro-Nazi or unsuitable for other reasons.<sup>180</sup>

**Truman, The Hoover Commission, the Atomic Energy Commission and “Born Secret”**

When President Roosevelt died in 1945, Irwin Deutscher was serving as a U.S. Marine navigator stationed at a remote airfield in the Philippines, “We didn’t know who Truman was. Roosevelt had been President for as long as anyone could remember and none of us in the unit could think who the current Vice president was.”<sup>181</sup> But that did not last long. As the war with Japan dragged on in the Philippines and throughout the region, Truman, after consultations with his advisers, ordered atomic bombs dropped on the Japanese cities of Hiroshima and Nagasaki. Japanese surrender quickly followed.

After the war, in 1948, a task force examined the workings of the country’s entire national security and intelligence system, including extensive research on the Department of Defense. The “Hoover Commission” headed by the former president submitted a 121-page document outlining criticisms and recommendations for the nation’s national security and intelligence organizations. The Committee’s report, “The Report on Unification of the War and Navy Departments and Postwar Organization for National Security,” proposed a post-war security organization that would include a National Security Council. Within the first few pages the Report of the Committee on the National Security Organization (one of many sub-committees of the Hoover Commission) Chairman of the Committee, Ferdinand Eberstadt states that “the National Security

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<sup>180</sup> <http://www.lie2me.net/thepolygraphmuseum/id12.html>.

<sup>181</sup> Deutscher/Deutscher discussion August, 2013.



Organization, established by the National Security Act of 1947, is, on the whole, soundly constructed, but is not yet working well."<sup>182</sup>

The report also questioned the quality of military intelligence professionals. Specifically, the report criticized the “somewhat haphazard method employed by the services in the selection of officers for important intelligence posts.” The report pointed out that in recent years, several chiefs of Army intelligence lacked previous experience. The committee also suggested that the military services should establish intelligence careers as an option for servicemen.<sup>183</sup>

### **The Atomic Energy Act of 1946**

Many of the existing policies and practices surrounding the national security personnel security clearance system have their roots in the Atomic Energy Act of 1946. The Act (also known as the McMahon Act) describes how the federal government will control and manage nuclear technology.<sup>184</sup>

The Act specified that nuclear weapon development and nuclear power management would be under civilian, rather than military control, and it established the United States Atomic Energy Commission. The first director of the AEC was David Lilienthal.

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<sup>182</sup> Scott, Beth F, “The Logistics of War: a Historical Perspective”, Air Force Logistics Management Agency, Maxwell, Air Force Base, Alabama, 2000, page 306.

<sup>183</sup> Unification of the War and Navy departments and postwar organization for national security: Report to Hon. James Forrestal, Secretary of the Navy, by Ferdinand Eberstadt, U.S. Govt. Printing Office, 1945.

<sup>184</sup> The Bill was sponsored by Senator Brien McMahon, a Democrat from Connecticut, who chaired the United States Senate Special Committee on Atomic Energy, and whose hearings in late 1945 and early 1946 led to the fine tuning and passing of the Act. Signed into law by President Harry Truman on August 1, 1946, it went into effect on January 1, 1947, and the Atomic Energy Commission assumed responsibility for nuclear energy from the wartime Manhattan Project.

In the section of the Act titled “Control of Information” there is a new concept later described as “born secret” or “classified at birth.” It defined a new legal term, “restricted data,” as “all data concerning the manufacture or utilization of atomic weapons, the production of fissionable material, or the use of fissionable material in the production of power,” unless the information has been declassified. The phrase “all data” included every suggestion, speculation, scenario, rumor or utterance —past, present, or future, regardless of its source, or even of its accuracy—unless it was specifically declassified.

“Born secret” constituted, for the first time, a permanent gag order affecting all public discussion of an entire subject matter. This concept was a radical departure from previous scientific practice, which depends on peer review and publication of results to hone and validate results. There is nothing like it anywhere else in American law.<sup>185</sup>

Morland believes that such unprecedented measures had more to do with do guilt than actual national security threats.

Before the Manhattan Project, government secrets were temporary.... Even radar, which had a greater impact on the course and outcome of World War II than did atomic bombs, was never envisioned as a permanent secret. Then again, nobody had reason to be ashamed of radar. The Hiroshima bombing was so destructive, so troubling, and so unexpected—at least by the general public—that an instant consensus emerged: such matters are better not discussed, even in a free country.<sup>186</sup>

Under Truman, the national security threat had shifted from winning the war and preserving allied nations under attack to protecting nuclear secrets, especially from former U.S. allies, the Soviet Union.

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<sup>185</sup> Born Secret: Howard Morland, *Cardozo Law Review*, Vol 26, No 4, March 2005, PP. 1401-8.

<sup>186</sup> Morland, Howard, *Cardozo Law Review*, Vol 26, No 4, March 2005, PP. 1401-8, 2005:1401.

Because the bureaucracy surrounding weapons development and the need to staff the defense laboratories and industry was growing in importance, in 1947, Truman implemented Executive Order 9835, “Prescribing Procedures for the Administration of an Employees Loyalty Program” which stated that

Whereas it is of vital importance that persons employed in the Federal service be of complete and unswerving loyalty to the United States; and Whereas maximum protection must be afforded the United States against infiltration of disloyal persons into the ranks of its employees, ... There shall be a loyalty investigation of every person entering the civilian employment of any department or agency of the executive branch of the Federal Government.<sup>187</sup>

Whereas Wilson had called upon volunteers of “Boy Spies,” Truman was bureaucratizing the process calling upon all technological and scientific advances of the age available to the government, to make sure he was sending trusty persons to keep the nation’s secrets. Because records had been meticulously kept during the war, they were used as part of the process to determine the degree of loyalty of federal workers.

An investigation shall be made of all applicants at all available pertinent sources of information and shall include reference to: Federal Bureau of Investigation files; Civil Service Commission files; Military and naval intelligence files; The files of any other appropriate government investigative or intelligence agency; House Committee on un-American Activities files; Local law-enforcement files at the place of residence and employment of the applicant, including municipal, county, and State law-enforcement files; Schools and colleges attended by applicant; Former employers of applicant; References given by applicant; Any other appropriate source.

In 1948, Leonarde Keeler founded the Keeler Polygraph Institute, located in Chicago – the first polygraph school in the world. The Central Intelligence Agency (CIA) established its Polygraph Division the same year. Truman’s administration had

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<sup>187</sup> Truman, Executive Order 9835, 1947.

made the decision, by that time, to test all CIA employees on the polygraph at least once every five years.<sup>188</sup>

As a further protection against government employees who may be viewed as untrustworthy, in 1950 Congress passed Public Law 81-733, “An Act to protect the national security of the United States by permitting the summary suspension of employment of civilian officers and employees of various departments and agencies of the Government, and for other purposes.”

“The Secretary of State [and other agency heads] may, in his absolute discretion and when deemed necessary in the interest of national security, suspend, without pay, any civilian officer or employee... Provided, that to the extent that such agency head determines that the interests of the national security permit...” The agency head concerned may, following such investigation and review as he deems necessary, terminate the employment of such suspended civilian officer or employee whenever he shall determine such termination necessary or advisable in the interest of the national security of the United States, and such determination by the agency head concerned shall be conclusive and final.”<sup>189</sup>

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<sup>188</sup> In the next chapter we observe that the polygraph is still very much in use by the CIA today, even though the underlying scientific principles of the device have been debunked by various scientific and government research. See *The Polygraph and Lie Detection*, Committee to Review the Scientific Evidence on the Polygraph Board on Behavioral, Cognitive, and Sensory Sciences and Committee on National Statistics, Division of Behavioral and Social Sciences and Education, National Research Council Of The National Academies, The National Academies Press, Washington, D.C.

<sup>189</sup> As addressed in the next section, historian David Johnson demonstrates how this law was used to remove hundreds of gay and lesbian civil servants from their jobs during the 1950s and beyond. See Johnson, David K., *The Lavender Scare: the Cold War Persecution of Gays and Lesbians in the Federal Government*, University of Chicago Press, 2006.

## **Post-World War II, the Cold War, Red and Lavender Scares**

Also in 1950 came National Security Council document number sixty-eight (NSC-68). The document argued that “to ensure the integrity and validity of our free society, which is founded upon the dignity and worth of the individual” is the “fundamental purpose” of the United States as a nation, and laid out the strategy of containment toward the Soviet Union that colored national security priorities throughout the Cold War.

As the new enemy emerged, national security priorities included preventing government employees from sharing secrets with the enemy – the USSR. In addition to background investigations, employees were being submitted, more and more, to polygraph testing. In 1951 the National Security Agency founded its polygraph division. By 1952, the CIA's polygraph program was operating on a worldwide basis.<sup>190</sup>

The emphasis in the Eisenhower administration was on keeping employees from sharing information with the enemy. But in February of 1953 J. Robert Oppenheimer gave a speech at a closed meeting of the members of the Council of Foreign Relations in New York. His argument was that rather than keeping any discussion of the nuclear program “born secret” it was actually more candor that was required in the service of national security. “Oppenheimer concluded that “such follies can occur only when even the men who know the facts can find no one to talk about them, when the facts are too secret for discussion, and thus for thought.”<sup>191</sup> According to Bird and Sherwin,

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<sup>190</sup> In his book “Gatekeeper: Memoires of a CIA Polygraph examiner”, John Sullivan describes traveling the world not only to examine CIA personnel but also foreign sources and informants.

<sup>191</sup> Bird/Sherwin, 2005:464.

It is hard to imagine a more provocative speech.... The nation's most famous nuclear scientist was calling upon the government to release heretofore closely guarded nuclear secrets, and to discuss candidly the consequences of nuclear war. Here was a celebrated private citizen, armed with the highest security clearance, denigrating the secrecy that surrounded the nation's war plans. As word spread through Washington's national security bureaucracy of what Oppenheimer had said, many were appalled.<sup>192</sup>

So in retrospect, it is no surprise that on December 21, 1953, Oppenheimer was told that his security clearance had been suspended, pending resolution of a series of charges. He was asked by David Lilienthal to resign. Oppenheimer chose not to resign and requested a hearing instead. The hearing that followed in April–May 1954, focused on Oppenheimer's past Communist ties and his association, during the Manhattan Project, with suspected disloyal or Communist scientists. The outcomes of the hearings were later made public and Americans learned that the Atomic Energy Commission had revoked the “Father of the atomic Bomb’s” security clearance.

According to Bernstein, Oppenheimer never stood a chance. The deck was stacked against him before the hearing even began. The government's attorneys and witnesses were privy to information (often illegally obtained) that Oppenheimer's legal team was denied access to or even knew existed. “Throughout there were abuses of law: FBI wiretaps, selection of prejudiced judges, denial of evidence to Oppenheimer and his attorneys, and applications of inappropriate legal standards.”<sup>193</sup>

As we will see later in this study, few who have endured such an investigation come through it well. Some do, but they are an unusually tenacious and resilient minority. Oppenheimer was not among that cohort.

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<sup>192</sup> Kai/Sherwin, 2005:465.

<sup>193</sup> Bernstein 1982: 197.

Part of the reason that Oppenheimer's hearings were of such interest to the public was that 1953 was also the year Julius and Ethel Rosenberg were executed after having been convicted of espionage for passing atomic secrets to the Soviets. During their trial, it was alleged that British authorities, with assistance from the U.S. FBI, gathered evidence that British physicist Klaus Fuchs, who worked on developing the atomic bomb both in England and the United States had passed top-secret information to the Soviet Union. Fuchs confessed, beginning a series of accusations naming Americans Harry Gold and David Greenglass. Upon his arrest, Greenglass confessed and then accused his sister and brother-in-law, the Rosenbergs, of being the spies who controlled the entire operation.<sup>194</sup>

The Rosenberg case garnered worldwide attention. Rosenbergs' supporters claimed they were being made scapegoats to the "Red Scare" that was sweeping America. The French writer and philosopher Jean-Paul Sartre called their execution a "legal lynching."<sup>195</sup>

Sartre and others pointed out that even if the Rosenbergs did pass secrets along to the Soviets during World War II, Russia had been an ally, not an enemy, of the United States at the time. Irrespective of their relative guilt, the Rosenberg execution galvanized the attention of the American public toward the retaliation of the state against espionage and treason.

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<sup>194</sup> The Rosenbergs were tried under the espionage Act of 1917, passed by President Wilson as discussed previously in this chapter.

<sup>195</sup> "Mad Beasts," from *Selected Prose: The Writings of Jean-Paul Sartre*. Evanston, Northwestern University Press, 1974: 207-11. This article was originally published as "Les Animaux malades de la rage" in *Libération*, June 22, 1953.

## **The Red Scare**

Both Oppenheimer and the Rosenberg hearings were entangled with the ongoing national “red scare.”

During the end of WW II, the national security priority was to win the war, in part by beating the Axis powers to the development of an atomic bomb and then by using it against them. So the threat that government workers posed was perceived to be classic espionage – the direct disclosure of nuclear secrets to the nation’s enemies (Germany and Japan).

But with the advance of the Cold War, the national security threat had crystalized against the Soviet Union – a former ally. When Russia built its own bomb (partly with secrets supplied through espionage) the perceived threat was that federal workers may be “fellow travelers” or communists with sympathies toward the Soviet Union and its quest for a global commune.

Beginning in 1950, Joseph Raymond "Joe" McCarthy became the public face of Cold War tensions by fueling fears of Communist conspiracies and subversion. He claimed that there were large numbers of Communists and Soviet spies and sympathizers inside the United States federal government and industry. The terms “red scare” and “McCarthyism,” coined in 1950 in reference to McCarthy's practices, were also applied to similar anti-communist activities.

After three largely undistinguished years in the Senate, McCarthy rose suddenly to national fame in February 1950 when he asserted in a speech that he had a list of



members of the Communist Party and members of a spy ring employed in the State Department.

Though he was never able to prove those charges, McCarthy continued to make additional accusations of Communist infiltration into the Truman administration's State Department, the Voice of America, and the United States Army. He also used various charges of communism, communist sympathies, disloyalty, or homosexuality to attack a number of politicians and other individuals inside and outside of government. One of the most publicized and notable examples of McCarthy's tactics during his House Committee on Un-American Activities (HUAC) hearings was the compilation of "blacklists" particularly in the entertainment industry where celebrity informants (like then Screen Actors Guild president Ronald Reagan) were encouraged to report to the committee on the political activities of their fellow actors, writers, directors and others in the industry causing many accused to lose their jobs in the process.<sup>196</sup>

Not as widely known as McCarthy's anti-Communist crusade were his various attempts to intimidate, and expel from government positions, persons whom he accused, or threatened to publicly accuse, of homosexuality. Former U.S. Senator Alan K. Simpson has written: "The so-called 'Red Scare' has been the main focus of most historians of that period of time. A lesser-known element...and one that harmed far more people was the witch-hunt McCarthy and others conducted against homosexuals."<sup>197</sup>

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<sup>196</sup> For more on Hollywood Black Lists see "Hollywood and Anticommunism: Huac and the Evolution of the Red Menace, 1935-1950" by J. Gladchuk, Routledge, 2009 and "Inside Out: A Memoir of the Blacklist: by Walter Bernstein, Da Capo Press, 2007.

<sup>197</sup> Simpson, 2013.

The genesis of Simpson's observation may have been when, in 1953, Eisenhower issued Executive Order 10450 which revoked President Truman's 1947 Executive Order and dismantled its Loyalty program. Instead, it charged the heads of federal agencies and the Office of Personnel Management, supported by the Federal Bureau of Investigation (FBI), with investigating federal employees to determine whether they posed "security risks." And it expanded the definitions and conditions used to make such determinations. Previously, the criteria used to define a security risk were political, consisting of affiliation with suspect organizations; aiding and abetting the enemy; sympathizing with subversives or other clear demonstrations of disloyalty.<sup>198</sup> The new Order expanded the definition of what a security threat, in the form of a government worker, might look like. These included estimations of character and lifestyle choices. "Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion."<sup>199</sup>

Without explicitly referring to homosexuality, the executive order responded to several years of charges that the presence of homosexual employees in the State Department posed blackmail risks. Attorney General Herbert Brownell, Jr. explained that the new order was designed to encompass both loyalty and security risks and he differentiated between the two: "Employees could be a security risk and still not be disloyal or have any traitorous thoughts, but it may be that their personal habits are such

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<sup>198</sup> As noted previously in this chapter, during the Adams and Wilson administrations, the perceived threat was that of civil servants being leveraged or influenced by foreign influences like saboteurs.

<sup>199</sup> In 1953, Eisenhower Executive Order 10450.

that they might be subject to blackmail by people who seek to destroy the safety of our country."<sup>200</sup>

The Washington Post said at the time that the Order established not a loyalty test but a "suitability test." Some in government referred to their new "integrity-security" program. Some of those the press anticipated would be excluded from federal employment included "a person who drinks too much," "an incorrigible gossip," "homosexuals," and "neurotics."<sup>201</sup>

Another notable impact of the new Executive Order was that Truman's earlier Order applied only to the State Department and select military agencies. Eisenhower's new Order extended to all employees of the federal government, including the military. David K. Johnson, in his book *The Lavender Scare: the Cold War Persecution of Gays and Lesbians in the Federal Government*, covers this period in excruciating detail outlining how the purge of suspected homosexuals of federal jobs created a "Lavendar Scare" that dwarfed the number of those impacted by McCarthy's "Red Scare."

In the two years between May 1953 and June 1955, as the purge accelerated, over eight hundred federal employees either resigned or were terminated with files containing information about sex perversion - about four hundred per year. During the height of the witch-hunts in 1953, Undersecretary of State Donald B. Lourie testified before a congressional committee that homosexual firings were averaging about one a day from his department alone. By the 1960s, the State Department, the most aggressive federal

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<sup>200</sup> Johnson, 2004:123-4.

<sup>201</sup> Johnson, 2004.

agency in ferreting out homosexuals had fired approximately one thousand suspected homosexuals.”<sup>202</sup>

Johnson describes how the purge of homosexuals that took place in the government also happened in the defense industry. “Almost no corporation or other private business will hire a man with such a stigma on his record,” warned a prominent Washington psychiatrist, “If the present wave of public sentiment continues, certain male and female homosexuals will become persons without a country, since they may find it practically impossible to earn a living.”<sup>203</sup>

The U.S. Supreme Court in *Cole v. Young* (1956) restricted the application of the executive order. In this case of a food and drug inspector for the Department of Health, Education, and Welfare who had been dismissed for his association with radicals, the Court faulted the executive order for its failure to define "national security" and for other ambiguities. And it faulted its application in the case of a position not clearly related to national security.

In 1954, officially, the polygraph was used for general security screening in only three federal government agencies. The Operations Research Office (ORO) (a civilian military research center founded in 1948 by the United States Army run under contract by Johns Hopkins University) the CIA, and the National Security Agency. At ORO, all the new employees were tested and all existing workers were polygraphed twice a year. The loyalty-security program in the decade 1947-57 covered 13.5 million people, or some 20% of the workforce.

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<sup>202</sup> Johnson:166.

<sup>203</sup> Johnson:168.

Just under 5 million were scrutinized for government employment, with the remainder being private sector employees whose work with the defense contractors brought them into the program. The scheme cost some \$350 million, required over 26,000 field investigations by the FBI to pursue information of a detrimental nature, resulted in over 11,000 people losing their jobs and uncovered no espionage or sabotage.<sup>204</sup>

The Crittenden Report was the outcome of a 1957 investigation on the part of a United States Navy Board of Inquiry, officially known as the Board Appointed to Prepare and Submit Recommendations to the Secretary of the Navy for the Revision of Policies, Procedures and Directives Dealing With Homosexuals. Navy Captain S.H. Crittenden, Jr., chaired the Board.

The Board evaluated Navy policies dealing with homosexual personnel that were based in part on the assertions made in the December 1950 final report of the Investigations Subcommittee of the Senate Committee on Expenditure in Executive Departments, which said that all of the government's intelligence agencies "are in complete agreement that sex perverts in Government constitute security risks." Senator Clyde Hoey, Democrat of North Carolina, chaired that subcommittee that produced the report.<sup>205</sup>

The Crittenden Report, by contrast, concluded that there was "no sound basis for the belief that homosexuals posed a security risk" and criticized the Hoey Report: "No intelligence agency, as far as can be learned, adduced any factual data before that committee with which to support these opinions" and said that "the concept that homosexuals necessarily pose a security risk is unsupported by adequate factual data."

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<sup>204</sup> Campbell 1998:153.

<sup>205</sup> Also sometimes known as the Hoey Report or the Hoey Investigation.

The Crittenden Report remained secret until 1976. Navy officials claimed they had no record of studies of homosexuality, but attorneys learned of its existence and obtained it through a Freedom of Information Act request.<sup>206</sup>

In September of 1960 two NSA employees, William Hamilton Martin and Bernon F. Mitchell, defected to the Soviet Union, becoming somewhat famous at the time, for betraying the United States.

As they explained to the cameras from Moscow's House of Journalists, Martin and Mitchell left out of disgust with what they saw as dangerous and unethical intelligence gathering practices of the United States. They were particularly worried that the American U-2 spy plane missions over the Soviet Union might needlessly lead to war.<sup>207</sup>

But as Johnson makes clear, it was the potential homosexual relationship between the two that garnered most of the media attention surrounding the case.

### **The Military Industrial Complex**

By the time Eisenhower left office in 1961, he knew that the inclusion of military personnel along with federal workers in a government-wide, comprehensive bureaucratic investigatory process to determine suitability of access to classified information was part of a "new American Experience" to sustain the "military-industrial complex," noting that "three and a half million men and women are directly engaged in the defense establishment."

"This conjunction of an immense military establishment and a large arms industry is new in the American experience. The total influence – economic, political, even spiritual – is felt in every city, every Statehouse, every office of the Federal government. We recognize the imperative need for this development. Yet we

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<sup>206</sup> See Allan Bérubé, "Coming out under fire: the history of gay men and women in World War Two," Free Press, New York, 1990.

<sup>207</sup> Johnson: 144.

must not fail to comprehend its grave implications. Our toil, resources and livelihood are all involved; so is the very structure of our society...”<sup>208</sup>

During the fiscal year ending June 30, 1963, the federal government owned 525 polygraph units and had conducted 23,122 polygraph tests. Leading the way was the Army (261 polygraphs), the Navy (86), the Air Force (72) and the FBI (48). There were 656 authorized polygraph operators in the employ of the government. At that time 24 agencies permitted the use of the polygraph. The figures did not include the use and ownership of the instruments by the CIA (who declined to reveal their numbers). The CIA may have been the most prolific user.<sup>209</sup>

### **The Pentagon Papers**

In 1967, Daniel Ellsberg had contributed to a top-secret study about the Vietnam War that had been commissioned by Defense Secretary Robert McNamara. These documents, completed in 1968, later became known collectively as the Pentagon Papers. In 1971 when Ellsberg leaked the Pentagon Papers to *The New York Times* and other newspapers, he became the focus of media attention and national political controversy. It was because Ellsberg, who worked for the RAND Corporation, held high-level security clearances and was one of only a few individuals who had access to the complete set of documents.

The Pentagon Papers, officially titled *United States – Vietnam Relations, 1945–1967: A Study Prepared by the Department of Defense*, is a history of U.S. political-military involvement in Vietnam from 1945 to 1967. The papers were discovered and

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<sup>208</sup> Eisenhower: 1961.

<sup>209</sup> <http://www.argo-a.com.ua/eng/history.html>.

released by Ellsberg, and first brought to the attention of the public on the front page of *The New York Times* in 1971. A 1996 article in *The New York Times* said that the Pentagon Papers had demonstrated, among other things, that the Johnson Administration "systematically lied, not only to the public but also to Congress"<sup>210</sup>

But what the Pentagon Papers and Ellsberg also represented to the administration was a new kind of threat. Unlike the Rosenbergs, he had not shared scientific secrets with the enemy. Unlike Oppenheimer, he had not advocated sharing secrets with the enemy. Unlike Martin and Miller, he had not taken sides with an enemy against the United States. Rather Ellsberg did what he did precisely because he was a patriot. He felt that the war in Vietnam was a mistake. And that the American people (and Congress) would agree if they had all the facts. He wanted the American people to know what their government was doing secretly in their name.

But it was not so much the release of the specific information that made Ellsberg such a national security threat to the administration. (Most of the data in the Pentagon Papers was historic, and frankly much of it was boring).<sup>211</sup>

What bothered the administration is that Ellsberg had leaked the information to the press. He had been a trusted employee with the highest level of security clearance and he had betrayed that trust. Not for the benefit of the enemy. Not for money or personal gain. But for his own ideological and ultimately patriotic reasons.

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<sup>210</sup> Apple: 1996.

<sup>211</sup> Specifically, the papers revealed that the U.S. had secretly enlarged the scale of the Vietnam War with the bombings of nearby Cambodia and Laos, coastal raids on North Vietnam, and Marine Corps attacks, none of which were reported in the mainstream media.



## Nixon's 1972 Executive Order 11652 - Classification and Declassification of

National Security Information and Material Within the Federal Government notes that

Official information or material which requires protection against authorized disclosure in the interest of the national defense or foreign relations of the United States...shall be classified in one of three categories, namely "Top Secret," "Secret," or "Confidential," depending upon the degree of its significance to national security. No other categories shall be used to identify official information or material as requiring protection in the interest of national security, except as otherwise expressly provided by statute.

The problem with the Order is that it led the public to believe that there were only three clearance levels for which personnel must be cleared. Top Secret Clearance is put forth as the highest classification. Clearly, insiders know this is not the case, even if outsiders can only guess.

In Ellsberg's book *Secrets*, he describes a meeting with then National Security Advisor Henry Kissinger where Ellsberg gives a primer on access to secrets.

You've been a consultant for a long time, and you've dealt a great deal with top secret information. But you're about to receive a whole slew of special clearances, maybe fifteen or twenty of them that are higher than top secret. I've had a number of these myself, and I've known other people who have just acquired them, and I have a pretty good sense of what the effects of receiving these clearances are on a person who didn't previously know they even existed.<sup>212</sup>

If there were (or are) "a whole slew of special clearances" that are higher than top secret, the public would not know it by Nixon's Executive order.<sup>213</sup>

### **The Downside to Secrecy**

But as Ellsberg points out, there is a drawback to holding such clearances,

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<sup>212</sup> Ellsberg, page 237.

<sup>213</sup> I once applied for a job where no less than 14 boxes were proffered to be checked by applicants relating to clearance levels. These clearances included: "Top Secret/SSBI, Top Secret/Polygraph, Top Secret/Full Scope/Life Style, and Top Secret/Counterintelligence, NSA, Public Trust and NATO".

You will deal with a person who doesn't have those clearances only from the point of view of what you want him to believe and what impression you want him to go away with, since you'll have to lie carefully to him about what you know. In effect, you will have to manipulate him. You'll give up trying to assess what he has to say. The danger is you'll become something like a moron. You'll become incapable of learning from most people in the world, no matter how much experience they may have in their particular areas that may be much greater than yours.

Given that advice, it may be wise to consider whether the number of people now bestowed with clearances may, in itself, constitute a threat to national security.

Priest and Arkin in their book *Top Secret America* point to the unprecedented proliferation of individuals and organizations conducting secret government in the wake of the terrorist attacks in the United States of September 11, 2011. They note that the fact that such work remains secret removes it from oversight and scrutiny allowing many such organizations to operate in the dark. This has major impact on policy that is often made, sometimes at the highest levels, without the best information available as the authors note,

When members voted to approve the use of military force against Iraq, which in effect approved the presumptive deaths of thousands of U.S. men and women in uniform, they didn't do it after studying the best information available or conducting exhaustive hearings; they simply took President Bush and his well-qualified national security team at their word.<sup>214</sup>

Sissela Bok in her book *Secrets: On the Ethics of Concealment and Revelation*, also reminds us of the dangers of too many secrets and the possible ramifications on policy makers' decisions,

Secrecy can harm those who make use of it in several ways. It can debilitate judgment, first of all, whenever it shuts out criticism and feedback, leading people to become mired down in stereotyped, unexamined, often erroneous beliefs and

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<sup>214</sup> 2011:23.

ways of thinking. Neither their perception of the problem nor their reasoning about it then receives the benefit of challenge and exposure.<sup>215</sup>

The Watergate scandal occurred as a result of the June 17, 1972 break-in at the Democratic National Committee headquarters at the Watergate office complex in Washington, D.C., and the Nixon administration's attempted cover-up of its involvement. The scandal eventually led to the resignation of Nixon and in the indictment, trial, conviction, and incarceration of forty-three persons, dozens of whom were Nixon's top administration officials.<sup>216</sup>

So there was some general public mistrust of the executive branch of government in the air when, in 1975, the United States Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, chaired by Senator Frank Church, was established. A precursor to the U.S. Senate Select Committee on Intelligence, the Church committee investigated intelligence gathering by the Central Intelligence Agency (CIA), National Security Agency (NSA) and Federal Bureau of Investigation (FBI) after certain activities had been revealed by the *New York Times* and in the aftermath of the Watergate scandal.

In 1976 President Gerald Ford brought George H.W. Bush to Washington to become Director of Central Intelligence. The CIA had been exposed by a series of

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<sup>215</sup> 1983:25.

<sup>216</sup> Ellsberg may have gone to prison had the Nixon administration not overreacted to his offense. On orders from the White House, Gordon Liddy and Howard Hunt burglarized the offices of Ellsberg's psychiatrist to obtain dirt on him that the administration could use to discredit him in the press. When it became clear that the break-in was committed by employees of the White House ordered by the President, the judge in the espionage case against Ellsberg agreed to a motion for a dismissal of all charges against the defendants based on the government's gross misconduct. "The sonofbitching thief is made a national hero...The New York Times gets a Pulitzer Prize for stealing documents...They're trying to get us with thieves. What in the name of God have we come to?"  
<http://law2.umkc.edu/faculty/projects/ftrials/ellsberg/ellsbergaccount.html>.

revelations, including those based on investigations by the Church Committee regarding illegal and unauthorized activities. Among the matters investigated were attempts to assassinate foreign leaders, including Patrice Lumumba of the Democratic Republic of the Congo, Rafael Trujillo of the Dominican Republic, the Diem brothers of Vietnam, Gen. René Schneider of Chile and to use the Mafia to kill Fidel Castro of Cuba.

Bush was credited with helping to restore the agency's morale. As DCI, Bush gave national security briefings to Jimmy Carter both as a Presidential candidate and as President-elect.

Carter's 1978 Executive Order 12065 - National Security Information, was intended to balance the public's interest in access to Government information with the need to protect certain national security information from disclosure. It addressed classification designation; classification authority; and other authorities laying out clear guidance on what may be classified - and it is only "that which poses a threat to national security if revealed."

In 1981 President Ronald Reagan was elected to fulfill his campaign pledge to restore "the great, confident roar of American progress and growth and optimism."<sup>217</sup>

The media referred to 1985 as "the Year of the Spy." Eight people were brought up on charges that year for espionage against the United States. The majority of these operatives were spying for Communist nations and their arrests and subsequent punishments heightened the awareness of the American public regarding the diversity of the federal workforce entrusted with the nation's secrets.

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<sup>217</sup> Televised Campaign Address, A Vital Economy: Jobs, Growth, and Progress for Americans, 10/24/1980.

Sharon Scranage was an American CIA secretary serving in Accra, Ghana. The Ghanaian government used a young male intelligence officer to romance her to solicit intelligence. She disclosed the identities of undercover CIA agents working in Ghana and plans for a coup against the Ghanaian government. Congress had previously passed the Intelligence Identities Protection Act in 1982 in response to the murder of the CIA station chief in Athens by a Marxist group there. The legislation made it illegal to disclose “the identities of or personal information about intelligence officers.”

Larry Wu-tai Chin was an American Chinese language translator working for the CIA's Foreign Broadcast Information Service. He sold classified documents to the People's Republic of China from 1952 to 1985.

Jonathan Jay Pollard is an American convicted of passing classified information to Israel while working as a civilian intelligence analyst. He pled guilty and received a life sentence in 1987.

Randy Miles Jefferies was arrested in an FBI sting operation. He met in a Washington hotel room with an undercover FBI agent posing as a Soviet official. According to FBI testimony, Jeffries had contacted the Soviets and delivered sample portions of top-secret documents he had obtained from the trashcan of his employer, a stenographic firm under contract to transcribe closed congressional hearings.

Ronald William Pelton was a National Security Agency intelligence analyst who was convicted of spying for and selling secrets to the Soviet Union. One operation he compromised was Operation Ivy Bells, a joint United States Navy, CIA and National Security Agency mission to place wire taps on Soviet underwater communication lines.

Edward Lee Howard was a CIA case officer who defected to the Soviet Union. He was hired by the CIA in 1980 and was later joined by his wife, Mary, where they were both trained in intelligence and counter-intelligence methods. Shortly after the end of their training and before going on their first assignment, a routine polygraph test indicated that he had lied about past drug use, and he was fired by the CIA in 1983 shortly before he was to report to the CIA's station at the American embassy in Moscow.

Disgruntled over the perceived unfairness of having been dismissed over accusations of drug use, petty theft and deception, he began providing classified information to the KGB, possibly contacting KGB officers in Austria in 1984 during a visit there.

Back in 1985, the arrest of spies working within the United States Intelligence Community focused a spotlight on those working within the national security infrastructure, much as the Edward Snowden and Chelsea Manning cases do today. As a result of the sudden apparent increase of and interest in national security risks, journalists and researchers who had been obtaining government information sought to store it in one central location. They did so by creating the National Security Archive at The George Washington University. The Archive continues to obtain declassified government documents via the Freedom of Information Act, Mandatory Declassification Review, presidential paper collections, congressional records, and court testimony with a mission to ensure and uphold the right to public access to historical documents and

records that can provide background for and clarify the U.S. government's process of national security decision making.<sup>218</sup>

Reagan's National Security Information Executive Order 12356 was designed to enhance the executive branch's ability to protect national security information from unauthorized or premature disclosure. It broadens the scope of the presumption that disclosure of certain types of information will cause damage to national security. In addition to foreign government information and the identity of confidential foreign sources, unauthorized disclosure of intelligence sources and methods is also now presumed to cause damage to national security.<sup>219</sup>

In addition, the Order states that "If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classified..." (Sec. 1.2 Classification Authority.1).<sup>220</sup>

With the espionage arrests in 1985, the issue of using polygraphs to uncover spies came to the forefront of the public debate about what should be done to stem the loss of defense secrets. The Reagan Administration and Congress battled over plans for

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<sup>218</sup> According to the Archive's website, "the National Security Archive combines a unique range of functions: investigative journalism center, research institute on international affairs, library and archive of declassified U.S. documents ("the world's largest nongovernmental collection" according to the Los Angeles Times), leading non-profit user of the U.S. Freedom of Information Act, public interest law firm defending and expanding public access to government information, global advocate of open government, and indexer and publisher of former secrets. [http://www2.gwu.edu/~nsarchiv/nsa/the\\_archive.html](http://www2.gwu.edu/~nsarchiv/nsa/the_archive.html).

<sup>219</sup> Executive Order 13526.

<sup>220</sup> As made clear by Peter Galison in his article "Removing Knowledge" Orders such as tis have led to a classified body of knowledge that is larger than that of the unclassified world. "True, the number of carefully archived pages written in the open is large. While hard to estimate, one could begin by taking the number of items on the shelves of the Library of Congress, one of the largest libraries in the world: 120 million items carrying about 7.5 billion pages, of which about 5.4 billion pages are in 18 million books. In fact, the classified universe, as it is sometimes called, is certainly not smaller and very probably is much larger than this unclassified one." Page 229, <http://www.fas.harvard.edu/~hsdept/bios/docs/Removing%20Knowledge.pdf>.

expanded government use of the polygraph. An executive order issued on March 11, 1983, known as National Security Decision Directive 84, would have sanctioned for the first time "adverse consequences" for a federal employee who refused to take a polygraph test when asked. The directive authorized tests to investigate candidates for certain security clearances and to ask any federal employee about leaks of classified information. This directive was issued shortly after Reagan's comment about being "up to my keister" in press leaks. Almost simultaneously, the Department of Defense (DOD) released a draft regulation that authorized use of the polygraph to screen employees who take on sensitive intelligence assignments. It too prescribed adverse consequences for refusal. But not long after the Directive 84 was drafted, it was rescinded after meeting considerable resistance from the Hill and Reagan's own cabinet.<sup>221</sup>

The chairman of the House Government Operations Committee today sharply disputed President Reagan's description of a national security directive he signed authorizing the increased use of polygraph, or lie-detector, tests for Federal employees. The chairman, Representative Jack Brooks, Democrat of Texas, made his criticism after Mr. Reagan commented on the Administration's polygraph program at a news conference Tuesday evening. "I am stunned by the President's denial that his directive would implement a massive, random, polygraph screening program," Mr. Brooks said in a statement.<sup>222</sup>

The distaste for a massive, random polygraph screening program was prevalent on the Hill and also in the executive cabinet. George P. Schultz, Reagan's Secretary of State threatened to resign if forced to take a polygraph.<sup>223</sup>

[Secretary of State] Shultz, who on Thursday threatened to resign if forced to take the test, met with Reagan at the White House. "Neither one of us are going to," Reagan said when asked if Shultz would have to take a polygraph test. An

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<sup>221</sup> Reagan is Angry on Press leaks, Lodi News Sentinel, January 11, 1983.

<sup>222</sup> Burnham, 1986.

<sup>223</sup> Though Reagan was successful in implementing another massive, random screening program for federal employees, the urinalysis test for illegal drug consumption discussed later in this chapter.



administration official later added that the polygraph portion of the new directive had been scrubbed, except for individuals who are already subject to lie detector tests under existing policy. Shultz has long objected to polygraph tests, charging that they are unreliable and tend to implicate the innocent and exonerate the guilty. Officials confirmed that he was a constant and vocal critic throughout the planning process that resulted in the security directive.<sup>224</sup>

The Employee Polygraph Protection Act of 1988 (EPPA) was passed partly in response to Reagan's overreaching aspirations for the polygraph program. The prospect of testing all federal employees jarred the sensibilities of Congress and the American people and paved the way for the Act which prevents employers from using polygraph tests, either for pre-employment screening or during the course of employment, with certain exemptions.<sup>225</sup>

Having failed in his attempt to implement a government-wide polygraph regime of random testing of government employees, Reagan turned to a different tactic. In 1986, he issued Executive order 12564 the Drug Free Federal Workplace, finding that

Drug use is having serious adverse effects upon a significant proportion of the national work force and results in billions of dollars of lost productivity each year... The Federal government, as the largest employer in the Nation, can and should show the way towards achieving drug-free workplaces through a program designed to offer drug users a helping hand and, at the same time, demonstrating to drug users and potential drug users that drugs will not be tolerated in the Federal workplace. The order directed among other things: Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis.<sup>226</sup>

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<sup>224</sup> Reagan Backs Off On Polygraphs Anti-espionage Test Would Be Used Only As 'Limited Tool', December 21, 1985, Los Angeles Times; Orlando Sentinel, [http://articles.orlandosentinel.com/1985-12-21/news/0340810284\\_1\\_polygraph-tests-lie-detector-shultz](http://articles.orlandosentinel.com/1985-12-21/news/0340810284_1_polygraph-tests-lie-detector-shultz).

<sup>225</sup> Under EPPA, most private employers may not require or request any employee or job applicant to take a lie detector test, or discharge, discipline, or discriminate against an employee or job applicant for refusing to take a test or for exercising other rights under the Act. The Act does permit polygraph tests to be administered to certain applicants for jobs with security firms (such as armored car, alarm, and guard companies) and of pharmaceutical manufacturers, distributors, and dispensers. The law does not cover federal, state, and local government agencies.

<sup>226</sup> Executive order 12564 the Drug Free Federal Workplace.

In 1989, George Bush brought to the White House a promise of "a kinder and gentler nation." In his Inaugural Address he pledged in "a moment rich with promise" to use American strength as "a force for good."

It is in the executive branch of George Bush's administration that I went to work for when I arrived in Washington in June of 1990 to begin work at the Voice of America, the U.S. government-run international radio network. On my first day, I took an oath, to

solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

According to the United States Office of Personnel Management (OPM), the oath has its genesis in the U.S. Constitution. "The Constitution not only establishes our system of government, it actually defines the work role for Federal employees – 'to establish Justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty.'"<sup>227</sup>

The history of the Oath for Federal employees can be traced to the Constitution, where Article II includes the specific oath the President takes - to "preserve, protect, and defend the Constitution of the United States." Article VI requires an oath by all other government officials from all three branches, the military, and the States. It simply states that they "shall be bound by oath or affirmation to support the Constitution." The very first law passed by the very first Congress implemented Article VI by setting out this

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<sup>227</sup> [http://archive.opm.gov/constitution\\_initiative/oath.asp](http://archive.opm.gov/constitution_initiative/oath.asp).

simple oath in law: "I do solemnly swear or affirm (as the case may be) that I will support the Constitution of the United States.

The wording we use today as Executive Branch employees is now set out in Chapter 33 of title 5, United States Code. The wording dates to the Civil War and what was called the Ironclad Test Oath. Starting in 1862, Congress required a two-part oath. The first part, referred to as a "background check," affirmed that you were not supporting and had not supported the Confederacy. The second part addressed future performance, that is, what you would swear to do in the future. It established a clear, publicly sworn accountability. In 1873, Congress dropped the first part of the Ironclad Test Oath, and in 1884 adopted the wording used today.<sup>228</sup>

In August of 1990, two months into my new job at the Voice of America (VOA), President Bush announced that he was sending troops to the Middle East in response to Iraq's invasion and annexation of Kuwait. The ensuing Gulf War, which lasted less than two months, was marked by the introduction of live news broadcasts from the front lines of the battle, principally by the U.S. Cable News Network (CNN).<sup>229</sup>

In 1993, Bush released Executive Order 12829 establishing The National Industrial Security Program (NISP) for managing the needs of private industry to access classified information. These guidelines are still in use today. The Order serves to solidify Eisenhower's military-industrial complex by standardizing security practices for the defense Industry. Policies for obtaining security clearances for both personnel and

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<sup>228</sup> [http://archive.opm.gov/constitution\\_initiative/oath.asp](http://archive.opm.gov/constitution_initiative/oath.asp).

<sup>229</sup> Scholars like James Der Derian observe that the sterility of the video, originating from aerial cameras in bomber cockpits and broadcast on CNN and other networks, helped to mask the human suffering of battle. See "Virtuous War", James Der Derian, Westview Press, 2001.

facilities, engaged by the private sector on behalf of national security and defense goals, are specified in the National Industrial Security Program

This order establishes a National Industrial Security Program to safeguard Federal Government classified information that is released to contractors, licensees, and grantees of the United States Government... Therefore, the National Industrial Security Program shall serve as a single, integrated, cohesive industrial security program to protect classified information and to preserve our Nation's economic and technological interests.

The order also establishes the National Industrial Security Program Operating Manual (NISPOM) prescribing for commercial industry standard investigative requirements for personnel and common adjudicative standards for obtaining security clearance and access determinations based upon uniform common adjudicative standards.

The year after the NISP and NISPOM were established, Daniel Patrick Moynihan chaired the U.S. Senate Commission on Protecting and Reducing Government Secrecy. Moynihan's term on the U.S. Senate intelligence and oversight committee had deepened his skepticism about the worth of secrecy in protecting national security and gave him an interest in the subject of secrecy as a problem in democratic government. He believed that secret information was a weakness in government decision-making and that belief led to his introduction of legislation in 1994 establishing the Commission. Part of the work of the Commission was to improve the existing personnel security procedures. The Commission made six formal recommendations that included establishing standard procedures for allowing employees of the federal government access to classified information.

### **Current Regulations and Guideline, Executive Order 12968**

In 1995, President William Jefferson Clinton signed Executive Order 12968 establishing uniform policies for the assignment and administration of personnel security clearances and access to classified information. It detailed standards for disclosure, eligibility requirements and levels of access, and administrative procedures for granting or denying access and for appealing such determinations. It required, for the first time, that those receiving security clearances provide information that the government previously had to acquire through its own investigations. The Order requires, as an initial condition of access to classified information, filing of financial disclosure statements "including information with respect to the spouse and dependent children of the employee" and mandated reporting of all foreign travel.

In addition, the Order stipulates that an applicant for a security clearance has the right to a hearing and to a written explanation and documentation if denied a clearance. The Order maintained two Adjudication and Appeal Processes for Obtaining DoD Security Clearances. DoD established one adjudication and appeal process for contractor employees to obtain a DoD security clearance and a second process for military and civilian employees. As a result, DoD military and civilian employees receive disparate treatment in that contractor employees are afforded more due process rights in the adjudication and appeal process.<sup>230</sup>

The Order's anti-discrimination statement, "The United States Government does not discriminate on the basis of race, color, religion, sex, national origin, disability, or

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<sup>230</sup> <http://www.fas.org/sgp/othergov/dod/dodig1203.pdf>.

sexual orientation in granting access to classified information" was important as it included "sexual orientation" for the first time in an Executive Order. It also stipulates that "no inference" about suitability for access to classified information "may be raised solely on the basis of the sexual orientation of the employee."

We have observed that the federal government had, at least since the Eisenhower administration and probably before, wrongly assumed that homosexuality was a disqualifying factor for holding a security clearance, despite the opposite findings of the U.S. Navy's Crittenden Report in 1957 and many others since.<sup>231</sup>

But According to Johnson, there had never been any data to back this up.

The politicians behind the Lavender Scare asserted that homosexuals were susceptible to blackmail by enemy agents and so could be coerced into revealing government secrets... A Senate subcommittee spent months investigating this claim and came up empty-handed. They found no evidence that even a single gay or lesbian American civil servant had ever been blackmailed into revealing state secrets. The only proof they offered was the well-known case of Colonel Alfred Redl, an Austrian double agent who was exposed just before World War I.<sup>232</sup>

According to the Spy Museum, Redl

Was a homosexual, a fact that was kept a secret from any of his colleagues and superiors. It is presumed that his homosexuality was discovered by the Russians and that they enticed him with young male lovers and then blackmailed him into providing information. At the same time, in addition to providing him with companions, they also paid him handsomely for providing them with secret information from the Austrian government.

Clinton's Order not to discriminate on the basis of sexual orientation in granting access to classified information was important because it also served to put to rest another

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<sup>231</sup> One of the individuals interviewed during this study explained that the results of such reports were "berried" because the commonly held belief was that homosexuals could be blackmailed."

<sup>232</sup> Johnson, Lavender Scare. Prior to his exposure as a spy, Redl was most famous for his new interrogation method, where he shined lights directly in a suspect's eye while questioning him – that he called the "third degree."

variation of the blackmail rationale. According to Johnson, one commonly held view expressed in many tabloid journals of the 1950s—held that communists promoted "sex perversion" among American youth as a way to weaken the country and clear the path for a communist takeover. In this line of reasoning, homosexuals (especially effeminate gay men) acted as a fifth column, by preventing family formation and fostering moral decay."<sup>233</sup>

In 1996 the Servicemembers Legal Defense Network, an organization that advocates on behalf on gays and lesbians in the U.S. military, reported that it discovered "fewer cases involving security violations," that is, inappropriate questioning about sexual orientation, following the issuance of Clinton's Executive Order.<sup>234</sup>

The Order also addressed the evaluation of evidence if an employee seeking a security clearance had mental health issues. It included a proviso that "No negative inference" about eligibility "may be raised solely on the basis of mental health counseling."<sup>235</sup>

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<sup>233</sup> <http://press.uchicago.edu/Misc/Chicago/404811in.html>.

<sup>234</sup> C. Dixon Osburn and Michelle M. Benecke, "Conduct Unbecoming: Second Annual Report on 'Don't Ask, Don't Tell, Don't Pursue'," in Laurie Lee Weinstein and Christie C. White, eds., *Wives and Warriors: Women and the Military in the United States and Canada* (Bergin & Garvey, 1997:163).

<sup>235</sup> Guideline I of the Adjudicative Guidelines lists 3 specific examples of potentially disqualifying conditions and 5 specific examples of mitigating conditions. Ultimately almost all cases where a final clearance is denied due to psychological conditions involve 1 of the 4 following situations: The applicant has displayed dysfunctional or abnormal behavior, and the applicant refuses to seek treatment or refuses to undergo medical evaluation; A qualified medical practitioner has determined that the applicant's condition could impair his or her judgment or reliability, and the applicant has failed to take medication or participate in other treatment as prescribed; A qualified medical practitioner has determined that the applicant's condition could impair his or her judgment or reliability and the condition cannot be adequately treated; A qualified medical practitioner has determined that the applicant's condition could impair his or her judgment or reliability and there is a lack of persuasive evidence that the condition is under control and will remain so for the foreseeable future. (See Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, 2006.)

## **Terrorist Attacks and “Top Secret America”**

After the landmark United States Supreme Court decision that resolved the 2000 presidential election in favor of George W. Bush, national security priorities were again in a position to shift.

The Bush administration viewed the coordinated terrorist attacks, launched by the Islamic terrorist group al-Qaeda hit New York, Washington DC and rural Pennsylvania on Tuesday, September 11, 2001 as an act of war.

Instead of understanding and representing the terrorist acts as crimes, and seeking indictments through the U.S. judicial system, as had been the case in the 1993 World Trade center bombing, the Bush administration determined that the incident constituted a new kind of war.

Bush signed into law the USA PATRIOT Act of 2001. The title of the act is a ten-letter acronym (USA PATRIOT) that stands for Uniting (and) Strengthening America (by) Providing Appropriate Tools Required (to) Intercept (and) Obstruct Terrorism Act of 2001. The act, as a response to the terrorist attacks, significantly weakened restrictions on law enforcement agencies' gathering intelligence within the United States. It also expanded the definition of terrorism to include domestic terrorism, thus enlarging the number of activities to which the USA PATRIOT Act's expanded law enforcement powers could be applied.

Many of the policies referred to as “the Bush Doctrine” were codified in the National Security Strategy of the United States published on September 20, 2002.



“The struggle against global terrorism is different from any other war in our history. It will be fought on many fronts against a particularly elusive enemy over an extended period of time. Progress will come through the persistent accumulation of successes—some seen, some unseen.”<sup>236</sup>

And it is that normalization of the “unseen” during that administration that most troubles scholars and others today. During the Bush administration there was an extraordinary practice of hiding national security activities carried out in the name of an unknowing public. The “unseen successes” were not easily packaged for public consumption. Most Americans assumed the government would maintain democratic values in pursuit of ruthless adversaries. That assumption was wrong.

Government workers, in the military and in the executive agencies, suddenly found themselves adrift in an unparalleled sea of contradictory policy guidance. The new war against terror was not following the old rules of national security engagement, like the Geneva Convention, for example.

In a February 7, 2002 memo with the subject: “Humane Treatment of Taliban and al Qaeda Detainees,” President Bush affirmed that, “...I determine that the Taliban detainees are unlawful combatants and, therefore, do not qualify as prisoners of war under Article 4 of Geneva. I note that, because Geneva does not apply to our conflict with al Qaeda, al Qaeda detainees also do not qualify as prisoners of war.”

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<sup>236</sup> National Security Strategy of the United States published on September 20, 2002.

Many government workers, entrusted with the nation's secrets and national security priorities, were also surprised by the administration's new war fighting activities and found themselves in bewildering circumstances.

John Kiriakou, the former CIA officer who blew the whistle on Bush's torture program was alarmed when his colleagues first explained to him methodologies employed in the new war on terror. "I had never heard of waterboarding... So [the CIA officer] explained to me that it simulates drowning and that we're gonna keep him up for nine, 10 days at a time, and we're gonna put him in a dog cage, and – [Zubaydah] had this fear of bugs – we're gonna put cockroaches in the cage. I said that wasn't something I wanted to be involved in."<sup>237</sup>

James B. Comey, President Obama's nominee for F.B.I. director, said in his confirmation hearing that he no longer believed it was legal to waterboard detainees under United States law. His statements contrasted with the position he took in 2005 "Even though I as a person, as a father, as a leader thought, 'That's torture — we shouldn't be doing that kind of thing.'"<sup>238</sup>

To be fair, the administration was not completely secretive with the public about its unorthodox activities. And the "unseen" policies were sometimes presented with a wink and a nod for public consumption. For example, during his inaugural address in January of 2003, President Bush said, "All told, more than 3,000 suspected terrorists have

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<sup>237</sup> Hedges, 2013.

<sup>238</sup> Schmidt, 2013.

been arrested in many countries. And many others have met a different fate. Let's put it this way: They are no longer a problem to the United States and our friends and allies."<sup>239</sup>

The Bush administration was from time to time embarrassed when the extent of their unseen policies came to light as they did during the Abu Ghraib prison scandal where U.S. soldiers were photographed torturing Iraqi prisoners of war. Senator John McCain, Ranking member of the Senate Armed Services Committee expressed concern on the Sunday Morning TV show, Face the Nation,

I have opposed torture. It's a violation of the Geneva Conventions. I worry about treatment of Americans in future conflicts. And we violated fundamental commitments that the United States of America made when we signed the Geneva Conventions. And we disregarded what might happen to Americans who are held captive in the future. And by the way, those who say our enemies won't abide the Geneva Conventions, they will if they know there's going to retribution for their violation of it.<sup>240</sup>

### **National Security and the "Blunt Instrument"**

In 2002, the National Academy of Sciences declared that polygraph examinations are dangerously unreliable and the federal government should cease depending on them to screen for security risks. The Academy's 18-month, federally-funded study found that the polygraph not only incorrectly deems large numbers of people who are telling the truth to be liars, but may have allowed spies and others posing security risks into sensitive positions because they were able to pass polygraph tests.

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<sup>239</sup> Bush, January 29, 2003.

<sup>240</sup> CBS News ([http://www.cbsnews.com/8301-503544\\_162-4969504-503544.html](http://www.cbsnews.com/8301-503544_162-4969504-503544.html)).

"National security is too important to be left to such a blunt instrument," according to Stephen Fienberg, the Carnegie-Mellon University computer science professor and chairman of the panel of academics who conducted the study.<sup>241</sup>

Calling lie-detector technology badly outdated, the report urged the government to vigorously pursue research into prospective new lie-detection techniques, such as analysis of brain activity, voice stress levels and thermal imaging. From Fienberg's Congressional testimony,

In our examination of several techniques that have been proposed as alternatives or enhancements to the polygraph, we found that some show promise. However, there is no viable alternative in hand that can reliably identify actual or potential threats to security. The shortcomings of the polygraph and all other available techniques for employee screening underscore the importance of finding new ways to pursue security goals.<sup>242</sup>

The Energy Department's acting national nuclear security director, Linton Brooks, hit the nail of the dilemma on the head when he asked the question that the report so profoundly brought into view at the time,

The...committee identified the fundamental conflict that we in the national security community must address: How to administer a program that is maximally effective in weeding out security risks while minimizing damage to the vast majority of loyal, patriotic employees? There is no easy answer, but it is a question that we will examine very seriously in the coming months.<sup>243</sup>

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<sup>241</sup> Kilian, Michael, "Study warns U.S.: Polygraphs can lie", Chicago Tribune, October 09, 2002.

<sup>242</sup> Testimony of Stephen E. Fienberg, Maurice Falk University Professor of Statistics and Social Science, Department of Statistics, Center for Automated Learning and Discovery, Center for Computer and Communications Security, Carnegie Mellon University and Chair, Committee to Review the Scientific Evidence on the Polygraph, National Research Council, The National Academies, Before the Subcommittee on Energy, Committee on Energy and Natural Resources, U.S. Senate, September 4, 2003.

<sup>243</sup> Kilian, Michael, "Study warns U.S.: Polygraphs can lie", Chicago Tribune, October 09, 2002.

### **The More Things “Change...”**

As noted above, President Bush signed into law the USA PATRIOT Act of 2001, in response to the terrorist attacks that year, strengthening intelligence gathering within the United States and expanding the definition of terrorism.<sup>244</sup>

The National Commission on Terrorist Attacks Upon the United States (also known as the 9-11 Commission), was a bipartisan commission created in 2002 to prepare an account of the circumstances surrounding the September 11, 2001 terrorist attacks, including preparedness for and the immediate response to the attacks. The Commission was also mandated to provide recommendations designed to guard against future attacks, which it did in its final report released in July of 2002.

The 9/11 Commission Report Implementation Act of 2004 specified, among other things, improvements in the expediency of granting clearance to presidential appointees during administrative transitions stating that “The President-elect should submit to the agency designated by the President ...the names of candidates for high level national security positions through the level of undersecretary of cabinet departments as soon as possible after the date of the general elections...” and that “The Federal Bureau of Investigation, and any other appropriate agency, shall undertake and complete as expeditiously as possible the background investigations necessary to provide appropriate security clearances to the individuals who are candidates....”<sup>245</sup>

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<sup>244</sup> The title of the act is a ten letter acronym (USA PATRIOT) that stands for Uniting (and) Strengthening America (by) Providing Appropriate Tools Required (to) Intercept (and) Obstruct Terrorism Act of 2001.

<sup>245</sup> The 9/11 Commission Report Implementation Act of 2004.

But even with his appointees expeditiously cleared, unlike past political corrections that occurred after previous administrations had overstepped democratic values in pursuit of national security, the policy of “unseen successes” continued (much to the surprise of those who had voted for “change”) into the Barack Obama administration.

Executive Order 13467 of June 30, 2008, “Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information” gives the Director of National Intelligence (DNI) as the new “Security Executive Agent” sole responsibility over security and public trust clearance processing. The DNI now has authority to: 1) develop government-wide policies on security clearance and sensitive position investigations and adjudication, 2) decide who will do the investigations, and 3) decide who will adjudicate the investigations and issue the clearances.<sup>246</sup>

The new executive order also created the “Suitability and Security Clearance Performance Accountability Council.” The Council, chaired by the White House Office of Management and Budget (OMB’s) Deputy Director for Management, and reporting directly to the President was given: 1) authority over the design of computer systems for personnel security processing and 2) authority to issue policy to insure the alignment of suitability and security processes. Another duty of the Council is to establish requirements for enterprise information technology.

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<sup>246</sup> The Order was signed by Bush but carried over into the administrative transition.

The Order amends Clinton's Executive Order 12968 of August 2, 1995 by inserting "Sec. 3.5. Continuous Evaluation. An individual who has been determined to be eligible for or who currently has access to classified information shall be subject to continuous evaluation under standards (including, but not limited to, the frequency of such evaluation) as determined by the Director of National Intelligence."

It is difficult to predict what forms the "continuous evaluation" of personnel will take. But the Department of Defense is already hard at work building the "end-to-end" enterprise systems to conduct security clearance adjudication using automated procedures. The concept of "continuous evaluation" certainly involves automated checks of existing government databases and will deploy new data as it becomes available.<sup>247</sup>

A program, known as ACES (Automated Continuous Evaluation System) developed by DoD's Personnel Security Research Center (PERSEREC), will be used "as is" or in some modified form for this purpose. PERSEREC also developed what is known as Automated Decision Support (ADS). This program was designed to review and adjudicate investigations for Secret clearances where little or no unfavorable information is present.<sup>248</sup>

In another disappointing move for those who voted for change, in 2011, President Obama signed the PATRIOT Sunsets Extension Act of 2011.

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<sup>247</sup> Recent disclosure about NSA activities related to face recognition is an example of future systems that may be incorporated. See "N.S.A. Collecting Millions of Faces from Web Images, James risen, Laura Poitras, New York Times, June 1, 2014.

<sup>248</sup> From PERSEREC website, <http://www.dhra.mil/perserec/currentinitiatives.html>.

While the previous administration had presented with a wink and a nod those secret practices that many preferred not to know about, the new administration appeared to attempt to keep “classified” even information that was already public.

Speaking hours after the world learned that a C.I.A. drone strike had killed Anwar al-Awlaki, an American and Yemeni imam and Islamic militant in Yemen, President Obama could still not publicly say the words “drone” or “C.I.A” in relation to each other or the event. That’s classified. The president’s careful language was the latest reflection of a growing phenomenon: information that is public but classified.”<sup>249</sup>

As Ellsberg warned that clearance holders “become something like a moron” “Steven Aftergood of the Federation of American Scientists, warns that secrecy about a disputed policy (like executing American citizens via drone attacks without a trial) promotes “a kind of self-inflicted autism that cuts decision makers off from the input they need, both from inside the government and outside.”<sup>250</sup>

### **Wiki Leakers, Whistleblowers and “Insider Threats”**

In 2013, building upon Presidents Clinton’s Executive order stating “The United States Government does not discriminate on the basis of race, color, religion, sex, national origin, disability, or sexual orientation in granting access to classified information,” the CIA actively began recruiting lesbians and gay men by holding networking events co-sponsored by Gay and Lesbian organizations. According to the CIA, more than 200 CIA employees are members of the agency's LGBT resource group. The agency is one of the founding partners of Outserve, an organization that provides

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<sup>249</sup> See Shane, Scott, “A Closed-Mouth Policy Even on Open Secrets”, New York Times, October 5, 2011.

<sup>250</sup> Shane, October 5, 2011.



legal aid and other resources to gay active duty military personnel. In a recruiting event in Miami in December of 2012, Michael Barber, the CIA's LGBT Community Outreach and Liaison program manager said, "Part of the reason we're doing outreach is to change that perception in the community," he says. "That this is no longer an issue for holding security clearance, that we want the best and the brightest regardless of your sexual orientation."<sup>251</sup>

President Obama, in his 2012 State of the Union address, said, "When you put on that uniform, it doesn't matter if you're black or white; Asian, Latino, Native American; conservative, liberal; rich, poor; gay, straight. When you're marching into battle, you look out for the person next to you, or the mission fails."

That year also marked the first ever Department of Defense Pride Month celebration, where Secretary of Defense Leon Panetta addressed a full auditorium at the Pentagon via video message saying

As we recognize Pride month, I want to personally thank all of our gay and lesbian service members, LGBT civilians, and their families for their dedicated service to our country. Before the repeal of "Don't Ask, Don't Tell," you faithfully served your country with professionalism and courage. And just like your fellow service members, you put your country before yourself. And now — after repeal, you can be proud of serving your country, and be proud of who you are when in uniform.<sup>252</sup>

While the pressure may be off LGBT individuals who seek to hold a security clearance, the full punitive force of the U.S. government is observably now focused on those trusty persons who publicly spill the beans - leakers.

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<sup>251</sup> Allen, Greg, "Mission Diversify: CIA Begins LGBT Recruiting", National Public Radio, December 02, 2012.

<sup>252</sup> Secretary of Defense Leon E. Panetta, June 15, 2012.

Edward Snowden, an American computer specialist and NSA contractor worked for the CIA and NSA before leaking details of several top-secret United States and British government mass surveillance programs to the press. The retaliation against Snowden was immediate. The State Department revoked his passport, which left him stranded in Russia where he has been granted temporary asylum.

His actions spurred considerable and ongoing national and international debate on whether his theft and disclosures of classified information was justified. While the administration called the act treasonous and claim that great damage was done to national security, others applaud the disclosures because of the amount of governmental intrusion identified and the important public discussion provoked about officials lying to Congress and precluding proper oversight and the possibly of public debate.<sup>253</sup>

In reference to the oath of allegiance (discussed earlier in this chapter) Snowden seems to agree with the Office of Personnel Management's assertion that the oath has its origins in the U.S. Constitution, saying in an interview, "The oath of allegiance is not an oath of secrecy....That is an oath to the Constitution. That is the oath I kept that [NSA Director] Keith Alexander and [Director of national Intelligence] James Clapper did not."<sup>254</sup>

Few news stories focus on the government's culpability in recruiting Snowden and permitting him the levels of clearance and access they did. Though some did, noting that the government's contracted screening process was questionable, "The holes in the

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<sup>253</sup> At this writing legislation is pending (and it is anticipated to pass ) that will curtail the NSA's collection activities based on the Snowden disclosures).

<sup>254</sup> Marcus, Ruth, "The insufferable Snowden", Washington Post, January 1, 2014.

government's security-clearance screening process may help to explain why investigators missed the numerous warning signs that Edward Snowden could be responsible for such a massive leak of classified information.”<sup>255</sup>

In addition to the faulty investigatory processes eventually revealed in the Snowden case, security professionals at the NSA were not made aware that Snowden's previous CIA bosses had doubts about him. As *the New York Times* reported,

In hindsight, officials said, the report by the C.I.A. supervisor and the agency's suspicions might have been the first serious warnings of the disclosures to come, and the biggest missed opportunity to review Mr. Snowden's top-secret clearance or at least put his future work at the N.S.A. under much greater scrutiny. “The weakness of the system was if derogatory information came in, he could still keep his security clearance and move to another job, and the information wasn't passed on,” said a Republican lawmaker who has been briefed on Mr. Snowden's activities.<sup>256</sup>

The U.S. Department of Justice has charged Edward Snowden with three felonies, including two under the Espionage Act. As Glen Greenwald has explained, the Obama administration has been particularly keen to use the Espionage Act as a tool against leakers. “Prior to Barack Obama's inauguration, there were a grand total of three prosecutions of leakers under the Espionage Act (including the prosecution of Daniel Ellsberg by the Nixon DOJ)... But during the Obama presidency, there are now seven such prosecutions: more than double the number under all prior U.S. presidents combined.”<sup>257</sup>

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<sup>255</sup> Grand, Polymic, <http://www.policymic.com/articles/50417/edward-snowden-a-private-contractor-gave-snowden-his-security-clearance-and-missed-the-red-flags>.

<sup>256</sup> “C.I.A. Warning on Snowden in '09 Said to Slip Through the Cracks”, Eric Schmitt, New York Times, Published: October 10, 2013.

<sup>257</sup> Glenn Greenwald, [guardian.co.uk](http://www.guardian.co.uk), Saturday 22 June 2013 07.18 ED  
<http://www.guardian.co.uk/commentisfree/2013/jun/22/snowden-espionage-charges>.

Those charged under the Espionage Act during the Obama administration include National Security Agency employee Thomas Drake who was charged with violating the Espionage Act for retaining classified documents for “unauthorized disclosure”; Shamai Leibowitz, a linguist and translator for the FBI, pleaded guilty to leaking classified information to a blogger; Stephen Kim, an analyst working under contract with the State Department, was indicted for giving classified information to Fox News about North Korea; Jeffery Sterling, a CIA officer, was charged with leaking information about the CIA’s efforts against Iran’s nuclear program; John Kiriakou was charged with leaking information about the interrogation of an Al Qaeda leader and disclosing the name of a CIA analyst involved.<sup>258</sup>

Chelsea Elizabeth Manning (born Bradley Edward Manning), a United States Army intelligence analyst was convicted in July 2013 of violations of the Espionage Act and other offenses, after releasing 250,000 U.S. diplomatic cables; and 500,000 Army cables to WikiLeaks and was sentenced to 35 years in prison.<sup>259</sup>

During the trial, media attention quickly focused on Manning’s intent to undergo hormonal treatments to change genders, with 24 hour news outlets airing incessantly the photo, released by the Pentagon, of Manning wearing a wig and lipstick.

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<sup>258</sup> <http://www.propublica.org/special/sealing-loose-lips-charting-obamas-crackdown-on-national-security-leaks>.

<sup>259</sup> Assigned in 2009 to an Army unit in Iraq as an, Manning had access to classified databases. In early 2010 she leaked classified information and confided this to Adrian Lamo, an online acquaintance. Lamo informed Army Counterintelligence, and Manning was arrested in May that same year. The material included videos of the July 12, 2007 Baghdad airstrike, and the 2009 Granai airstrike in Afghanistan. Much of the material was published by WikiLeaks or its media partners between April and November 2010 (Puolsen, Kevin and Zetter, Kim, “U.S. Intelligence Analyst Arrested in Wikileaks Video Probe” Wired, June 6, 2010).

But there were clearly other emotional issues plaguing the young Manning, which his superior's ignored, short staffed as they were. For example, prior to Manning's arrest his supervisor sent a memo to the unit's behavioral psychologists about Private Manning, noting that his "instability was a constant source of concern" and that it included "frequent catatonic periods," like when he stopped talking and went blank in the midst of a briefing. He also mentioned that Private Manning had sent an e-mail to him, saying that he had been struggling with something that was "haunting me more and more" and "makes my entire life feel like a bad dream that won't end."

When the supervisor was asked during Manning's trial why he kept Manning on the job in a secure facility in light of his obvious emotional distress, the supervisor explained that the work Manning was doing in Iraq was important. "The biggest threat to our soldiers and to our operational environment emerged from the Shia insurgent groups, which Pfc. Manning helped analyze."

### **Whistleblowing**

Snowden and Manning consider themselves whistleblowers. They contend that the information they leaked is useful for a more informed dialogue on U.S. national security issues. But the U.S. government does not agree, so the protections in place for whistleblowers do not apply to them. But the government does acknowledge that there are times when whistleblowers do and will need protection from retaliation for exposing government activities.

The United States Presidential Policy Directive 19, signed by President Obama, is designed to ensure that employees who serve in the Intelligence community or have

access to classified information can effectively report waste, fraud, and abuse, while protecting classified information. It is the executive order establishing standards for all Federal agencies with employees covered by the Directive, including those under Defense Intelligence Community Whistleblower Protection and the U.S. Department of Defense Whistleblower Program. It also prohibits retaliation against these employees for their reports.

PPD-19, as written, states that it: Prohibits retaliation against any officer or employee of a covered agency within the Intelligence Community; Prohibits retaliation by affecting eligibility for access to classified information and allows for employees who allege reprisal to request an external review by a three-member Inspector General panel if the applicable review process is exhausted. The order requires the agencies to set up procedures to prevent retaliation against whistleblowers in the CIA, Defense Intelligence Agency and National Security Agency, among others.<sup>260</sup>

But the Policy Directive does not do enough, though it does represent a significant breakthrough, according to Government Accountability Project Legal Director Tom Devine. He worries that that government employees that embarrass their bosses will still face retaliation, and that the fox has been left to guard the proverbial henhouse, “Regulations to enforce whistleblower rights will be written by the same agencies that routinely are the defendants in whistleblower retaliation lawsuits... it is no substitute for Congress to legislate permanent rights for national security whistleblowers, with third-

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<sup>260</sup> Clark, July 29, 2013.

party enforcement the same as for other employees.”<sup>261</sup> So even though the government pays lip service to protecting national security employees from retaliation, it does not really provide much protection from it.

### **The Insider Threat**

Even before Snowden exposed the NSA’s secret collection programs, the Obama administration was designing a new personnel security clearance policy to help identify what was fast becoming a new priority for national security – the insider threat.

Part of the administration’s new policy guidance now requires federal employees to report on each other. On November 21, 2012 President Obama issued the White House memorandum on “National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs.”

The Policy broadens the reach of anticipated security risks from not just the national security bureaucracies but to most federal departments and agencies nationwide, “including the Peace Corps, the Social Security Administration and the Education and Agriculture departments. It emphasizes leaks of classified material, but catchall definitions of ‘insider threat’ give agencies latitude to pursue and penalize a range of other conduct.”<sup>262</sup>

To help federal employees identify “high risk” individuals, the Defense Information Systems Agency (DISA) created a “CyberAwareness Challenge.” One

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<sup>261</sup> Federal Daily News, Directive extends whistleblower protections to intelligence employees, By Federal Daily Staff, October 11, 2012 <http://federaldaily.com/articles/2012/10/11/whistleblower-directive.aspx>.

<sup>262</sup> “Obamas Crackdown Views Leaks as Aiding Enemies of U.S.”, Marisa Taylor, McClatchy Washington Bureau, June 20, 2013.

section of the security challenge requires employees to identify the threat levels of hypothetical individuals that they may encounter in their offices.

An example of a “high threat” individual is an Indian woman named Hema, who travels to India twice a year to visit family and who “speaks openly of unhappiness with US foreign policy.” This woman demonstrates an “adequate work quality” and had her car repossessed while at work.

“Based on her statements, this employee demonstrates divided loyalty,” the program explains. “Paired with her financial difficulties and foreign travel, she is a high threat.”<sup>263</sup>

On July 31, 2013, the Secretary of the Army formally established its Insider Threat Program. The program “will ensure the security and safety of Army computer networks by establishing an integrated capability to monitor and audit user activity across all domains to detect and mitigate activity indicative of insider threat behavior,” wrote Army Secretary John M. McHugh in Army Directive 2013-18.<sup>264</sup>

Naturally, coming on the heels of the Manning Wikileaks experience (though before the Snowden incident) there is much in the Directive about monitoring employee’s computer activities, for example, the Directive says that the Army will “ensure the security and safety of Army computer networks by establishing an integrated capability to monitor and audit user activity across all domains to detect and mitigate activity indicative of insider threat behavior.” And there are requirements for Army units to cross

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<sup>263</sup> Sledge, Matt, “Unhappy With U.S. Foreign Policy? Pentagon Says You Might Be A 'High Threat'”, Huffington Post, 08/07/2013.

<sup>264</sup> Army Directive 2013-18 (Army Insider Threat Program) Secretary of the Army (John M. McHugh, July 31, 2012).



check applicants against the databases that PERSEREC's new automated systems are designed to interact with. For example, the Directive mandates that the Army "develop a capability to vet personnel for access to Army facilities against authoritative U.S. Government databases to identify potential criminals, terrorists or other security and insider threats." But there are also some unexpected new requirements. For example, for the first time, information will be gleaned from medical sources, "The Surgeon General will provide information from medical sources, consistent with privacy laws and regulations, to authorized personnel to help them recognize the presence of an insider threat."

### **Beating the Box**

In addition to punishing leakers, federal agents have launched a criminal investigation of individuals who claim they can teach job applicants how to pass a polygraph exam.

According to a McClatchy news report,

The criminal inquiry...is aimed at discouraging criminals and spies from infiltrating the U.S. government by using the polygraph-beating techniques, which are said to include controlled breathing, muscle tensing, tongue biting and mental arithmetic.

So far, authorities have targeted at least two instructors, one of whom has pleaded guilty to federal charges, several people familiar with the investigation told McClatchy. Investigators confiscated business records from the two men, which included the names of as many as 5,000 people who'd sought polygraph-beating advice. U.S. agencies have determined that at least 20 of them applied for government and federal contracting jobs, and at least half of that group was hired, including by the National Security Agency.

By attempting to prosecute the instructors, federal officials are adopting a controversial legal stance that sharing such information should be treated as a crime and is not protected under the First Amendment in some circumstances.

Undercover stings are being cited as the latest examples of the Obama administration's emphasis on rooting out "insider threats," a catchall phrase

meant to describe employees who might become spies, leak to the news media, commit crimes or become corrupted in some way....<sup>265</sup>

In December, 2013, an Indiana Little League coach accused of threatening national security by teaching government job applicants how to beat lie-detector tests was sentenced to eight months in prison. According to prosecutors, he trained seven federal law-enforcement applicants and two government contractors with security clearances — one with the FBI and one with an unnamed intelligence agency. As part of the case, Prosecutors cited the defendant’s interactions with two undercover agents in the sting operation. “Dixon, for instance, advised one undercover agent posing as the brother of a violent Mexican drug trafficker to withhold details during a polygraph for a U.S. Customs and Border Protection job, prosecutors said. They also listed nine unnamed sex offenders Dixon trained across the country, though training those people was not a federal crime because their cases fall under state law.”<sup>266</sup>

### **Summary**

In this chapter, we have observed how, from the birth of the nation to present times, the evolution of national security priorities is reflected in policies impacting government workers. At times federal employees have themselves constituted national security threats to administrations as they intentionally or inadvertently thwart president’s reputations. War, international alliances, espionage, surprise attacks, and leaks have shaped national security priorities and continue to do so. Media coverage also always

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<sup>265</sup> Taylor, Marisa and Cleve R. Wootson, Jr. “Seeing threats, feds target instructors of polygraph-beating methods”, McClatchy News Service, McClatchy Washington Bureau, Posted on Friday, August 16.

<sup>266</sup> “Indiana man gets 8 months for lie-detector fraud”, By Marisa Taylor, McClatchy Washington Bureau, Originally published Friday, September 6, 2013 at 5:11 PM).  
[http://seattletimes.com/html/nationworld/2021772209\\_lyingpenaltyxml.html](http://seattletimes.com/html/nationworld/2021772209_lyingpenaltyxml.html).

shapes public perceptions and policies around the culture of national security, thereby impacting those entrusted to secure it. Journalists can be caught in the retaliatory actions of the state in response to unlawful disclosures or inconvenient embarrassment. By looking at the history of the national security state in the United States, we are able to identify moments of crisis when the national security bureaucracy tends to outgrow its legitimate need and the dynamic by which prudent security measures give way to imprudent paranoia. Fear was the underlying foundation for much of the security clearance process and remains so today. As Jean-Paul Sartre wrote to the American public, after the Rosenberg executions, “you have quite simply tried to halt the progress of science by human sacrifice. Magic, witch hunts, auto-da-fés, sacrifices - we are here getting to the point: your country is sick with fear... you are afraid of the shadow of your own bomb.”<sup>267</sup> In the next section, I turn to the security clearance process as it exists today, pointing to some of the fear-based elements that remain within it.

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<sup>267</sup> Jean-Paul Sartre, *Libération* (21<sup>st</sup> June, 1953).

### CHAPTER 3. THE PERSONNEL SECURITY CLEARANCE PROCESS

“No coercive policing could replace the self-discipline and integrity of the person entrusted with the nation’s secrets as the most effective means of protecting them.”<sup>268</sup>

#### Introduction

As illustrated in the previous chapter, the concepts of national security, government secrets and those entrusted to maintain them, are as old as the United States of America - indeed older. As the nation grew, the number of people employed in federal service grew along with it. Ensuing layers of requirements and regulations have disciplined those individuals working for the national security state, through consecutive administrations, based on perceived threats. Within the realm of national security work, we have observed the evolution of the current national security personnel clearance system becoming increasingly bureaucratized during World War II, growing exponentially during the Cold War and skyrocketing after the September 11, 2001 terrorist attacks in the United States.

As of October 2012, 4.91 million people held U.S. security clearances. About 71 percent of them hold confidential or secret clearances, and the rest have top secret clearances.<sup>269</sup>

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<sup>268</sup> Executive Order 12968, Revised Adjudicative Guidelines for Determining Eligibility to Access for Classified Information.

<sup>269</sup> The Office of the Director of National Intelligence, 2012 Report on Security Clearance Determinations.

Of those clearances, the Department of Defense issues nearly 80 percent, many of them to members of the military services. But many clearance holders are not military service members or government employees, but rather work in what President Eisenhower termed the military industrial complex. Positions in the private industrial sector increasingly require clearance as government secrecy grows.

For example, when asked, in the wake of the Edward Snowden leak case, Booz Allen estimated that 48 percent of their 24,500 workers hold top secret clearances, and 28 percent have secret clearances. That means that roughly 11,760 employees at Booz Allen have access to classified information.<sup>270</sup>

But as Gusterson has shown, individuals entrusted with the nation's secrets believe in the importance of those secrets and so they are willing to enter into a process that will render them "cleared". But such privileges also have costs that play out in increased anxiety, self-censorship and limited political voice.<sup>271</sup>

Edward Shils describes the paradox faced by those entrusted by the state to maintain its secrets. That is that simply holding a clearance makes one suspect of betrayal, "Since secrecy is so damaging to solidarity the mere possession of the secret gives rise to the suspicion of disloyalty. Hence their (secrets holders) privacy must be dissolved and they must be completely and unreservedly absorbed into an undifferentiated ideological community."<sup>272</sup>

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<sup>270</sup> Politico, Leak risk: So many security clearances, By Leigh Munsil (6/11/13).

<sup>271</sup> Gusterson, Hugh, *Nuclear Rites: A Weapons Laboratory at the End of the Cold War*, University of California Press, 1998, page 84.

<sup>272</sup> Shils, Edward A., *The Torment of Secrecy: The Background and Consequences of American Security Policies*, Ivan R. Dee Publisher, Chicago, 1956, page 35.

In this chapter I describe and explore the process that applicants undergo to be awarded a clearance, the policies that dictate how clearances are administered, and some of the controversies currently surrounding those processes, policies and practices.

### **Methodology for this Chapter**

It has been said that “journalism is the first rough draft of history.”<sup>273</sup> It is largely through trusted daily news reports that we make sense out of everyday life. More often than not it is journalists who are the most up-to-date experts in the “beats” they cover.

During my career as a government press manager and spokesperson, I often found myself on the telephone or face to face with a journalist who knew more about a given government program or policy issue than I. This was a fairly common occurrence (particularly when I was new to an agency or a program that a journalist had covered for decades). Even though I was the government official assigned, ostensibly, to provide the press background on a topic, it was often through their well-informed and historically-based questions that I learned my way through certain sets of issues.

Good journalists are smart, curious, and relentless in getting the latest and most relevant information surrounding their beats. Deutscher defends using good journalism in social science by describing journalists as “research assistants” who share many traits of academic and scientific pursuits,

Like scientists, contemporary newspaper reporters are trained to exercise a degree of detachment, value objectivity, check the reliability of sources, and confirm their discoveries with outside evidence. Both scientists and journalists are subject

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<sup>273</sup> There is some discussion as to who coined the phrase exactly. It could have been Alan Barth, writing for the new Republic in 1943 or it may have been Washington Post Chairman and CEO Philip Graham. “Who Said It First? Journalism is the “first rough draft of history”, By Jack Shafer. Schaffer thinks it was Barth, even though Graham tends to get the credit.

to scrutiny by their peers and to both internal and external sanctions should their integrity be questioned. In a real sense the careers of both are contingent upon the maintenance of credibility.<sup>274</sup>

So in this chapter, building on the previous chapter, I employ news reports, as trusted secondary sources, rather than doing that research anew. Based on the premise that journalists are at least as trustworthy as research assistants, I feel reasonably comfortable relying on them to provide context to some of the debate surrounding the personnel security clearance process. And I have tried to choose the most reliable sources.

### **The Personnel Security Clearance Process**

Antonio Gramsci observed the relationship between state power and capital noting that cultural hegemony is vital to the maintenance of the capitalist state and is maintained through a mix of force and consent. “These two levels correspond on the one hand to the function of ‘hegemony’ which the dominant group exercises throughout society and on the other to that of ‘direct domination’ or command exercised through the state and ‘juridical’ government.”<sup>275</sup>

One can understand that mix when viewed through the prism of the personnel security clearance process, wherein individuals consent to surveillance along with other physical intrusions, like urinalyses and polygraph testing, because their livelihoods depend upon it. But also because they believe the process has merit. Almost without

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<sup>274</sup> Deutscher also points to the importance of choosing credible journalists for one’s research assistants noting that “Some conform to the highest journalistic standards; others to the lowest. This is, unfortunately, also true of universities” Deutscher, Irwin, *Accommodating Diversity: National Policies that Prevent Ethnic Conflict*, page 70.

<sup>275</sup> Forgacs, David, *The Antonio Gramsci Reader, Selected Writings 1916-1936*, New York University Press, New York, 2000, page 306.

exception, those interviewed for this study reported that some type of personnel security clearance was necessary. After undergoing the process clearance holders enjoy a sense of responsibility fostered through camaraderie of others who also hold clearances. For some, advantages to holding a clearance include privileged access to information and a concomitant sense of prestige. For all, the remuneration is typically more substantive than that of their colleagues without a clearance.

When comparing jobs that require security clearances to non-clearance jobs, a Security Clearance Jobs Salary Survey conducted by ClearanceJob.com, an Internet-based job board for professionals with U.S. government security clearances, found that "among the 20 highest paid job categories, security-cleared candidates earn an average of \$19,138.00 or 22 percent, more than their closest noncleared peers."<sup>276</sup>

As observed previously, over time the number of people employed in the national security state has grown. Rarely, if ever, does that number shrink. Even now, as more than a decade of wars wind down, there is little evidence, even with current discussions in Congress, budget impasses and sequestration, that the number of individuals who hold clearances will diminish, though it is probable that many who currently hold clearances may shift from war-related activities to other national security priorities.

In fact the need to maintain government secrecy is now so great that there appears to be little, if any, worry among cleared professionals, either in government or in the defense industry, during economic downturns or other fiscal crisis, that they will ever diminish in number.

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<sup>276</sup> Requiring Top Secret security clearances on the rise, survey says, By Rafael Enrique Valero, March 28, 2008, Government Executive.



The clearance.com Survey concluded that job security is a perk for those holding a clearance, no matter how national security threats and concerns may shift.<sup>277</sup>

Although federal government budgets continue to be negotiated, defense and intelligence agency professionals with security clearance remain insulated and their career concerns are relatively limited... We continue to see security-cleared government contractors that are prepared to switch employers to further their career and increase their earnings potential. This is a workforce that is swift to move and is used to continuous change related to budgets, priorities and contracts.<sup>278</sup>

In addition to the job security and added remuneration, clearances also offer a certain cache. As Shils observed,

Given the hatefulness and fascination of secrets, the mere idea of persons entrusted with vital, crucial secrets on which the life of the supremely valuable community depends, transforms them into objects of a passionate play of exited sentiment. A great aura of phantasy, of destruction and salvation plays about those who have been entrusted with secrets and whose special knowledge puts them in the position where they must be entrusted with secrets.<sup>279</sup>

Popular culture glamorizes those entrusted with the nation's secrets in spy novels like Ian Fleming's James Bond series, blockbuster movies such as those made from Tom Clancy's Jack Ryan Chronology (The Hunt for Red October, Clear and Present Danger, the Sum of all Fears et al) and action TV shows like the current Showtime series "Homeland."

In addition to fictional depictions of government secrets and those who keep them, real life accounts of spies and covert agents are equally popular as demonstrated by

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<sup>277</sup> The 2011 ClearanceJobs Compensation Survey was administered online between October 2010 and January 18, 2011 with 8,461 respondents. Participants had to have a current, active federal security clearance and be currently employed.

<sup>278</sup> Security-Cleared Professionals Take Home Less, Study Shows, By Security Week News on February 28, 2011.

<sup>279</sup> Shils, Edward A., The Torment of Secrecy: The Background and Consequences of American Security Policies, Ivan R. Dee Publisher, Chicago, 1956, page 35.

the new best-seller by Kai Bird, “the Good Spy”, depicting the life of real-life CIA agent Robert Ames.<sup>280</sup>

All of these cultural products shape public perceptions of the clearance process and clearance holders. Such cultural production, along with access to privileged information, may also help imbue clearance holders with an added sense of pride and patriotism. Though it should be noted that the national personnel security clearance process has also been a rich source of satire, irony and spoofing in comedic movies like Stanley Kubrick’s “Dr. Strangelove or: How I Learned to Stop Worrying and Love the Bomb” or the 1965-1970 TV comedy series “Get Smart” written by Mel Brooks and Buck Henry.

But we also see that high clearances (accompanied by high dollars and prestige), may involve a bit more of that Gramscian mix of force and consent, than do their less prestigious counterparts. Often, the higher the clearance level, the more intrusive the clearance process becomes. Many of the intelligence agencies, with which employment is generally deemed prestigious, in the national capital region, employ polygraph testing, in addition to more routine elements of the clearance process in order to vet applicants.<sup>281</sup>

Commentators on the personnel security process have noted that intelligence work is prestigious not only because it is made to look glamorous in popular culture, but also because it pays more. “The agencies that utilize polygraph results the most are viewed as

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<sup>280</sup> The Good Spy: The Life and Death of Robert Ames, by Kai Bird, Random House, New York, 2014.

<sup>281</sup> The United States Intelligence Community (I.C.) is a federation of 17 separate agencies that conduct intelligence activities considered necessary for national security. Member organizations include intelligence agencies, military intelligence, and civilian intelligence and analysis offices within federal executive departments. The I.C., headed by the Director of National Intelligence (DNI), who reports to the President, was established by Executive Order 12333, signed on December 4, 1981, by U.S. President Ronald Reagan.

prestigious places to work. There are opportunities, particularly at the CIA, for not only important work but reasonably well-paid work when you go overseas."<sup>282</sup>

In fact, there are few better perks in federal compensation plans than those offered to security-cleared professionals working in a war zone.<sup>283</sup>

### **Going Through the Process**

According to the United States General Accounting Office, approximately 900,000 security clearances are processed annually by the government, with the majority for Defense-related and Intelligence Community (IC) positions discussed above. But many other federal agencies also now require clearances and so the number of individuals seeking a security clearance every year is on the rise.<sup>284</sup>

The apparatus that sustains the National Security Personnel Clearance Process (NSPCS) is a vast web of people, institutions, policies and processes designed to vet and monitor applicants who seek to serve the nation. The tools and methodologies employed in the NSPCS are a mix of science, art and human ingenuity. "A clearance goes with the job, not with the person" is a common remark among those working within the NSPCS. Individuals cannot obtain a security clearance on their own. First, one must be selected or hired for a position (either as a federal employee or as a contracted worker for a

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<sup>282</sup> Howard, Katie, "What Federal Applicants Should Know About Polygraph Tests", Federal News Radio 12/11/2012.

<sup>283</sup> According to the 2011 Survey Average base salaries in the Middle East are \$79,732 and substantially surpass security-cleared professionals' salaries in Europe (\$65,947) and in the United States (\$72,449). Middle East-based security-cleared professionals earn on average an additional \$61,434 or 77 percent of their salaries in other compensation, while Europe-based professionals earn an additional \$28,479 or 43 percent of their salaries. In the two war zones, salaries for security-cleared professionals in Iraq are \$82,144, slightly ahead of their counterparts in Afghanistan at \$81,501. <http://www.securityweek.com/security-cleared-professionals-take-home-less-study-shows>.

<sup>284</sup> Backlogs in security clearance program reduced after GAO raises concerns, By Lisa Rein, Washington Post Staff Writer, Monday, February 21, 2011; 10:14 PM.

commercial firm with a government contract) that requires a clearance, and only then can an agency, employer or sponsor submit an application for a clearance for the appropriate level (Confidential, Secret, or Top Secret) depending on the requirements of the job. A security clearance, unlike a driver's license, is assigned not to an individual per se, but rather to a national security position. Specifically clearance is granted to a position with a "need to know" certain secrets."<sup>285</sup>

As mentioned in the previous chapter, the National Personnel Security Clearance System has a long history. But it is Executive Order 12968, signed by President Clinton in 1995, that establishes the uniform policies for the assignment and administration of personnel security clearances and access to classified information in effect today. The order details standards for disclosure, eligibility requirements and levels of access, and administrative procedures for granting or denying access and for appealing such determinations. It also states that "no employee shall be granted access to classified information unless that employee has been determined to be eligible in accordance with this order and to possess a need-to-know."

Executive Order 12968 describes characteristics the government wants in individuals seeking clearance (such as honesty, reliability and discretion) and it describes characteristics that it seeks to avoid (conflicting allegiances and potential for coercion).

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<sup>285</sup> The term "need to know", when used by the government describes the restriction of data which is considered sensitive. Under need-to-know restrictions, even if one has all the necessary official approvals (such as a security clearance) to access certain information, one would not be given access to such information, or read into a clandestine operation, unless one has a specific need to know; that is, access to the information must be necessary for the conduct of one's official duties. Need-to-know also aims to discourage "browsing" of sensitive material by limiting access to the smallest possible number of people.

It also stipulates that if there is ever any doubt as to an individuals' trustworthiness, the individual must be denied, on the grounds of national security. The order dictates that

...eligibility for access to classified information shall be granted only to employees who are United States citizens for whom an appropriate investigation has been completed and whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information. A determination of eligibility for access to such information is a discretionary security decision based on judgments by appropriately trained adjudicative personnel. Eligibility shall be granted only where facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States, and any doubt shall be resolved in favor of the national security.<sup>286</sup>

### ***The Background Investigation***

As noted, the Executive Order stipulates that an "appropriate investigation" must be completed to determine if an applicant's "personal and professional history affirmatively indicates loyalty to the United States."<sup>287</sup>

The State Department explains the investigation process applied to most prospective federal employees seeking cleared jobs on its website, outlining the appropriate forms that applicants must sign authorizing release of any and all information to Security Clearance Investigators, including sealed records, juvenile records, expunged records, and medical records. The site explains that applicants can expect various databases to be searched including the Security/Suitability Investigations Index, Defense Clearance and Investigations Index, fingerprint classification, and a search of the Federal

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<sup>286</sup> Executive Order 12968, signed by President Clinton in 1995, August 4, 1995.

<sup>287</sup> Executive Order 12968, signed by President Clinton in 1995, August 4, 1995.

Bureau of Investigation's investigative index. And that a credit check covering all residence, employment, and education locations will be conducted.

According to the website, "The personnel security background investigation begins after an individual has been given a conditional offer of employment and has completed the appropriate security questionnaire, usually a "Standard Form 86, Questionnaire for National Security Positions", and other required forms. When completing the Questionnaire, for Confidential, and Secret clearances, it is necessary to provide information for the previous five years. For Top Secret clearances, one must provide information for the previous ten years. Page 10 of the SF-86 contains a statement which applicants must sign authorizing release of any and all information to Security Clearance Investigators. This includes sealed records, juvenile records, expunged records, and medical records. Candidates are instructed to complete the questionnaire and other required forms

thoroughly, honestly, and with candor. Typically, once the forms are received by the agency, the Human Resources Department will submit the completed security questionnaire and other forms, also known as "the security package," to the agency's Personnel Security Office where it is reviewed for completeness, and the information is entered into a case management system

and other IT systems discussed later in this chapter.

For Confidential and Secret clearances National Agency record Checks (NACs) or National agency records checks with local agency check (NACLC) will be conducted. The NAC queries various databases including the Security/Suitability Investigations Index, Defense Clearance and Investigations Index, fingerprint classification, and a search of the Federal Bureau of Investigation's investigative index. It also includes a credit check covering all residence, employment, and education locations during the last 7 years.

The NACLC will be used as the initial investigation for contractors at the Confidential, Secret, and L access levels. It will also be used as the reinvestigation product for both contractors and Federal employees at the same access levels.

The NACLC includes the NAC components but also does law enforcement checks covering all locations of residence, employment, and education during the last 5 years and to all locations of admitted arrest. Fingerprint scans are also used in this process.

For Top Secret Clearances, a Single Scope Background Investigation (SSBI) is performed which includes all of the above, plus field interviews, checks of records held by employers, courts, and rental offices, and a subject interview with the applicant by an investigator. These inquiries are performed by one or more investigators who work in the geographic area where the information is to be obtained. NACs may be performed electronically from a central location. Some agencies have staff investigators. Others use contractors. When conducting field interviews, the investigators will normally begin with individuals listed as references in the questionnaire. They then use those references to develop names of additional references. Investigators verify the information an individual has supplied in his or her security package, such as where he or she has lived, gone to school, and worked. Investigators talk to current and former neighbors, supervisors, co-workers, classmates, and to the references an individual provides. These references are asked about the applicants honesty, reliability, and trustworthiness, and their opinion on whether the applicant should be given access to classified information or assigned to a sensitive position or position of trust.

References will also be asked questions about past and present activities, employment history, education, family background, neighborhood activities, and finances. During the investigation the investigators will try to determine any involvement with drugs, encounters with the police, drinking habits, and other facts about personal history. Investigators may also contact law enforcement agencies in each of the places an individual has lived, worked, or attended school. The investigators will attempt to obtain both favorable and unfavorable information so that adjudicators can make an appropriate clearance determination.

For Top Secret Clearances, a face-to-face interview is conducted between the applicant and an investigator. This interview usually occurs within a few weeks of an individual submitting a complete security clearance package. The objective of the subject interview is to obtain a complete picture of an individual so that an adjudicator can determine risk. Therefore, the interview will be wide-ranging and cover most aspects of the applicant's life. Interviewers can ask the subject virtually anything about family background, past experiences, health, use of alcohol or drugs, financial affairs, foreign travel, and other topics deemed relevant.<sup>288</sup>

Once the investigators have completed a report, adjudicators will weigh the results against existing adjudicative guidelines for security clearances (More on the

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<sup>288</sup> <http://www.state.gov/m/ds/clearances/c10978.htm>.

Guidelines later in this chapter). In addition to the background investigation, other tests or procedures may be required, such as those to screen for drug use or assess credibility. I will also cover these procedures in more detail later in the chapter.

Most individuals will be granted a security clearance, although complicating factors or derogatory findings (more on those later too) may delay a decision or result in a denial of a security clearance.

Lately, the background investigation process has come into question, as some investigators have been found negligent (or worse) and standard processes and procedures for conducting investigations remain elusive.

### ***Problems with the Investigative Process: The Backlog and Attempts to Fix It***

It has been observed, by those spending any amount of time in the capitol city, that efforts by the government to fix one problem can sometimes result in a new one. This may have been the case when, because of the increase in hiring of cleared workers resulting from the 9/11/2001 terrorist attacks in the United States, and the backlog in the investigation process that these new hires created, Congress intervened to improve the way agencies vetted cleared workers. As Rebecca LaFlure has noted on the Center for Public Policy website, the investigative process was not then sufficient to handle the investigative caseload,

Soon after its hiring binge began, the government's ambitions collided with a creaky system for conducting the background checks needed to approve job applicants for security clearances. By 2004, the backlog of contractors awaiting approval had reached the size of a small city: at least 188,000. Complaints by federal agencies and job-seekers alike grew so intense that lawmakers became fixated on finding a solution. Additional personnel were added to the federal investigations process, but Washington largely chose a different path that



promised to be cheaper and quicker — shortening the time allowed for the reviews, by law.<sup>289</sup>

In 2004, Congress passed the Intelligence Reform and Terrorism Prevention Act (IRTPA), which required that by 2009, agencies must process 90 percent of clearance applications within an average of 60 days, less than a sixth of the average 375-day wait in 2003.<sup>290</sup>

Because of the new mandate to process 90 percent of clearance applications within an average of 60 days, many agencies chose to farm the bulk of the investigative work out to contractors. It relied in particular on US Investigations Services (USIS), which came under particular scrutiny in 2013 when it was discovered that USIS had conducted the security clearance investigation for the notorious NSA leaker Edward Snowden.

But as *the Miami Herald* reported, Inspector General of the U.S. Office of Personnel Management Patrick McFarland confirmed during a hearing of a Senate Homeland Security subcommittee that an investigation of USIS was underway, even before the Snowden incident brought the company to public attention.

...In those cases, the background investigators reported interviews that never occurred, recorded answers to questions that were never asked, and documented records checks that were never conducted, he said. One contractor faked 1,600

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<sup>289</sup> LaFlure Rebecca, “ Security clearance lapses stemmed from Washington’s heedless emphasis on speed over quality Profits and politics, plus a huge and sudden growth in secrecy-obsessed institutions, played key roles in misguided clearance decisions, The Center For Public Integrity website, October 1, 2013.

<sup>290</sup> IRTPA addresses many different facets of information gathering and the intelligence community. IRTPA’s eight titles reflect its broad scope that in addition to Security Clearances include: Reform of the Intelligence Community; Federal Bureau of Investigation; Transportation Security; Border Protection, Immigration, and Visa Matters; Terrorism Prevention; Implementation of 9/11 Commission Recommendations; And a requirement that the Department of Homeland Security ensure that “the civil rights and civil liberties of persons are not diminished by efforts, activities, and programs aimed at securing the homeland.” (Pub. L. 108-458 (12/17/04) <https://it.ojp.gov/default.aspx?page=1282>).

credit checks. As it turned out, her own background investigation had been faked by a background investigator in a separate case.<sup>291</sup>

### ***Interim Clearance***

The backlog in the investigative procedures and adjudication of clearances after the terrorist attacks of September 11, 2001 resulted in an increase of interim clearances being issued. According to the State Department's website on the security clearance process,

In exceptional circumstances, the hiring office may request an interim security clearance. The Office of Personnel Security and Suitability may be able to grant an interim security clearance within a few weeks after the individuals has submitted a complete security package. Final clearances usually are processed and adjudicated in less than 90 days. In the past, interim clearances have been routinely issues because the clearance backlog was so great.<sup>292</sup>

### ***Periodic Reinvestigation***

All individuals who have been issued a security clearance are reinvestigated periodically to maintain it. The number of years between reinvestigations depends on the level of clearance. According to the State Department's website on the security clearance process,

Security clearances are subject to periodic reinvestigation every 5 years. The Personnel Security Office notifies the individual when it is time for their reinvestigation. The individual will submit an updated security package and another background investigation will be conducted. The investigation will again cover key aspects of the individual's life, but will start from one's previous background investigation.

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<sup>291</sup> Wise, Lindsay, "Contractor responsible for Snowden's security clearance investigated for inadequate background checks" McClatchy Washington Bureau, Miami Herald, June 20, 2013.

<sup>292</sup> <http://www.state.gov/m/ds/clearances/c10978.htm>.

## *Urinalysis Testing*

As noted in the previous chapter, in 1986 President Reagan issued Executive order 12564 on “the Drug Free Federal Workplace” which established random drug testing for civil service employees. So today, urinalyses testing for drug use is part of many agency recruitment and monitoring policies.

But In 1974, Department of Defense (DOD) Instruction 1010.1 had already been issued establishing random testing of all eligible members of the Armed Forces who had been on active duty for more than 30 days.<sup>293</sup>

In 2001, the American Forces Press Service reported that DoD labs test 60,000 urine samples each month. That all active duty members must undergo a urinalysis at least once per year and members of the National Guard and Reserves must be tested at least once every two years.<sup>294</sup>

According to the Department of Defense Inspector General’s Office,

once an applicant is notified by the Drug Program Coordinator that they must take the applicant drug test, they have 48 hours from the time of notification to complete the test. If the test is not completed within the 48 hours, the tentative offer of employment is revoked, and the applicant must reapply for any future OIG positions. If the applicant drug test result is positive, the Department of Defense will not seek to prosecute applicants, but the tentative offer of employment will be revoked, and he or she will not be permitted to apply for any OIG positions for a period of one year.<sup>295</sup>

According to the Department of Labor, Office of the Assistant Secretary for Policy, the 48 hour rule is standard.<sup>296</sup> Typically, when an agency requests a drug test

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<sup>293</sup> <https://iftdtl.amedd.army.mil/ftmd/History.html>.

<sup>294</sup> Who's Doing What, and How They Get Caught: A Look at Drug Use and Testing Within the Military, By Sgt. 1st Class Kathleen T. Rhem, USA, American Forces Press Service, Washington, Nov. 26, 2001.

<sup>295</sup> <http://www.dodig.mil/Careers/faq.html#Q1.2>.

<sup>296</sup> <http://www.dol.gov/elaws/drugfree.htm>.

from an employee, the employee is instructed to report within that 48 hour time period to a collection site.

In my experience at the Department of Defense, I was given only a few hours' notice before testing. For example I would receive an e-mail at my office in the morning requiring me to report to a clinic in the Pentagon that same day. Or sometimes, in offices outside of the Pentagon, the clinicians would set up shop in a bathroom in the building and we were told to report to that bathroom before noon.

Typically, after showing proper government identification, one is guided to a toilet stall where you are instructed to urinate into a plastic cup.

According to the Navy Drug Screening Laboratory, San Diego,

The employee's urine is collected in a specially designed secure cup, sealed with tamper-resistant tape. The individual is then required to initial the sample and it is sent to a testing laboratory to be screened for drugs. At the collection site, the urine sample begins to go through a specified "chain of custody" to ensure that it is not tampered with or invalidated through lab or employee error.

Once at the lab, boxes containing the urine specimens from the collection sites are inspected for evidence of tampering. After inspecting seals, the boxes are opened and the specimen receptacles are checked. During inspection, the bottles are inventoried against the enclosed chain-of-custody document, checked to insure the tamper resistant tape is intact and properly applied, checked to determine that information on the bottle label is the same as on the chain-of-custody document and checked to insure that information on the bottle label is complete and in accordance with agency regulations. If any discrepancies are discovered, the discrepancies are documented. The names of the urine donors are not submitted to the laboratory.<sup>297</sup>

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<sup>297</sup> According to the Navy Drug Screening Laboratory, "each specimen bottle is assigned a unique Laboratory Accession Number (LAN). The LAN for each specimen is placed on the chain-of-custody document, and a label imprinted with the LAN is affixed to each bottle. Each specimen is retained in the accessioning area until it is approved for disposal. Only portions of urine (aliquots) are taken outside this room for testing. Aliquots are poured from the original bottle on separate occasions, so that separate tests can be performed. Every time a test is done, a new aliquot of urine is used. Prior to the sample aliquot being poured, the SSN and LAN are scanned and the results are compared by computer to ensure that the correct bottle is used. The computer then prints a duplicate human readable bar-coded LAN label that is affixed to the receiver tube into which the urine is poured. Nothing is ever added to or dipped into the original bottle and aliquots are discarded after completing each test. An extra test (Re-Screen), on a fresh

According to the Navy, throughout the testing process, redundant steps are in place to check results and “handling of all specimens; each specimen drug test result is checked independently at least four times by employees in the laboratory.”<sup>298</sup>

According to American Forces Press Service,

Department of Defense labs are equipped to test for marijuana, cocaine, amphetamines, LSD, opiates (including morphine and heroin), barbiturates and PCP. But not all samples are tested for all of these drugs. Every sample gets tested for marijuana, cocaine and amphetamines, including ecstasy. Tests for other drugs are done at random on different schedules for each lab. Some laboratories do test every sample for every drug. Military commanders can request samples be tested for steroids. In this case, the samples are sent to the Olympic testing laboratory at the University of California at Los Angeles.<sup>299</sup>

As discussed above, by regulation, each military member must be tested at least once per year. Reserve members must be tested at least once every two years.

For other government agencies and commercial entities with government contracts standard testing is often random, which means an agency can order that either all or a random-selected sample of employees be tested, at any time. Employees do not have the right to refuse random testing. However, agencies and commanders cannot order specific individuals to take a "random" test. Those selected must be truly "random."<sup>300</sup>

According to the Navy Drug Screening Laboratory, “The technical and administrative performance of the laboratory is continually and rigorously monitored by the Armed Forces Medical Examiner System (AFMES) Quality Control Program.”<sup>301</sup>

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aliquot from the original bottle, is conducted to eliminate the possibility of carryover and as a quality control measure. <http://www.med.navy.mil/sites/sandiegodruglab/Pages/faq.aspx>.

<sup>298</sup> <http://www.med.navy.mil/sites/sandiegodruglab/Pages/default.aspx>.

<sup>299</sup> Who's Doing What, and How They Get Caught: A Look at Drug Use and Testing Within the Military, By Sgt. 1st Class Kathleen T. Rhem, USA, American Forces Press Service.

<sup>300</sup> <http://usmilitary.about.com/od/theorderlyroom/l/bldrugtests.htm>.

<sup>301</sup> <http://www.med.navy.mil/sites/sandiegodruglab/Pages/default.aspx>.

But no matter how controlled its scientific implementation, just as with other personnel clearance screening methodologies, the urinalyses test is not perfect. And it is not without its critics, like Mathew B. Tully writing for *Army Times*. “It happens every morning in the military — a soldier, sailor, airman or Marine gets the call that their Social Security number came up and it's time for a unit urinalysis. Most service members don't give a second thought to the possibility that they'll come up positive. But can an innocent person test positive? The answer, emphatically, is yes.”<sup>302</sup>

In his article for *Army Times*, Tully observes that “Many commanders want to believe only drug users test positive on unit urinalysis. This is simply untrue” and goes on to describe how his associate, an Army trial defense counsel for many years, told him about one of his cases in which an Army captain with eight years of service tested positive after a urinalysis for cocaine.

This young captain had a family from South America who had come to the U.S. for a visit. One of the gifts his grandmother brought him was bags to make an iced tea called mate de coca... Could the tea bags have caused this captain to test positive for cocaine? Of course, the command was not buying that story and pushed for a court-martial — until two independent drug testing firms hired by council pointed to the fact that several ingredients in mate de coca tea bags could cause a urinalysis to read high levels of benzoylecgonine. BZE is the metabolite of cocaine. Upon receiving the reports, the command agreed to drop all charges against the captain and reinstate him into command. Many people in the military still believe it is not possible to innocently test positive on a urinalysis. But a urinalysis is not 100 percent accurate, and assorted other issues cause these tests to come back improperly positive and negative.<sup>303</sup>

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<sup>302</sup> Tully, Mathew B., “Know the right thing to do when your drug test is wrong”, *Army Times*, Gannett, Aug. 27, 2007.

<sup>303</sup> Tully, Mathew B., “Know the right thing to do when your drug test is wrong”, *Army Times*, Gannett, Aug. 27, 2007.

As discussed in Chapter 1, President Ronald Reagan issued Executive Order 12564, instituting mandatory drug-testing for all civil-service employees with a security clearance.

In 2012 the policy was expanded to include abuse of prescription, as well as illegal drugs, as misuse of legal drugs is now on the rise and is perceived as a new security threat. According to Nathan Baily writing for Stars and Stripes, the most abused prescription drugs have been added to the standard military urinalysis test.

The Department of Defense announced this week that it will start testing U.S. servicemembers for prescription drugs containing hydrocodone, after a spike in prescription drug abuse in the military. The DOD will also test for anti-anxiety medications containing benzodiazepine...The painkiller Vicodin, containing the synthetic opioid hydrocodone, and the anti-anxiety medications Xanax and Valium, which contain benzodiazepine, are among the most abused prescription drugs on the market, which is why they are being added to the list of testable substances.<sup>304</sup>

When I was tested, almost monthly, as an employee at the Defense Security Service, I found the process to be oddly democratizing. The female director of the agency, the senior executives and staff would all be summoned to report to the same ladies' room and urinate on demand. There was something comradely about this shared experience in the line of duty. We were all doing something somewhat distasteful, but we all had to do it.

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<sup>304</sup> Nathan Baily, "DOD adds Vicodin, Xanax to drug testing, offers 90-day amnesty", Stars and Stripes, February 2, 2012.

## ***The Polygraph: Testing Credibility***

### ***The Polygraph Defined***

According to Polygraph Investigative Services, a company which provides polygraph services to government agencies in the Asia Pacific region,

a polygraph is an instrument that measures and records several physiological indices such as blood pressure, pulse, respiration, and skin conductivity while the subject is asked and answers a series of questions. Proponents argue that, when conducted by a competent and experienced polygraph examiner, deceptive answers will produce physiological responses that can be differentiated from those associated with non-deceptive answers. And that when confronting subjects with these responses, confessions may be stimulated.

According to Polygraph Investigative Services,

Polygraph theory is based on the psychophysiological principle. Psychophysiology is the branch of psychology that is concerned with the physiological bases of psychological processes. The assumption of polygraph examiners is that during the testing phase, and according to the psychophysiological principle, when the subject hears a question in response to which he or she intends to lie, the brain triggers automatic and uncontrollable physiological changes captured by the machine. These changes are recorded by the examiner. Each polygraph test normally lasts between 1.5 to 2.5 hours.<sup>305</sup>

Typically, there are two areas in which the polygraph is used. The first is in a criminal context the “did you do it?” determination where questions surrounding a specific incident or crime are asked. In this context, according to researchers at the Department of Defense National Center for Credibility Assessment (NCAA), the machine has demonstrated some accuracy up to 80%.<sup>306</sup>

The other major area of use for the polygraph is in the screening that takes place during the personnel security clearance process. Polygraphers admit that there is lesser

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<sup>305</sup> Polygraph Investigative Services, <http://www.polygraphis.com/WebsiteFAQ.htm>.

<sup>306</sup> This information was obtained during a telcon between the author and a researcher employed at the Department of Defense National Center for Credibility Assessment, on 9/12/13.



validity in this area. Researchers concede that it is difficult to measure effectiveness in this context. Nevertheless, there are currently 28 federal programs using the polygraph to screen for clearances. Federal agencies that employ the polygraph to issue clearances include the Departments of Homeland Security, Energy, State, Treasury, Justice, and the Central Intelligence Agency.

### ***The Polygraph Administered***

The NCCA (formerly the Department of Defense Polygraph Institute) at the U.S. Army Training Center in Fort Jackson, S.C., is the federally funded institution providing graduate and continuing education courses in a discipline known as “Psychophysiological Detection of Deception” (PDD).

According to the NCAA, their staff

consists of recognized subject matter experts in all aspects of PDD who assist and participate in operational activities throughout the Department of Defense and with federal partners. NCCA personnel conduct operational PDD examinations in support of counterintelligence, security, law enforcement, and counter-terrorism efforts to satisfy unique and specific missions that require a thorough knowledge of relevant laws, law enforcement procedures, counterintelligence methods, and specialized PDD processes and analytic tools.

The NCAA also offers graduate level coursework in how to administer and analyze polygraph tests.

According to Polygraph Investigative Services, the polygraph examination consists of 3 phases.

To begin the process, the examiner obtains and studies the complete security package on the individual (the subject) that includes the information from the security forms, background investigation and interviews discussed previously in this chapter. During the pre-test phase, the examiner discusses with the subject how the test will be conducted and thoroughly reviews all of the test questions that will be asked during the test. The testing phase consists of a series of tests

where the subject's physiological responses are recorded as the subject answers the set of questions reviewed earlier.

During the post-test phase, the examiner reviews all test data obtained and interprets the polygraph charts, from which the examiner will reach one of 3 conclusions – that the subject is telling the truth; that the subject is not telling the truth; or that the results are inconclusive.

Upon completion of the test, a report will be given to the agency. It consists of a synopsis of the case information, a list of the relevant test questions, the subject's answers, and the examiner's opinion as to the subject's truthfulness or deception.<sup>307</sup>

The examiner may or may not share any derogatory findings with the applicant.

The tests are, however, uploaded into a massive database, the Investigative Records Repository (IRR) (also referred to as the “Improved” Investigative Records Repository (iIRR)) maintained by the Department of Defense. (More on the systems later in this chapter.)

The process, as administered by the Department of Homeland Security, Customs and Border Protection, to screen border guards for a security clearance is detailed by Andrew Becker at the Center for Investigative Reporting, who touches on another objective of the process, the confession or “cleansing.”

The technology itself can’t distinguish between a white lie or a whopper. In other words, the polygraph is just a tool to get to the interrogation, if needed. That’s where the admission comes in. Polygraphers ask law enforcement applicants questions in two categories: suitability and national security. The suitability questions probe illegal drug use, involvement with serious crimes and falsification of a job application. National security questions seek answers related to espionage, unauthorized contact with foreigners and the mishandling of classified information. The examiners ask broad control questions that typically elicit a response, such as whether the applicant has ever stolen anything. The standardized tests generally have three phases. First, the examiner conducts a pretest interview in which he or she tries to build rapport with the applicant. Next is the test itself, in which the applicant’s heart rate, breathing and skin moisture levels are monitored. Finally, there is a post-test interview, if need be, when the

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<sup>307</sup> <http://www.polygraphis.com/WebsiteFAQ.htm>.

polygrapher encourages applicants to “cleanse” themselves. During the actual test, each question is asked three to five times, and these questions are reviewed with the applicant before the test even begins. Examiners look for stressful responses to specific questions. They evaluate on the spot whether someone is being truthful or deceptive. Examiners delve deeper into certain responses during the post-test, downplaying any transgressions while emphasizing the need for honesty. The overall process typically runs three or four hours, but can go longer if the applicant continues to admit things.<sup>308</sup>

The data collected during the exam (scrolls of paper meant to visually record, retain and exhibiting the subjects reactions to questions) is used by the individual examiner, sometimes in consultation with that individual’s colleagues or boss, to make a final determination of credibility. The decision of the examiner (the polygrapher and senior polygrapher) is final in most cases.

Yet, according to the National Academies, thousands of people a year could be identified as lying in polygraph screenings when they are not. And under the current system, many of them have no way to legally challenge polygraphers’ conclusions.

There are some exceptional cases when polygraph results have been appealed. But those cases require lengthy and expensive legal battles that most applicants are precluded from pursuing.

An exception, as reported by Marisa Taylor at *McClathy Newspapers* was when Michael Pillsbury, a consultant, had to fight claims by CIA polygraphers that he made admissions of leaking sensitive information. Two things worked in his favor. He had the money for good lawyers and he was not a federal employee.

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<sup>308</sup> Doubts about polygraphs don’t stop federal agencies from using them, Andrew Becker, the Center for Investigative Reporting, Apr 04, 2013, <http://cironline.org/reports/doubts-about-polygraphs-don’t-stop-federal-agencies-using-them-4326>.

With the help of some of Washington's top lawyers, Pillsbury realized he was a rare exception. Despite the CIA's insistence he couldn't appeal outside the agency, he discovered that as a government consultant he could turn to an obscure board of administrative judges. After an almost two-year dispute...he was able to rebut the statements attributed to him and a judge granted him the top-secret access he'd requested. The board, the Defense Office of Hearings and Appeals, is mainly set up for contractors and consultants, but even those who fall into those categories often discover they're barred for other reasons.<sup>309</sup>

Katie Howard, for Federal News Radio makes the point that for most applicants, the final determinations of polygraph examinations remain a mystery. "That little blip on the screen, the polygraph examiner may feel, 'I really want to probe this because I think there is something there. But the person being polygraphed never sees that blip and they never get to later. They never get the charts. They are never able to have somebody else to look at the reasonableness of that conclusion.'"<sup>310</sup>

According to a *McClatchy News* investigation, the Department of Defense conducts approximate 46,000 national security polygraphs each year.<sup>311</sup>

And the use of the machine for security clearance screening is still on the rise. More federal employees reported last year having to submit to a polygraph examination for federal employment or to keep a federal job, according to Federal News Radio.

Polygraph results in the federal employment process are not something that is supposed to be used against you and a handful of agencies really rely on them. But if you do admit to a criminal matter, the polygraph examiner can report the fact that you said this to law enforcement and if they can find other evidence that you did this activity, you could be prosecuted. And it's incredible the things that people will then say and admit to. And once they have admitted to things that are

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<sup>309</sup> Taylor, Marisa, "As polygraph screening flourishes, critics say oversight abandoned, *McClatchy Newspapers*, December 6, 2012, <http://www.mcclatchydc.com/2012/12/06/176310/as-polygraph-screening-flourishes.html#storylink=>.

<sup>310</sup> Howard, Katie, "What Federal Applicants Should Know About Polygraph Tests", *Federal News Radio* 12/11/2012.

<sup>311</sup> "Sen. Charles Grassley seeks probe of polygraph techniques at National Reconnaissance Office" By Marisa Taylor | *McClatchy Newspapers*, July 27, 2012.

problematic, then the agency will use the person's own words to screen them away from having a job.<sup>312</sup>

It is not surprising to learn that such confessions are obtained during the polygraph exams in light of the way that The NCAA's Psychophysiological Detection of Deception (PDD) Program trains polygraph examiners.<sup>313</sup>

The course description for PDD 501 "Interview Techniques", states that "Interviewing skills facilitate and complement the PDD process...students are taught how to encourage self-report of behaviors relevant to the test issues."<sup>314</sup>

Observers like attorney Bill Bransford for Federal News Radio note that, in their quest to encourage self-reporting of relevant behaviors, some polygraph examiners currently at work in the intelligence agencies, can delve into "a lot of serious things that are pretty personal and might be viewed...as maybe across the line."<sup>315</sup>

The Employee Polygraph Protection Act of 1988 (EPPA) prohibits private employers from using polygraph testing to screen applicants on the following subjects: religious beliefs or affiliations (unless specifically relevant to the job); beliefs or opinions regarding racial matters (except to the extent that any such biases could interfere with one's ability to fairly and objectively perform his or her job); political beliefs or

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<sup>312</sup> Howard, Katie, "What Federal Applicants Should Know About Polygraph Tests", Federal News Radio 12/11/2012.

<sup>313</sup> According to its website, the Psychophysiological Detection of Deception (PDD) Program is an academically challenging 520-hour comprehensive series of courses that prepares the student to begin a polygraph career in law enforcement or counterintelligence. This graduate-level program consists of courses in psychology, physiology, and research methods, as well as polygraph history, theory, and methodology. Realistic scenario-based practical exercises are conducted throughout the program to provide the students with hands on instruction in polygraph techniques and instrumentation. The PDD Program is taught at the graduate level. [http://www.ncca.mil/pdd\\_program\\_about.htm](http://www.ncca.mil/pdd_program_about.htm).

<sup>314</sup> [http://www.ncca.mil/pdd\\_program\\_about.htm](http://www.ncca.mil/pdd_program_about.htm).

<sup>315</sup> Howard, Katie, "What Federal Applicants Should Know About Polygraph Tests", Federal News Radio 12/11/2012.

affiliations; beliefs, affiliations or lawful activities regarding unions or labor organizations or lawful sexual preferences or activities.<sup>316</sup>

However, that legislation does not apply to federal agencies. And indeed government polygraph examiners have crossed that line and even government-mandated norms when it comes to intrusive questioning. They continue to do so according to a *McClatchy Newspaper* review of documents at the National Reconnaissance Office (NRO) which included internal policy documents, memos and agency emails, and interviews with dozens of polygraphers and national security experts. The news service found that NRO was pushing “ethical and possibly legal limits” by establishing a system to track the number of confessions obtained by polygraphers that were then used to determine annual performance bonuses.<sup>317</sup>

We have observed comparable behavior (where individuals suffer for the apparent greed of federal employees) most recently exhibited by officials at the Veterans Health Administration, where professionals systematically falsified the expeditious scheduling of medical appointments. While I have not personally experienced individual attempts to falsify performance records (other than the perhaps defensively self-aggrandizement that our egos demand), its perennial exposure by whistleblowers and the press seem to indicate that a problem exists.

In the case of the NRO, *McClatchy* found that annual performance reviews were bolstered by

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<sup>316</sup> Employee Polygraph Protection - EPP - 29 U.S. Code Chapter 22.

<sup>317</sup> Taylor, Marisa, "Sen. Charles Grassley Seeks Probe Of Polygraph Techniques At National Reconnaissance Office", The McClatchy Company, 27 July 2012.

summoning employees and job applicants for multiple polygraph tests to ask about a wide array of personal behavior. In some cases, polygraph examiners were found to have altered test results in what some polygraphers say is an effort to justify more probing of employees' and applicants' private lives. The disclosures by employees and applicants include a wide range of behavior and private thoughts such as drug use, child abuse, suicide attempts, depression and sexual deviancy.<sup>318</sup>

The *McClatchy* findings prompted a Congressional investigation of NRO's polygraph program. *McClatchy* also covered those hearings during which "Sen. Charles Grassley (R-Iowa) instructed the Department of Defense Inspector General to investigate whether the NRO had overstepped its bounds, "The polygraphers should have clear rules and regulations about the topics they can and should cover in their work,' Grassley said."<sup>319</sup>

Grassley is right to be concerned about state intrusion into citizens' psyches. There should be limits on the methodologies used by the state to determine who is trustworthy and suitable. As NCAA's course number PDD 504, "Methods I" poignantly explains there is a history here. Their curriculum covers "the historical aspects of PDD beginning with the methods of detecting deception during the Inquisition to the modern approaches of the present day." (To be fair, this language was from the 2013 Catalogue. The language for the current course description has been changes to "methods of detecting deception in ancient history to the scientifically founded approaches of the present."<sup>320</sup>

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<sup>318</sup> Taylor, Marisa, "Sen. Charles Grassley Seeks Probe Of Polygraph Techniques At National Reconnaissance Office", The McClatchy Company, 27 July 2012.

<sup>319</sup> Taylor, Marisa, "Sen. Charles Grassley Seeks Probe Of Polygraph Techniques At National Reconnaissance Office", The McClatchy Company, 27 July 2012.

<sup>320</sup> [http://www.ncca.mil/pdd\\_program\\_about.htm](http://www.ncca.mil/pdd_program_about.htm).

### ***More Problems with the Polygraph***

As previously noted, the National Academy of Sciences declared polygraph examinations dangerously unreliable and urged the federal government to cease depending on them to screen for security risks. The study found that the polygraph not only incorrectly deems large numbers of people who are telling the truth to be liars, but may have allowed spies and others posing security risks into sensitive positions because they were able to pass polygraph tests. For example, double agent Aldrich Ames, passed two polygraph tests while spying for the Soviet Union.<sup>321</sup>

"National security is too important to be left to such a blunt instrument," according to Stephen Fienberg, the Carnegie-Mellon professor and chairman of the National Academy of Sciences panel who conducted the study. The panel called the current technology badly outdated, and urged the government to "vigorously pursue research into prospective new lie-detection techniques, such as analysis of brain activity, voice stress levels and thermal imaging."<sup>322</sup> And some at the Department of Defense's National Center for Credibility Assessment agree with that recommendation. I conducted a telephone interview with a professor at the NCCA who said as much - "The problem is that we've been using the same single diagnostic tool for decades."

At the time the Academy released its report in 2002, the federal government's polygraph program was administered by the Department of Defense Polygraph Institute

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<sup>321</sup> Lie Detectors Lie (Tell the C.I.A.), By Jeff Stein; Published: February 19, 1995, The New York Times.

<sup>322</sup> The Polygraph and Lie Detection, Committee to Review the Scientific Evidence on the Polygraph, Board on Behavioral, Cognitive, and Sensory Sciences and Committee on National Statistics, Division of Behavioral and Social Sciences and Education, National Research Council of the National Academies, The National Academies Press, Washington, D.C., The National Academies, 500 Fifth St. N.W., Washington, D.C. 20001, Copyright © 2014 National Academy of Sciences.



(DoDPI) and when the Office of the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence) released its Annual Polygraph Report to Congress, Fiscal Year 2002, it made mention of the NRC Report, concurring with its findings and promising to improve its diagnostic tools. But the government's response to the Academy's findings also stated that it would continue to use the polygraph because it did not have anything better.

DoD employs the polygraph as one of many investigative tools to detect deception and assess the credibility of individuals involved in criminal investigations, counterintelligence cases, foreign intelligence and counterintelligence operations, as a condition for access to certain positions or classified information, and for requests for exculpation...The report recommended that a significant investment in the research and development of new technologies to detect deception for credibility assessment was required to produce tools for these requirements based on sound scientific principles. The Department concurs with this recommendation, and will pursue funding sources to be dedicated to this research. Finally, it is important to note that the NRC Report also concluded that the polygraph technique is the best tool currently available to detect deception and assess credibility. The Department will continue to use the polygraph technique as it has in the past, until improved technologies or methodologies are developed as a result of scientific research.<sup>323</sup>

The entity that now holds responsibility to improve technologies and methodologies referenced in the government's promise is the Alternate Technologies Branch of the NCCA. According to that organization's website, NCCA's Alternate Technologies Branch "educates senior leadership of the strengths, limits and possible applications of all new and approved Credibility Assessment (CA) systems and creates

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<sup>323</sup> Department of Defense, Polygraph Program, Annual Polygraph Report to Congress, Fiscal Year 2002, Office of the Assistant Secretary of Defense, (Command, Control, Communications, and Intelligence).

and submits the approval packages to secure USD(I) authorization for fielding new CA technologies within the DoD.”<sup>324</sup>

In spite of the National Academy of Sciences recommendations to improve the technology and the government’s promise to do so, there have been few modifications to the polygraph since the original U.S. Army Polygraph School was established in 1951. In fact, I can only find one exception. In 2010, when the Pentagon changed the name of the Polygraph Institute to the National Credibility Assessment Center, The Preliminary Credibility Assessment Screening System (PCASS) was its first product.

PCASS is a hand-held computer or personal digital assistant that attempts to measure stress to decide if a subject is telling the truth. Initially the "P" stood for "Portable," but it became "Preliminary" to emphasize the idea that the device should not be used to make final decisions. The PCASS collects less information than the standard polygraph technology. The PCASS is similar to a polygraph in that it is designed to detect lies, but it is different in that it is designed to remove the human elements of experience and judgment that examiners bring to the lie detecting situation.

Bill Dedman, an investigative reporter with msnbc.com, obtained studies describing the PCASS program (which were not classified) and compared the new technology, designed primarily for use by soldiers in the Iraq and Afghanistan theaters of operation, to the existent polygraph technology.

Both the polygraph and the PCAS collect information on electro-dermal response (changes in sweating) with fingertip electrodes. And both collect information on pulse and blood flow, though in different ways: The polygraph uses a blood pressure cuff, and the PCASS uses a pulse oximeter. The polygraph also measures

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<sup>324</sup> [http://www.ncca.mil/br\\_AT.htm](http://www.ncca.mil/br_AT.htm), Modification to the Polygraph (PCASS the "Truth Verifier."

respiration with two sensors on the chest. The PCASS does not. A polygraph typically has a pad that the interviewee sits on, detecting movement such as tensing of the back muscles. The PCASS does not. A polygraph examiner for the Defense Department must be at least 25 years old, a graduate of a four-year college, with two years of investigative experience in law enforcement, and must complete a 13-week polygraph course and a six-month internship. The polygraph examiner analyzes information collected by the polygraph. A PCASS examiner gets one week of training, either in the field or at the Defense Academy for Credibility Assessment. The PCASS examiner does not analyze the results; the device scores the exam.<sup>325</sup>

Dedman (as any investigative reporter worth his salt is wont to do) follows the money trail behind PCAS. He found that the algorithm, designed to interpret the physiological information and illuminate the need for human assessment, was designed at Johns Hopkins University by the Advanced Physics Laboratory, where the project was called "Truth Verifier" noting that "That lab has done polygraph studies and was criticized for a lack of transparency in the National Academy of Sciences study. The University has been paid \$1,194,000 thus far by the Defense Department for work on the Truth Verifier."<sup>326</sup>

While a lucrative endeavor for Johns Hopkins, one wonders, in analyzing Dedman's description of the government's modifications to its lie detection tool box, whether it constitutes the sort of recommendations for improvement that the Academies recommended and the government promised to deliver.

### ***Failing the Polygraph***

Whether reliable or not, there is no doubt the polygraph has ruined some careers. It has also prevented some from pursuing careers in federal service, turning some

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<sup>325</sup> Dedman "What is the PCASS and how does it work? FAQ about the hand-held lie detector the Army is deploying, Bill Dedman, Investigative reporter , msnbc.com, updated 4/9/2008 10:36:14 AM ET.

<sup>326</sup> "What is the PCASS and how does it work? FAQ about the hand-held lie detector the Army is deploying, Bill Dedman, Investigative reporter , msnbc.com, updated 4/9/2008 10:36:14 AM ET.

applicants sour on the agencies for which they have applied. This comes from the Federal Daily Forum, a blog for federal employees.

during my polygraph, I was told I failed the test. The three questions I had a response to according to the polygrapher were the questions regarding whether I had sold or used illegal drugs, whether I had ever been involved in a serious crime, or whether I had failed to include anything on my application with the FBI. The answer to all three of these questions for me is “no.” I sleep great at night because I have a clean conscience and am 100% secure in my answers to the aforementioned questions; however, what has continued to bother me is the fact that the FBI can tell an applicant that he/she failed the polygraph and not have to show any proof that they (FBI) are not lying. I requested a retest, but the FBI declined... However, they were content to call me a “liar” and send me on my way. I have lost all respect for the FBI as an institution, and even though I love this country and everything it stands for, I have no use for the FBI. I did not lie. The only liars in this situation are the FBI. If people like this, who will call you a liar without any proof, are charged with protecting our country, God help us all.<sup>327</sup>

### ***Experiencing Technical Difficulties***

In light of the polygraph’s scientifically dubious reputation, and the adverse impact it has had on individual careers, it becomes even more alarming to learn that the equipment upon which examiners rely to make their clearance determinations do not really work as well as they should.

Melisa Taylor writing for *McClatchy News* found that a particular brand of polygraph instrument, used by the FBI and other federal agencies, the LX4000, manufactured by the Lafayette Instrument Company of North Lafayette Indiana, is not working as well as hoped.

...polygraphers have documented problems with the measurement of sweat by the LX4000.... Polygraphers also interpret measurements of respiration and blood

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<sup>327</sup> January, 2011 entry on FedSoup.

[https://federalssoup.federaldaily.com/forum\\_posts.asp?TID=31015&title=failed-fbi-polygraph](https://federalssoup.federaldaily.com/forum_posts.asp?TID=31015&title=failed-fbi-polygraph). The Federal Soup website (FedSoup) is designed to provide federal employees a resource for information on their career, pay, benefits, financial planning, and retirement options and is also the portal to weekly issues of Federal Employees News Digest, benefits guides, and the annual Federal Employees Almanac.

pressure for their decisions on whether someone is lying, but many see the sweat measurement as especially indicative of deception. The manufacturer of the LX4000, Lafayette Instrument Co. Inc., describes the problem as rare but it isn't able to specify what that means.<sup>328</sup>

Lest they be singled out as the only company making defective polygraph devices, the Lafayette Instrument Company of North Lafayette Indiana told Taylor, in a statement that other polygraphs that use the same technology might have the same problem. "The potential for occasional differences to be observed was already clearly described in the published literature, not limited to the Lafayette polygraph system, and anecdotal experience confirms it is an occasional occurrence."<sup>329</sup>

Taylor contends that records obtained by *McClatchy* show the FBI polygraphs approximately 13,000 people a year for initial security clearances and that "According to records, the bureau has at least a 30 percent failure rate in its job screening. As many as 40 percent of special agent applicants don't get the job because of their polygraph test results."<sup>330</sup>

And Federal agencies continue to use the device even though it has proven to be defective (at least sometimes). For example, in August 2008, after the *McClatchy* story broke, the Defense Intelligence Agency, which also uses the Lafayette polygraph systems LX4000 for routine counterintelligence testing, announced that "though they are aware of

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<sup>328</sup> Taylor, Marisa, "FBI turns away many applicants who fail lie-detector tests", *McClatchy Washington Bureau*, May 20, 2013.

<sup>329</sup> Taylor, Marisa, "FBI turns away many applicants who fail lie-detector tests", *McClatchy Washington Bureau*, May 20, 2013.

<sup>330</sup> Taylor, Marisa, "FBI turns away many applicants who fail lie-detector tests", *McClatchy Washington Bureau*, May 20, 2013.

the problems with the machine”...it would subject each of its 5,700 prospective and current employees to polygraph testing at least once annually.”<sup>331</sup>

### ***Beating “the Box”***

A problem with the polygraph, according to critic is that, even when calibrated properly, individuals can beat the system by learning how to control bodily functions (nervousness, heart rate, sweat, breathing rate) that would trigger responses and give polygraphers pause to further investigate and interrogate test takers.

Jeff Stein relates a scenario for *the New York Times* wherein David Thoreson Lykken, a behavioral geneticist and Professor Emeritus of Psychology and Psychiatry at the University of Minnesota known for his work on twin studies and lie detection, is called upon to help an individual pass a polygraph.

In 1983, an Army intelligence officer made a desperate call to David Lykken, a psychology professor at the University of Minnesota and expert on polygraphs. The officer said that he had just flunked two routine lie detector tests but that he hadn’t done anything illegal, and wanted to know if Mr. Lykken had any advice on beating the machine. Sure, the professor said, offering a few suggestions involving altering the body’s breathing rate and blood pressure at strategic times. The officer passed the next test easily. “The only hard part was learning how to keep a straight face,” he later told Mr. Lykken.<sup>332</sup>

During the current Obama administration, those who counsel individuals on passing a polygraph test are considered threats to national security.

In August 2013, the federal government began indicting individuals who teach individuals methods to “beat” a polygraph test. It investigated a former police officer from Oklahoma City who conducted courses on how to defeat a polygraph test. A sting

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<sup>331</sup> Taylor, Marisa, “FBI turns away many applicants who fail lie-detector tests”, McClatchy Washington Bureau, May 20, 2013.

<sup>332</sup> Stein, Jeff “ Lie Detectors Lie (Tell the C.I.A.)” Published: February 19, 1995, The New York Times.

was conducted on a former little league coach in Indiana who taught methods on how to beat a polygraph tests to up to 100 people throughout the U.S., resulting in him pleading guilty to charges of obstruction and wire fraud. Federal prosecutors asked the judge to sentence him to one year and nine months, saying that he had a “career of criminal deceit” and taught how to defeat a polygraph to applicants to law enforcement jobs, employees of intelligence services, and child molesters”. He received an eight month sentence.

According to Taylor writing for *McClatchy News*, the pursuit and criminal treatment of polygraph coaches is the result of the Obama administration’s over reach, in the aftermath of insider leaks from individuals like Manning and Snowden, to try to prevent such “insider threats.”

The decision to prosecute Dixon and the attempt to imprison him has been cited as an example of the Obama administration’s overzealousness in detecting and deterring potential “insider threats,” a catchall phrase meant to describe employees who might become spies, leak to the news media, commit crimes or become corrupted in some way... Dixon, meanwhile, pleaded guilty in federal court in Alexandria, Va., a forum often chosen by prosecutors for terrorism and spy cases.<sup>333</sup>

But the NCCA is ready for those subjects who have been trained to “beat the box”. PDD course number 505, PDD METHODS provides students with countermeasures for countering countermeasures,

This course acquaints the student with the various specific-issue PDD testing formats utilized within the Federal Government. It also introduces the student examiner to the various types of mental, physical, and pharmacological countermeasures that might be encountered in PDD testing and provides counter-

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<sup>333</sup> Taylor, Marisa, “Feds want prison time in unprecedented lie detector prosecution”, *McClatchy Washington Bureau*, August 30, 2012.

countermeasures an examiner might utilize to neutralize these countermeasures.<sup>334,335</sup>

## **Personnel Security and Big Data - The IT Systems**

In 2008, then President George W. Bush became disgusted with the time it was taking to hire cleared government workers and contractors. As discussed previously in this chapter, the backlog of applicants was building up and the antiquated clearance system could not handle the post-9/11 demand for clearing personnel.

So Bush tasked his cabinet for proposals on how to make personnel security clearance decisions more quickly, effectively and efficiently. In April that year, a Joint Security and Suitability Reform Team comprised of members from the Department of Defense (DoD), Office of Management and Budget (OMB), Office of the Director of National Intelligence (ODNI) and the Office of Personnel Management (OPM), delivered a plan of action to streamline security clearance processes government-wide. Among the team's recommendations were that automation be used to make the process faster and "that continuous evaluation techniques replace periodic investigation, using more frequent automated database checks to identify security relevant issues."<sup>336</sup>

The Department of Defense already maintained several automated databases, at that time, that they were using for security clearance adjudication and administration.

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<sup>334</sup> The Federal Polygraph handbook, [http://www.ncca.mil/pdd\\_courses.htm](http://www.ncca.mil/pdd_courses.htm).

<sup>335</sup> Indeed, even before the current administration's emphasis on insider threats, the now defunct Department of Defense Counterintelligence Field Activity published an entire manual under the authority of DoD Directive 5210.48, DoD Polygraph Program, the purpose of which was to "prescribe uniform Psychophysiological Detection of Deception (PDDIpolygraph) procedures" (Department of Defense Counterintelligence Field Activity, Federal Psychophysiol Detection of Deception Examiner Handbook, October 2, 2006. <https://antipolygraph.org/documents/federal-polygraph-handbook-02-10-2006.pdf>).

<sup>336</sup> Security and Suitability Process Reform, Initial report, April 30, 2008, Provided by Joint Security and Suitability Reform Team.



Based on the Team's recommendations, in January 2009, the Deputy Secretary of Defense directed the transfer of existing Department of Defense enterprise wide IT systems associated with personnel security clearances from the Defense Security Service to the Defense Manpower Data Center (DMDC). The applications that transferred from DSS to DMDC included: The Joint Personnel Adjudication System (JPAS); The Defense Central Index of Investigations (DCII); the Secure Web Fingerprint Transmission (SWFT); and The Investigative Records Repository (IRR) (also referred to as the "Improved" Investigative Records Repository (iIRR). The program management and operational responsibilities of these four transitioned applications now fall under the Personnel Security/Assurance (PSA) Division, which is a component of the Identity Management Directorate at DMDC.<sup>337</sup>

According to the Department of Defense Personnel and Research Center (PERSEREC), changing technology has had a major impact on the way personnel security adjudicators do their work. The anticipation, as with all technological inventions, is that the systems will save time and money.

With the development of automated databases, a primary focus of our activities has been on the automation of the investigative process. What began as an automated process for the continuing evaluation of cleared personnel is now developing as a cost- and time-saving method for conducting initial clearance investigations through database checks. This method ultimately will save the government millions of dollars.<sup>338</sup>

As discussed earlier in the chapter, when an applicant enters into the National Security Personnel Clearance System, by applying for a federal job that requires

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<sup>337</sup> <http://www.dss.mil/diss/jpas/jpas.html>.

<sup>338</sup> Department of Defense Personnel and Security Research Center, <http://www.dhra.mil/perserec/currentinitiatives.html>.

clearance, the individual's application forms and all of the data resulting from the investigation and testing processes are entered into databases.

The Defense Central Index of Investigations (DCII) System is an automated central index that identifies investigations conducted by DoD investigative agencies, and personnel security determinations made by DoD adjudicative authorities. DCII is operated and maintained on behalf of the DoD components and office of the Deputy Under Secretary of Defense for HUMINT, Counterintelligence and Security. Access to DCII is normally limited to the Department of Defense and other federal agencies that have adjudicative, investigative and/or counterintelligence missions.<sup>339</sup> The Secure Web Fingerprint Transmission (SWFT) program enables cleared Defense industry users to submit electronic fingerprints (e-fingerprints) and demographic information for applicants who require an investigation by the Office of Personnel Management (OPM) for a personnel security clearance. Cleared contractors collect and securely transmit e-fingerprints to SWFT for subsequent release to OPM based on a JPAS/e-QIP submission approved by the Personnel Security Management Office (PSMO-I). Paper-based capture, submission and processing of fingerprints was time consuming and prone to errors. According to the Office of the Secretary of Defense, Defense Security Service, "the

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<sup>339</sup> Code of Federal Regulations, Title 32 - National Defense, Volume: 1, Date: 2013-07-01, Title: Subchapter F – Security, Context: Title 32 - National Defense. Subtitle A - Department of Defense. Chapter I - Office of the Secretary of Defense, Subchapter F—Security, Pt. 154, Part 154—Department of Defense Personnel Security Program Regulation.

SWFT eliminates the manual paper process, expedites the clearance process, and provides end-to-end accountability for (Personally Identifiable Information) PII data.”<sup>340</sup>

### ***Automated Continuing Evaluation System (ACES)***

According to PERSEREC, the Automated Continuing Evaluation System (ACES) was developed as an automated approach to assessing eligibility for access to classified information in between an initial background investigation and a periodic reinvestigation (PR). It is also to be used “during the career of a cleared employee, in between PRs.”

PERSREC is fully aware of the administration’s focus on insider threats and promised the system will help to solve that problem. “With regard to response to the insider threat, when fully operational, ACES will offer to the DoD earlier detection and intervention and an increased range of issues for determining vulnerabilities.”<sup>341</sup>

But there is cause for concern in the trend toward increased dependence on technology. As we have seen with the recent roll out of the health exchange registration websites to implement the Affordable Care Act, technology is not always as dependable as the government would like it to be. There is also reason to worry about the focus on cost and time cutting measures as we have seen what they have wrought in the wake of legislation specifying timeliness – remember fraudulent investigations were one of the results there.

According to PERSEREC, The system currently can query over 40 different government and commercial database records to identify cleared personnel who appear to

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<sup>340</sup> Electronic Fingerprint Capture Options for Industry, The Defense Security Service, Version 4.0 February 2014, Issuing Office: Defense Security Service Russell-Knox Building, 27130 Telegraph Rd Quantico VA 22134.

<sup>341</sup> Defense Personnel and Security Resource Center, <http://www.dhra.mil/perserec/currentinitiatives.html#ACES>.

be engaging in behaviors of security concern that may indicate personal vulnerability (e.g., substance abuse, criminal behavior, or financial problems) or possibly espionage-related activities (e.g., unexplained affluence). In addition to current queries, PERSEREC is currently adding or evaluating other security-relevant databases.

### ***Adjudication Decision Support and eAdjudication***

Marko Hakamaa, a former background investigator for the Office of Personnel Management (OPM), writing for ClearanceJobs.com, describes the job that adjudicators perform in the personnel security clearance process, noting that all agencies have requirements that must be met by those assigned as adjudicators, before they are allowed to review background investigations and make adjudicative determinations. Among those requirements are that adjudicators themselves undergo either a Background Investigation (BI) or Single Scope Background Investigation (SSBI) and are required to have completed specific training courses. In addition, Hakama notes that

new adjudicators or those with less experience have senior adjudicators there to train, mentor, provide oversight, and to ensure the determinations made are sound and fall within established guidelines. For the more experienced adjudicators, refresher training is completed in order to stay current with ever-changing security mandates and guidance.

According to the Defense Security Service, an adjudicator is a person trained in the process of reviewing and evaluating security clearance information who reviews the results of the investigation and compares it to established qualifying criteria for legibility to access classified national security information.

This person, an adjudicator, considers the whole person, i.e., both favorable and unfavorable information, in making the clearance decision. Briefly, the adjudicator considers the following factors when evaluating an individual's conduct: The nature, extent and seriousness of the conduct; The circumstances

surrounding the conduct, to include knowledgeable participation; The frequency of the conduct; The individual's age and maturity at the time of the conduct; The extent to which participation is voluntary; The presence or absence of rehabilitation and other permanent behavioral changes; The motivation for the conduct; The potential for pressure, coercion, exploitation, or duress; and The likelihood of continuation or recurrence of the conduct.<sup>342</sup>

One could argue that many of those tasks seem inherently human. For example, is it may be difficult for an automated system to determine the amount of pressure, coercion, exploitation, or duress an individual may have been under when (s)he made certain decisions. And, as Hakamaa makes clear, for government workers, there is a lot riding on those determinations.

Adjudicators hold an immense responsibility for making decisions that could impact national security and/or alter the life path of the individual being investigated. Adjudicators are required to be unbiased and maintain a fair, impartial, and objective attitude toward the person being investigated and information being reviewed and adjudicated. Common characteristics of persons assigned these duties include: maturity, integrity, honesty, discretion, sound logical thinking, and strong analytical processing and communication skills. An adjudicator is an analyst who forms his or her conclusions and recommendations based on a review of all available information. The process is not black and white and everyone sees and/or interprets information a bit differently. In most cases, as standard procedure, a second set of eyes review each case that has issues or concerns. Fundamental security principles dictate that all doubts concerning personnel having access to classified data shall be resolved in favor of national security. Any uncertainty or doubt about the individual makes the decision that much harder. The challenges for adjudicators reviewing investigations are many: high workload with pressure to meet timeliness requirements; not enough information in the investigation to get a “complete picture” when issues of concern exist; grey area conduct where a direct nexus to the position does not exist but is of serious concern; trying to determine intent in falsification or non-disclosure cases; dealing with pressure or political fall-out from management; getting supervisors to separate job performance from conduct issues; and knowing that decisions could affect the livelihood of an individual and that of their family. Each investigation is reviewed on its own merits and no “one size fits all”

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<sup>342</sup> Defense Security Service, “Industrial Personnel Security Clearance Process: Processing an Applicant for an Industrial Personnel Security Clearance” [http://www.dss.mil/psmo-i/indus\\_psmo-i\\_process\\_applicant.html](http://www.dss.mil/psmo-i/indus_psmo-i_process_applicant.html).

approach can be used. Adjudicators must make what is called a whole-person judgment based on all available information about an individual's reliability and trustworthiness. This includes all favorable and unfavorable information, circumstances that may mitigate the unfavorable information and circumstances that may affect the credibility of the information. It should be noted that adjudicators see information about individuals that no one else sees. Quite often, intentionally, or not, many individuals compartmentalize their lives and as a result, supervisors, co-workers, friends, and family may only see bits and pieces of the big picture and are surprised when adverse information about someone they thought they knew is revealed in a background investigation comes to light. Being an adjudicator is a tough job and is not one of the more favorably looked upon positions within an agency. There will always be someone who disagrees with the adjudicative decision and as the subject matter expert, the adjudicator has the responsibility to present the concerns to management in a factual and impartial manner and put forth a sound recommendation. Despite the various challenges, adjudicators are security professionals that work behind the scenes peering into the darker side of human nature while trying to do their best in making hard decisions and are an integral part of the overall security process.<sup>343</sup>

### ***The Adjudication Decision Support (ADS) – Removing the Human Adjudicator***

The Adjudication Decision Support (ADS) initiative explores the use of computer automation to increase the efficiency and effectiveness of determining eligibility for access to classified information (the granting of security clearances).

According to PERSEREC,

Research results suggest that an ADS system can reliably process the electronic results of personnel security investigations, i.e., “e-Adjudicate” the information and, consequently, eliminate the need for human adjudicative review (“h-Adjudication”) of investigations that contain acceptably minor adverse information. An automated ADS system greatly shortens case processing times for the cleanest cases, facilitates the initial review of complex cases by adjudicators, reduces the workload for adjudicators, increases adjudication consistency, and facilitates the assignment of complex cases to adjudicators with relevant expertise. This automated clean-case screening system makes use of information on policy, criteria comparable to those of expert adjudicators, and empirical research to reach determinations that accord with the Federal standards outlined in the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information. In addition, the system reliably detects and documents

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<sup>343</sup> Marko Hakamaa “Adjudicating Background Investigations – Not an Easy Job”, December 8, 2013.

adverse information of security concern to maintain the integrity of the process.”<sup>344</sup>

In addition, the ADS system currently processes investigative information typically gathered by the Office of Personnel Management (OPM) for the DoD and is expected to be integrated with other automated record checks available through the Automated Continuing Evaluation System (ACES).

According to PERSEREC, ADS is currently saving the government, industry and taxpayers millions of dollars and substantially expediting the process of clearance applications and renewals. PERSEREC anticipates that eventually “Approximately 50% of all personnel security and suitability investigations may eventually be eligible for expedited approval by an ADS system.”<sup>345</sup>

### ***Systems to Determine Personality Disorders that are Security and Safety Risks***

According to PERSEREC, the Department of Defense has developed and is in the process of assessing an instrument that “assesses dysfunctional aspects of personality that are neither accessible via self-report nor readily observable by others” in order to mitigate security, safety and reliability risks associated with personality disorders.”<sup>346</sup>

According to PERSEREC,

Security and safety problems are sometimes caused by individuals with particular personality disorders. Identifying such individuals is difficult because: (1) traditional clinical personality assessment methods have diagnostic weaknesses, and (2) there is insufficient information on which personality disorders relate to the greatest security, safety and reliability risks. To address these challenges, PERSEREC initiated a two-phase study. In Phase I, 20 personnel security

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<sup>344</sup> The Department of Defense Personnel and Security Research Center, PERSEREC, <http://www.dhra.mil/perserec/currentinitiatives.html>.

<sup>345</sup> The Department of Defense Personnel and Security Research Center, PERSEREC, <http://www.dhra.mil/perserec/currentinitiatives.html>.

<sup>346</sup> <http://www.dhra.mil/perserec/currentinitiatives.html#PersDis>.

adjudicators from four government adjudication centers served as expert raters on behavioral characteristics that are security risks. The raters identified the characteristics of a hypothetical risky person using the 200 behaviors of the Shedler-Westen Assessment Procedure (SWAP)-a validated and recognized personality assessment instrument designed to assess aspects of personality that are neither accessible via self-report nor readily observable by others. Successful results were used to develop item weights for the Dispositional Indicators of Risk Exposure (DIRE)-a new SWAP scale. In the Phase II field test, clinicians used the SWAP/DIRE method to evaluate the security and mental health fitness of individuals employed in a sensitive government nuclear program. Clinicians reported that the SWAP and DIRE significantly improved their ability to assess important aspects of employees' mental fitness, including the presence of risky personality disorders. Phase III research results continue to support the criterion validity of DIRE with respect to behaviors of security and safety concern.<sup>347</sup>

It is important to note that while PERSEREC admits that “clinical personality assessment methods have flaws” they built their new DIRE/WSAP scale using “a validated and recognized personality assessment instrument – the Shedler-Western Assessment Procedure”. They make no mention as to how they have mitigated the impact of flaws in the assessment, so presumably the flaws noted are also built into the new system.

An improved ability “to assess important aspects of employees’ mental fitness” would have come in handy in September of 2013 when a navy contractor with a personality disorder killed 12 people at the Navy Yard in Washington, D.C. The killer held a security clearance. Incensed lawmakers called for the Secretary of Defense, Chuck Hagel, to reform the security clearance system to preclude individuals with personality disorders from obtaining and maintaining a clearance.

As Jack Gillum and Eric Tucker reported at the time for *Associated Press*,

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<sup>347</sup> Defense Personnel and Security Research Center, <http://www.dhra.mil/perserec/currentinitiatives.html>.



Defense Secretary Chuck Hagel has ordered two sweeping reviews of military security and employee screening programs, acknowledging Wednesday that “a lot of red flags” may have been missed in the background of the Washington Navy Yard shooter. Two days after former Navy reservist Aaron Alexis gunned down 12 people in a shooting rampage inside the Navy base, Pentagon leaders struggled with whether a string of minor arrests, mental health issues and other behavioral problems should have been enough to strip him of his security clearance or deny him access to the secure facility in southeast Washington. “Obviously, there were a lot of red flags,” Hagel told reporters at a Pentagon briefing. Hagel has ordered the Pentagon to review the physical security and access procedures at all U.S. defense facilities worldwide as well as a study of the programs used for granting and renewing the security clearances for the military, civilian employees and contractors. He also said that he is asking an independent panel to undertake the same reviews, vowing that, “where there are gaps, we will close them.” Alexis' employer — and possibly the government — missed how, in September 2010, Alexis' neighbor called police in Fort Worth, Texas, after she said she was nearly struck by a bullet shot from his downstairs apartment. When police confronted Alexis about the shooting, he said he was cleaning his gun when it accidentally discharged. Alexis was arrested on suspicion of discharging a firearm within city limits. The checks also missed how, six years earlier, Seattle police arrested Alexis for shooting the tires of another man's vehicle in what he later described as an angry “blackout.” Police said two construction workers reported seeing a man, later identified as Alexis, walk out of the home next to their worksite, pull a gun from his waistband and fire three shots into the rear tires of their car before he walked back home. No charges were filed in either the Fort Worth or Seattle incidents. *The Experts* said it had most recently used a company called *First Advantage* of Alpharetta, Ga., to search Alexis' past for criminal involvement. A First Advantage spokeswoman said Thursday *The Experts* asked only for a typical employment background check that only returns information on convictions, not merely arrests.

Even with complete data, the databases probably would have missed a Newport, R.I., police report which did not list Alexis as a suspect in any wrongdoing but instead reported him complaining about voices wanting to harm him. “He couldn't sleep,” reports stated, and believed people were following him and using a microwave machine to send vibrations to his body. He called police and told them he couldn't get away from the voices. On Aug. 7, local police did alert officials at the Newport Naval Station about being called to the naval defense contractor's hotel room. But officers didn't hear from them again.<sup>348</sup>

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<sup>348</sup> By Jack Gillum and Eric Tucker, — Sep. 19, 2013, “How can red flags be missed like Navy shooter's?” The Associated Press.

So in this example, one concern with the automated systems currently in use, is that they may not collect all of the relevant information on a given individual. The systems are reliant upon humans to register and enter the data. Another concern is that databases may contain important information but humans may not know how, when or if to retrieve and analyze it. What should have been done with the information that an individual is hearing voices? Given that information, some security officers may have filed an “incident report” in JPAS that would have triggered an investigation (more on that later in the chapter), but others may not. We have noted that adjudicators enter a grey area when making clearance determinations. So in addition to the new big data solutions to security clearance concerns, there must be appropriate human protocols and practices in place to make the best use of them. So far, it appears that such practices have yet to materialize.

PERSEREC claims to have “developed and validated an assessment instrument that efficiently assesses dysfunctional aspects of personality” and such an instrument may have been used to develop the profiles related to the current administration’s new insider threat policies cited earlier, such ambitious planning did not come into play at the September, 2013 Navy Yard incident.

While PERSEREC is working on its personality assessment tools, some point to the fact that identifying violent personality disorders was not an original mandate of the personnel security clearance system. As Gillum and Tucker note,

The government’s sprawling system of background checks and security clearances is so unreliable it’s virtually impossible to adequately investigate the nearly 5 million Americans who have them and make sure they can be trusted with access to military and sensitive civilian buildings, an Associated Press

review found. Case after case has exposed problems for years, including recent instances when workers the government approved have been implicated in mass shootings, espionage and damaging disclosures of national secrets... The system focuses on identifying applicants who could be blackmailed or persuaded to sell national secrets, not commit acts of violence. And it relies on incomplete databases and a network of private vetting companies that earn hundreds of millions of dollars to perform checks but whose investigators are sometimes criminally prosecuted themselves for lying about background interviews that never occurred.<sup>349,350</sup>

A review of incidents like the Navy Yard shooting demonstrate failures, on the part of individuals, to fully make use of automated systems available to them.

Nevertheless, PERSEREC is working on another initiative to “improve the identification and management of DoD personnel who pose a safety or security threat.”<sup>351</sup>

The idea is to monitor personnel with security clearances through social media.

### ***Cybervetting and CyberPsychology Security Risks***

According to PERSEREC, “Cybervetting can be defined as checking blogs, social media sites, and other Internet-based sources to identify issues of security concern applicable to people holding or seeking positions of trust. “In addition to cybervetting, PERSEREC is pursuing a series of “CyberPsychology studies exploring how certain types of activities in cyber environments, such as Second Life, can spill over into negative affects on workplace reliability, judgment, and other areas of personnel security concern.”<sup>352</sup>

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<sup>349</sup> [http://www.cbsnews.com/8301-201\\_162-57603806/how-can-red-flags-be-missed-like-navy-shooters/](http://www.cbsnews.com/8301-201_162-57603806/how-can-red-flags-be-missed-like-navy-shooters/).

<sup>350</sup> “The only thing that the security-clearance process is intended to protect is the security of the United States,” said Shlomo Katz, a government contracts lawyer who has been issued a clearance himself and is an expert on the process. “The system is not designed to protect the lives of our co-workers, and therefore I don’t view it as a failure of the system”, September 20, 2013 (By JACK GILLUM and ERIC TUCKER, — Sep. 19, 2013, “How can red flags be missed like Navy shooter’s?” The Associated Press).

<sup>351</sup> <http://www.dhra.mil/perserec/currentinitiatives.html>.

<sup>352</sup> <http://www.dhra.mil/perserec/currentinitiatives.html>.

Assuming that such studies are a reaction to critic's contention that Edward Snowden exhibited anti-government sentiments during online chat sessions or that Fort Hood shooter, Nidal Malik Hasan (a U.S. Army major and psychiatrist, who fatally shot 13 people and injured more than 30 others) was under surveillance by a Joint Terrorism Task Force because of e-mails with a Yemen-based imam monitored by the NSA as a security threat, the Cybervetting and CyberPsychology efforts underway at PERSEREC touch on many of the surveillance and privacy issues triggered by Snowden's disclosure of NSA collections.

### **Incident Reporting**

So far in this chapter we have examined some of the processes, existent and future, by which individuals may be screened in order to obtain a security clearance. But clearance must also be maintained. Periodic reinvestigations – at a minimum of every five years for Top Secret, 10 years for Secret, and 15 years for Confidential – are one way that clearances are maintained, or in some cases revoked.<sup>353</sup>

But when intermittent issues arise with respect to one's existing security clearance they may also be reported. Each such report is placed in the Joint Personnel Adjudication System (JPAS). This type of reporting is generally referred to as an Incident Report.

An incident may be self-reported, for example employees are instructed to inform their security office whenever they receive a moving violation while driving, which may include speeding tickets and citations for driving under the influence of alcohol (DWI).

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<sup>353</sup> Changed to 5 years under the tiered investigation policy adopted by the DNI but not yet implemented by the DoD.

Other reports come from others. Colleagues or coworkers may anonymously report individuals who they observe to be impaired by substance or alcohol abuse on or off the job. Coworkers may also report incidents of individuals threatening violence or manifesting violent behaviors in or out of the workplace. One of the commonest incidents reported in shipyards, where employees hold security clearances, is for bar fighting. If you've ever spent time in a shipyard, you will know that is a common occurrence, often with combatants reporting on each other. But an incident report can come from virtually anywhere.

According to the Defense Security Service, the following are sources from which an incident report may be received: Facility Security Officers (FSO); Other Government Agencies; Investigative process; Another Central Adjudication Facility (CAF)'s decision to Deny, Revoke or Suspend a (Federal) security clearance; Anyone who knows the person.

When an incident is reported, an agency's personnel security officer, usually in consult with the individual's chain of command, may decide to click the "suspend access" button in the JPAS system (or not – another example of the grey area of human decision making in the process). If that button is clicked, the individual loses clearance until the incident is resolved. Once the incident enters the JPAS system, it is sent, within the system, to the clearance adjudication facility of record. If the security officer suspends a clearance, it is then passed to clearance adjudicators to decide for or against

permanently revoking the clearance. If they've decided against revoking a clearance, they remove the incident report from JPAS.<sup>354</sup>

Historically, the Army, Navy Air Force, have had individual Central Adjudication Facilities (CAFS) with jurisdiction over those personnel. But in 2012 the Deputy Secretary of Defense directed a complete consolidation of the functions, resources, and assets of the Army Central Clearance Facility, Department of the Navy CAF, Air Force CAF, Joint Staff CAF, Washington Headquarters (WHS) CAF, Defense Industrial Security Clearance Office, and the Defense Office of Hearings and Appeals into a single organization under the authority, direction and control of the Department of Defense, Director of Administration and Management.<sup>355</sup>

After receiving an incident report, a CAF may decide to request further information, to include requiring a new Standard Form SF-86 in addition to a full or limited investigation regarding the issues involved in the incident report. Once the new investigation is complete, the CAF can determine what steps to take in adjudicating the incident report and whether to leave an individual's security clearance intact or to take steps to revoke an individual's access to classified information.

As noted in earlier, the current administration is encouraging increased incident reporting under "insider threat" policies that encourage co-workers to identify personality traits or behaviors in colleagues that may identify an insider threat, and report them.

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<sup>354</sup> [https://fedoralsoup.federaldaily.com/forum\\_posts.asp?TID=3244&title=security-clearance-sabatoge](https://fedoralsoup.federaldaily.com/forum_posts.asp?TID=3244&title=security-clearance-sabatoge).

<sup>355</sup> [http://www.dss.mil/psmo-i/indus\\_psmo-i\\_news.html](http://www.dss.mil/psmo-i/indus_psmo-i_news.html).

### ***The Whole Person Approach***

If adjudicators determine that an investigation into the Incident Report is necessary, many of the conditions that may mitigate security concerns in the Adjudicative Guidelines for Determining Eligibility to Access for Classified Information are examined. In addition, after an investigation has been completed, according to the Defense Security Service,

a person trained in the process of reviewing and evaluating security clearance information reviews the results of the investigation and compares it to established qualifying criteria for eligibility to access classified national security information. Adjudicators consider the whole person, i.e., both favorable and unfavorable information, in making the clearance decision.

Each case is judged on its own merits and final determination is the responsibility of the specific department or agency that adjudicates the clearance eligibility. Any doubt regarding whether access to classified information is clearly consistent with national security must be resolved in favor of national security.<sup>356</sup>

### ***Self-Reporting***

Incident Reports can make the difference between obtaining and maintaining and being denied a security clearance or having one suspended or revoked. Most incidents are reported by others.

But as discussed earlier in the chapter, self-reporting is also encouraged. Employees of the Department of Agriculture are reminded to self-report in an Employee Handbook. According to *the Department of Agriculture Security Guide for Employees*, “All holders of a security clearance must keep their security office informed about anything that might have a bearing on their continued eligibility for access to classified

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<sup>356</sup> Defense Security Service: Industrial Personnel Security Clearance Process, Processing an Applicant for an Industrial Personnel Security Clearance ([http://www.dss.mil/psmo-i/indus\\_psmo-i\\_process\\_applicant.html](http://www.dss.mil/psmo-i/indus_psmo-i_process_applicant.html)).

information or that might signal an increased vulnerability to foreign intelligence targeting. Your cooperation in doing so is an important part of the ‘continuing evaluation’ process.”<sup>357</sup>

The kinds of information that must be reported by all cleared personnel are:

**Change in Personal Status:** Changes in marital status, cohabitation, and change of name must be reported. Special requirements may apply if an intended spouse or partner is a foreign national. If approved for access to Sensitive Compartmented Information (SCI) or are employed in certain Special Access Programs (SAPs), intent to marry or cohabitate must be reported well in advance to allow time for security clearance of intended partner. As described above, clearance adjudicators may require a determination as to whether an intended spouse changes an individual’s security risk. For example, if the intended spouse is a foreign national, and not a United States citizen, investigators may check the extent to which the intended spouse maintains property, voting rights, or family contacts in their nation of birth.

**Foreign Travel:** Whether traveling on business or pleasure, foreign travel plans should be reported to the security office in advance of travel.

**Foreign Contacts:** All cleared personnel must report contacts with individuals of any foreign nationality, either within or outside the scope of their official activities, in which: Illegal or unauthorized access is sought to classified or otherwise sensitive information; or the employee is concerned that he/she may be the target of actual or attempted exploitation by a foreign entity.

**Financial Problems:** Serious financial difficulties must be reported. This includes filing for bankruptcy, garnishment of wages, having a lien placed upon property for failing to pay a creditor, or eviction from a residence for failure to pay rent.

**Arrests:** If arrested for any reason, it must be reported regardless of whether or not there was a conviction or charges were dropped for lack of evidence.

**Other Involvement With the Legal System:** Any other involvement in legal or court proceedings should be reported if a) the employee is the target of the legal action, such as if an employee is sued for any reason, or b) if there is any possibility an employee might be required to discuss the job or organization under oath.

**Psychological or Substance Abuse Counseling:** When counseling is needed, employees are encouraged to seek assistance from employer-sponsored Employee Assistance Program (EAP) or other counseling service. Counseling is private and need not be reported if sought on one’s own initiative. Counseling

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<sup>357</sup> <http://www.dm.usda.gov/ocpm/SecurityGuideEmployees/SelfReporting.htm>.



must be reported if employee was advised to seek counseling owing to work performance or other undesirable behavior.<sup>358</sup>

As noted earlier, this guidance stems from the 1995 Executive Order 12968 signed by President Clinton establishing uniform policies for the assignment and administration of personnel security clearances and access to classified information. It included a proviso that "No negative inference" about eligibility "may be raised solely on the basis of mental health counseling." However, Guideline I of the Adjudicative Guidelines lists 3 specific examples of potentially disqualifying conditions and 5 specific examples of mitigating conditions. Ultimately, almost all cases where a final clearance is denied due to psychological conditions involve 1 of the 4 following situations:

The applicant has displayed dysfunctional or abnormal behavior, and the applicant refuses to seek treatment or refuses to undergo medical evaluation; A qualified medical practitioner has determined that the applicant's condition could impair his or her judgment or reliability, and the applicant has failed to take medication or participate in other treatment as prescribed; A qualified medical practitioner has determined that the applicant's condition could impair his or her judgment or reliability and the condition can not be adequately treated; A qualified medical practitioner has determined that the applicant's condition could impair his or her judgment or reliability and there is a lack of persuasive evidence that the condition is under control and will remain so for the foreseeable future.

Other information that Department of Agriculture employees must self-report include:

Outside Activities: Any planned or actual outside employment or volunteer activity that could create a real or apparent conflict with one's responsibility to protect classified information must be reported to the security office.

Media Contacts: Any media inquiries about the job or organization should be reported. Ongoing personal contacts with media representatives who cover the organization or subject area specialty should be cleared with security.

Pre-Publication Review: Any technical paper, book, magazine article, or newspaper article prepared for publication or for posting on the Internet, or

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<sup>358</sup> Ibid, <http://www.dm.usda.gov/ocpm/SecurityGuideEmployees/SelfReporting.htm>.

lecture or speech, must be cleared in advance if it contains information or knowledge gained during current or any previous classified job. Resumes may also come under this requirement.

Loss or Compromise of Information: If an employee inadvertently or accidentally loses or compromises classified or other sensitive information, it must be reported.<sup>359</sup>

## **Adjudicative Guidelines for Determining Eligibility to Access for Classified**

### **Information**

After the background investigation is complete, determination of eligibility for a security clearance is made by personnel security adjudicators who are located either in the newly created DoD central adjudication facility or in one of nine component adjudication facilities (CAFs).

According to the Department of Defense Personnel and Security Research Center (PERSEREC)

An adjudicator is a government official who makes a decision about eligibility for access to classified information based on all available investigative information. Adjudicators can also revoke an existing clearance if sufficient information comes to light that shows that continued eligibility would present an unacceptable risk to national security.<sup>360</sup>

Adjudication takes place prior to an initial clearance, during periodic reinvestigations and after an incident is reported and investigated as described above.

In order to help adjudicators determine if an individual's "personal and professional history affirmatively indicates loyalty to the United States," the White House

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<sup>359</sup> <http://www.dm.usda.gov/ocpm/SecurityGuideEmployees/SelfReporting.htm>, United States Department of Agriculture, Departmental Management, PDSD Homepage, United States Department of Agriculture, Personnel and Document Security Division, 1400 Independence Ave. SW, Washington, D.C. 20250-9305.

<sup>360</sup> <http://www.dhra.mil/perserec/faqs.html>.

released in 2005, its *Revised Adjudicative Guidelines for Determining Eligibility to Access for Classified Information*.

The Guidelines are used for all U.S. government civilian and military personnel, consultants, contractors, employees of contractors, licensees, certificate holders or grantees and their employees and other individuals who require access to classified information. “They apply to persons being considered for initial or continued eligibility for access to classified information, to include sensitive compartmented information and special access programs, and are to be used by government departments and agencies in all final clearance determinations.”<sup>361</sup>

What the guidelines attempt to provide is a roadmap for adjudicators to vet potential and current national security workers in several specific areas to determine their reliability to protect classified information. The intent is that by using the guidelines, individuals who are not trustworthy will be screened out in their initial attempt to join the national security workforce. In this case, the guidelines apply during an initial background investigation. The guidelines are also used to monitor those already employed, to identify who may have become untrustworthy subsequent to their initial screening, and rehabilitate or remove them.

According to the Guidelines,

No coercive policing could replace the self-discipline and integrity of the person entrusted with the nation's secrets as the most effective means of protecting them. When a person's life history shows evidence of unreliability or untrustworthiness, questions arise whether the person can be relied on and trusted to exercise the responsibility necessary for working in a secure environment where protecting

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<sup>361</sup> Executive Order 12968, Revised Adjudicative Guidelines for Determining Eligibility to Access for Classified Information.

classified information is paramount... The ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person.<sup>362</sup>

### **The Thirteen Guidelines for Eligibility**

When deciding whether or not an individual will be granted a clearance, the 2005

*Revised Adjudicative Guidelines for Determining Eligibility to Access for Classified*

*Information* must be used. Those are:

(1) Guideline A: Allegiance to the United States; (2) Guideline B: Foreign Influence; (3) Guideline C: Foreign Preference; (4) Guideline D: Sexual Behavior; (5) Guideline E: Personal Conduct; (6) Guideline F: Financial Considerations; (7) Guideline G: Alcohol Consumption; (8) Guideline H: Drug Involvement; (9) Guideline I: Psychological Conditions; (10) Guideline J: Criminal Conduct; (11) Guideline K: Handling Protected Information; (12) Guideline L: Outside Activities; (13) Guideline M: Use of Information Technology Systems.

Since it may be one of these guidelines that is used to grant, deny, suspend, or revoke, a clearance, it is worth looking at each of the six in detail. We will also examine some of the current controversies surrounding some of the Guidelines.

#### ***Guideline A: Allegiance to the United States***

According to the Guidelines, the concern is that

an individual must be of unquestioned allegiance to the United States. The willingness to safeguard classified information is in doubt if there is any reason to suspect an individual's allegiance to the United States.

**Conditions that may raise a security concern and may be disqualifying include:** involvement in, support of, training to commit, or advocacy of any act of sabotage, espionage, treason, terrorism, or sedition against the United States of America; association or sympathy with persons who are attempting to commit, or who are committing, any of the above acts; association

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<sup>362</sup> Executive Order 12968, Revised Adjudicative Guidelines for Determining Eligibility to Access for Classified Information.

or sympathy with persons or organizations that advocate, threaten, or use force or violence, or use any other illegal or unconstitutional means, in an effort to: (1) overthrow or influence the government of the United States or any state or local government; (2) prevent Federal, state, or local government personnel from performing their official duties; (3) gain retribution for perceived wrongs caused by the Federal, state, or local government; (4) prevent others from exercising their rights under the Constitution or laws of the United States or of any state.

**Conditions that may mitigate security concerns include:** the individual was unaware of the unlawful aims of the individual or organization and severed ties upon learning of these; the individual's involvement was only with the lawful or humanitarian aspects of such an organization; involvement in the above activities occurred for only a short period of time and was attributable to curiosity or academic interest; the involvement or association with such activities occurred under such unusual circumstances, or so much time has elapsed, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or loyalty.

### ***Guideline B: Foreign Influence***

According to the Guidelines, the concern is that

foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudicators, under this Guideline, are encouraged to consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

**Conditions that may raise a security concern and may be disqualifying include:** contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; counterintelligence information, that may be classified, indicates that the individual's access to protected information may involve unacceptable risk to national security; sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-

operated business, which could subject the individual to heightened risk of foreign influence or exploitation; failure to (self) report, when required, association with a foreign national; unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service; indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion; conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

**Conditions that could mitigate security concerns include:** the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.; there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority; the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

### ***Guideline C: Foreign Preference***

According to the Guidelines, the concern is that when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

**Conditions that may raise a security concern and may be disqualifying include:** exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport; military service or a willingness to bear arms for a foreign country; accepting

educational, medical, retirement, social welfare, or other such benefits from a foreign country; (4) residence in a foreign country to meet citizenship requirements; (5) using foreign citizenship to protect financial or business interests in another country; (6) seeking or holding political office in a foreign country; (7) voting in a foreign election; (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen; (c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; (d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

**Conditions that could mitigate security concerns include:** dual citizenship is based solely on parents' citizenship or birth in a foreign country; the individual has expressed a willingness to renounce dual citizenship; exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor; use of a foreign passport is approved by the cognizant security authority; the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; the vote in a foreign election was encouraged by the United States Government.

#### ***Guideline D: Sexual Behavior***

According to the Guidelines, the concern is that

sexual behavior that involves a criminal offense, indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which may subject the individual to undue influence or coercion, exploitation, or duress can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. No adverse inference concerning the standards in the Guideline may be raised solely on the basis of the sexual orientation of the individual.

**Conditions that may raise a security concern and may be disqualifying include:** sexual behavior of a criminal nature, whether or not the individual has been prosecuted; a pattern of compulsive, self-destructive, or high-risk sexual behavior that the person is unable to stop or that may be symptomatic of a personality disorder; sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; sexual behavior of a public nature and/or that which reflects lack of discretion or judgment.

**Conditions that may mitigate security concerns include:** the behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature; the sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good

judgment; the behavior no longer serves as a basis for coercion, exploitation, or duress; the sexual behavior is strictly private, consensual, and discreet.

### ***Guideline E: Personal Conduct***

According to the Guidelines, the concern is that

conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility: refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

**Conditions that may raise a security concern and may be disqualifying also include:** deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative; credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of



proprietary information, unauthorized release of sensitive corporate or other government protected information; disruptive, violent, or other inappropriate behavior in the workplace; a pattern of dishonesty or rule violations; evidence of significant misuse of Government or other employer's time or resources; personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group; violation of a written or recorded commitment made by the individual to the employer as a condition of employment; association with persons involved in criminal activity.

**Conditions that may mitigate security concerns include:** the individual made prompt, good-faith efforts to correct (self report) the omission, concealment, or falsification before being confronted with the facts; the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; association with persons involved in criminal activities has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

### ***Guideline F: Financial Considerations***

According to the Guidelines, the concern is that

failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be

explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

**Conditions that may raise a security concern and may be disqualifying include:** inability or unwillingness to satisfy debts; indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; a history of not meeting financial obligations; deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust; consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis; financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern; failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same; unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

**Conditions that may mitigate security concerns include:** the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances; the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; the affluence resulted from a legal source of income.

### **Current Complications**

The mitigating factors surrounding Guideline F, Financial Considerations include accounting for "the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical

emergency, or a death, divorce or separation),” but they do not take into account the incidents wherein the government itself has forced an individual into a financial crisis. As reported by Jamie Smith for the *Baltimore Sun*, military service members must transfer when ordered. And often are placed in the position, in a bad real estate market, to sell homes at a loss. Sadly, the government does not routinely take this into consideration when making clearance determinations.

Air Force Maj. Justice Sakyi's change-of-station orders to Germany came with a built-in dilemma: what to do about his family's home in Maryland. He and his wife, Olivia, bought the single-family house in Bowie in early 2006, near the height of the housing bubble. Then came the bust. Selling for what they owe is impossible. They can't rent the place out for nearly enough to cover the mortgage. And they haven't been able to negotiate a lower payment. About 185,000 service members who own homes get orders to relocate each year, according to the Consumer Financial Protection Bureau... “If circumstances are outside of a service member's control — in other words, they own a home and they're being required to [make a] permanent change of station — ... a short sale may be the most responsible step they can take and they will not be looked at unfavorably,” said Maj. Shawn McKelvy, deputy director of legal policy for the Office of the Under Secretary of Defense for Personnel and Readiness.<sup>363</sup>

While the Guidelines do not single out the government's ineptitude as a mitigating factor for individual's financial concerns, some lawmakers voiced concerns over the plight of security clearance holders caught in the last round of sequestration. Kelly Lunney, writing for *Government Executive Magazine*, reports on the concerns of Senator Susan Collins who represents the clearance holders at the Portsmouth Naval Shipyard.

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<sup>363</sup> “Underwater on the mortgage, stationed away from home, For service members caught by the housing bust, transfer means a home they can't easily sell”, *Baltimore Sun* July 14, 2012|By Jamie Smith Hopkins, *The Baltimore Sun*.

A top Republican senator is concerned that furloughs resulting from the sequester could endanger some federal employees' security clearances. Susan Collins of Maine has asked the agency that handles the government security clearance process not to rescind employees' credentials because of financial problems stemming solely from being furloughed. "I understand the reason a security clearance could be revoked for an employee who is in financial trouble because of decisions he or she made," Collins wrote in a March 19 letter to Office of Personnel Management Director John Berry. "In these unusual circumstances, however, employees may have financial difficulties due to the unexpected impact of sequestration." The government can revoke the security clearances of federal employees who fall into financial debt, which in turn can cost them their jobs since some positions require those credentials. Many agencies have said they will have to furlough ... As a result, some federal employees will have trouble keeping up with expenses and could miss monthly car or mortgage payments, for example.

Those missed payments now could have a negative effect five or six years hence when an employee's current security clearance comes up for review, said Mark Nelson, the union representative for the International Federation of Professional and Technical Engineers Local 4 at the Portsmouth Naval Shipyard in Kittery, Maine. Nelson, who has had a security clearance since 1981, says he takes the process very seriously and does not expect the Pentagon or OPM to cut corners when granting employees access to such jobs. But the government needs to figure out how to differentiate between those employees who have racked up debt because they gambled away their money, for instance, and those who fell behind because of being furloughed, he said. Collins represents more than

16,000 federal employees in Maine, and 4,700 of them work at the Portsmouth Naval Shipyard near the New Hampshire border. “We are not unique,” Nelson said. “This is going to affect every federal employee who has a security clearance,” and is furloughed, he said.<sup>364</sup>

### ***Guideline G: Alcohol Consumption***

According to the Guidelines, the concern is that

excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

**Conditions that may raise a security concern and may be disqualifying include:** alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program; relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

**Conditions that may mitigate security concerns include:** so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser); the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; the individual has successfully completed inpatient or

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<sup>364</sup> Government Executive Magazine, “Furloughs Could Endanger Feds’ Security Clearances”, By Kellie Lunney, March 26, 2013.

outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

### ***Guideline H: Drug Involvement***

According to the Guidelines, the concern is that

use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Drugs are defined as mood and behavior altering substances, and include: (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

**Conditions that may raise a security concern and may be disqualifying include:** Any drug abuse (see above definition); testing positive for illegal drug use; illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence; evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program; failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional; any illegal drug use after being granted a security clearance; expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

**Conditions that may mitigate security concerns include:** the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; a demonstrated intent not to abuse any drugs in the future, such as: (1) dissociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation; abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without

recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

### **Current Complications**

The Guidelines have as a mitigating factor “satisfactory completion of a prescribed drug treatment program”, but Pauline Jelinek, writing for *the Huffington Post*, reports, an American Institute of Medicine study shows that military members often do not get the help they need to overcome alcohol and drug addiction.

The armed forces' programs and policies have not evolved to effectively address medication misuse and abuse. “Better care for service members and their families is hampered by inadequate prevention strategies, staffing shortages, lack of coverage for services that are proved to work, and stigma associated with these disorders,” said Charles P. O'Brien of the University of Pennsylvania's Center for Studies of Addiction.... “We reviewed the training materials the U.S. Navy uses for counselor training. Those materials are based on guidelines originally written in 1984. They haven't updated them,” said Dr. Dennis McCarty, a professor of public health and preventive medicine at the Oregon Health and Science University... Today, the military's approach to treating substance abuse “tends to be old-fashioned,” O'Brien said, noting the example of the military's reluctance to use medications that can combat cravings and in other ways help treat addiction, he said. “Modern treatment of substance abuse does involve medications. There are FDA-approved, effective medications that could be used and should be used much more than they are,” he said. “We think there's a substantial opportunity to enhance the training for the counselors” who work with active-duty military personnel. To reduce the stigma attached to getting help – and thus drawing more troops into its programs – the military should integrate prevention and treatment efforts more into primary health care and do more to preserve confidentiality for those seeking help, the report said.<sup>365</sup>

### ***Guideline I: Psychological Conditions***

According to the Guidelines, the concern is that

certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for concern under this guideline. A duly qualified mental health professional (e.g.,

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<sup>365</sup> “Military Alcohol Abuse 'Culture' Is Now A 'Crisis,' Report Finds”, Pauline Jelinek, *Huffington Post*, 09/17/12.

clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline. No negative inference concerning the standards in this Guideline may be raised solely on the basis of seeking mental health counseling.

**Conditions that may raise a security concern and may be disqualifying include:** behavior that casts doubt on an individual's judgment, reliability, or trustworthiness that is not covered under any other guideline, including but not limited to emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or bizarre behavior; an opinion by a duly qualified mental health professional that the individual has a condition not covered under any other guideline that may impair judgment, reliability, or trustworthiness; the individual has failed to follow treatment advice related to a diagnosed emotional, mental, or personality condition, e.g. failure to take prescribed medication.

**Conditions that may mitigate security concerns include:** the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan; the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional; recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation; the past emotional instability was a temporary condition (e.g., one caused by a death, illness, or marital breakup), the situation has been resolved, and the individual no longer shows indications of emotional instability; there is no indication of a current problem.

### **Current Complications**

In 2009, the Defense Centers of Excellence for Psychological Health and Traumatic Brain Injury launched "The Real Warriors Campaign" to help military personnel overcome the stigma associated with seeking psychological help and encourage them to seek help when they need it. The campaign uses social networking, radio, television, posters, flyers, and a Web site featuring stories of real service members who have sought treatment and are continuing to serve. The implication of the campaign is that, if you seek mental health treatment, you will not lose your clearance. But Tod



Lopez, writing for the Army website, interviewed Eric Schoomaker, surgeon general of the Army and he did not say that. Schoomaker emphasized lowering the stigma, but said nothing about keeping clearance and Lopez did not ask him.

Lt. Gen. Eric Schoomaker, surgeon general of the Army and commander of U.S. Army Medical Command, explained that the Army works hard to encourage Soldiers to overcome the stigma associated with seeking out mental-health assistance. “One of our challenges is to lower the stigma of (Soldiers) getting follow-on counseling,” Schoomaker said during a media roundtable Wednesday. “We are working in every venue we can to do that. The Army leadership, recognizing that stigma is a major part of that, has undertaken in the last two years very aggressive top-to-bottom sensitization and education of the force.” Schoomaker said when Soldiers return from deployment, they can experience symptoms from experiences they endure in combat -- and those symptoms are normal human reactions, and nothing to be ashamed of. “Human beings exposed to trauma in life have fairly high frequency of developing symptoms later on. It's a normal human reaction,” Schoomaker said. “You are not going crazy. It doesn't mean you are going to have a lifetime disability. It means you need sometimes to have some help and counseling, to prevent a longer and more resistant disorder we call Post Traumatic Stress Disorder -- that is a persistence of these symptoms that begin to interrupt and interfere with life.”<sup>366</sup>

But Robert Guzzo's parents say the Navy cautioned him not to seek mental health treatment for symptoms of post-traumatic stress disorder before he committed suicide on Veteran's Day, 2012. Guzzo's father told *Washington Post TV* that his son was worried about losing his security clearance.<sup>367</sup>

According to his parents, the culture of the Navy discouraged their son from seeking professional treatment to combat his inner demons. “They told him specifically not to report on any worksheet that you are having these issues, because if they do, they'll take your bird. They'll take your trident,” (Guzzo's father) told the Post. The Navy denies that service members who seek treatment

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<sup>366</sup> Lopez, Todd, “Real Warriors' takes aim at mental health stigma”, WWW.Army.Mil The Official Homepage of the United States Army, May 21, 2009.

<sup>367</sup> The specific concern about the clearance is in the actual Washington Post TV online interview, but not in the daily news article referenced below. January 9, 2013 7:50 AM EST — When Navy SEAL Robert Guzzo returned from Iraq, he feared seeking treatment for PTSD would endanger his career. (The Fold / The Washington Post) [http://www.washingtonpost.com/posttv/video/thefold/a-navy-seals-tragic-secret/2013/01/09/899e181c-5a2e-11e2-9fa9-5fbdc9530eb9\\_video.html?hpid=z3](http://www.washingtonpost.com/posttv/video/thefold/a-navy-seals-tragic-secret/2013/01/09/899e181c-5a2e-11e2-9fa9-5fbdc9530eb9_video.html?hpid=z3).

for PTSD face negative career consequences. “I’m not going to hide how he died,” Andersen told the Post. “People need to know this is what happened and it could happen to other veterans.”<sup>368</sup>

This issue is also coming to light in the case of Navy contractor, Aaron Alexis whose shooting rampage at the Washington D.C. Navy Yard triggered a Department of Defense investigation to determine what impact post-traumatic stress disorder or other service-related experiences may have had on Alexis’s mental health.

But as Gillum and Tucker reported for the *Associated Press*, the chairman of the Joint Chiefs of Staff, Martin Dempsey, still believes that those who have served in the military should not have to answer questions about mental health treatment or status on security clearance forms.

In recent years, Dempsey and other military leaders had argued that service members — many of whom have been plagued by stress disorders and other problems after multiple deployments in more than a decade of war — should have the opportunity to overcome their mental health challenges without being stigmatized. He questioned whether forcing Alexis to disclose that he had been undergoing mental health treatments could have prevented Monday’s tragedy. “I don’t know what the investigation will determine, but he committed murder,” said Dempsey, sitting next to Hagel. “And I’m not sure that any particular question or lack of question on a security clearance would probably have revealed that.”<sup>369</sup>

And in Dempsey’s confusion lies the complexity of this task. Because it would not have been revealed that Alexis had committed murder on his forms, because he had not done it yet. That is the problem. It is very difficult to predict and monitor future human behavior based on current information.

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<sup>368</sup> Knowles, David, “Navy SEAL’s parents link son’s suicide to horrors of war, stigma surrounding mental health”, New York Daily News, Thursday, January 10, 2013, <http://www.nydailynews.com/news/national/parents-tie-mental-health-stigma-seal-suicide-article-1.1237877#ixzz36WatlGfp>.

<sup>369</sup> CBS News, How can red flags be missed like Navy shooter's? September 19, 2013 Posted: Sep 19, 2013 2:53 AM EDT Updated: Sep 19, 2013 10:23 PM EDT, By JACK GILLUM and ERIC TUCKER, Associated Press, 2013 The Associated Press.

Even if such unchecked behavior (or potential behavior) is existent in an applicant's past, it is highly unlikely that it will come to the surface during a background investigation. As John Sullivan notes after thirty-one years running polygraph exams for the CIA, "The only admission of murder I ever obtained from an applicant occurred during a pretest. In response to the question about having committed a serious crime, the subject said, 'Well yeah, I killed somebody once'. When I asked for details, the man said that he had stabbed a man in a fight and was pretty sure he had killed him."<sup>370</sup>

Whatever the Pentagon's report on the Navy Yard shooting reveals about that individual's psychological treatment and the reporting of it, the complexities surrounding the disclosure of mental health treatment of security clearance applicants and what that may mean for national security, will remain controversial.

#### ***Guideline J: Criminal Conduct***

According to the Guidelines, the concern is that

criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

**Conditions that could raise a security concern and may be disqualifying include:** a single serious crime or multiple lesser offenses; discharge or dismissal from the Armed Forces under dishonorable conditions; allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; individual is currently on parole or probation; violation of parole or probation, or failure to complete a court-mandated rehabilitation program.

**Conditions that may mitigate security concerns include:** so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment; the person was pressured or coerced into committing the act and those pressures are no longer

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<sup>370</sup> Sullivan, John, Gatekeeper: Memoirs of a CIA Polygraph Examiner, Potomac Books Inc., Washington, D.C., 2007, page 89.

present in the person's life; evidence that the person did not commit the offense; there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

### **Current Complications**

This issue is also coming to light in the case of Navy contractor, Aaron Alexis's shooting rampage at the Washington D.C. Navy Yard. As it turns out, Alexis was granted a security clearance and credentials to enter the facility even though investigators had determined that he had a criminal record.

Paul Lewis writing for *the Guardian* reported that Alexis was granted a secret security clearance even after an FBI database search revealed he had apparently lied on his application form, about an arrest.

An internal inquiry has established that when Alexis first enlisted, in June 2007, he declared on a security questionnaire that he had never been arrested. However, a fingerprint check on an FBI database revealed that he had been arrested three years previously, in Seattle. He was still granted a special security clearance, after attending an interview and claiming that he did not think he needed to declare the arrest. Alexis provided only a partial explanation of the incident in Seattle, in which he is now known to have used a gun to shoot the tyres<sup>371</sup> of car belonging to a construction worker. Defence<sup>372</sup> officials have previously acknowledged that several "red flags" were missed in Alexis's background, allowing him to achieve and retain a secret security clearance and work as a navy contractor despite a string of police-related and behavioral problems.<sup>373</sup>

Lewis also notes that at least one of Alexis's background checks had been conducted by none other than the notorious USIS (described previously in this chapter)

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<sup>371</sup> British spelling from Guardian.

<sup>372</sup> British spelling from Guardian.

<sup>373</sup> Paul Lewis, "Navy yard gunman given security clearance despite 'lie' about arrest: Aaron Alexis, who shot dead 12, was given secret-level security clearance despite omission from application form" *The Guardian*, Monday 23 September 2013.

whom the Office of Personnel Management (OPM), had contracted to do the investigation before the Navy granted him clearance.<sup>374</sup>

***Guideline K: Handling Protected Information***

According to the Guidelines, the concern is that

deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

**Conditions that could raise a security concern and may be disqualifying include:** deliberate or negligent disclosure of classified or other protected information to unauthorized persons, including but not limited to personal or business contacts, to the media, or to persons present at seminars, meetings, or conferences; collecting or storing classified or other protected information in any unauthorized location; loading, drafting, editing, modifying, storing, transmitting, or otherwise handling classified reports, data, or other information on any unapproved equipment including but not limited to any typewriter, word processor, or computer hardware, software, drive, system, gameboard, handheld, "palm" or pocket device or other adjunct equipment; inappropriate efforts to obtain or view classified or other protected information outside one's need to know; copying classified or other protected information in a manner designed to conceal or remove classification or other document control markings; viewing or downloading information from a secure system when the information is beyond the individual's need to know; any failure to comply with rules for the protection of classified or other sensitive information; negligence or lax security habits that persist despite counseling by management; failure to comply with rules or regulations that results in damage to the National Security, regardless of whether it was deliberate or negligent.

**Conditions that could mitigate security concerns include:** so much time has elapsed since the behavior, or it happened so infrequently or under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities; the security violations were due to improper or inadequate training.

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<sup>374</sup> Ibid.

## Current Complications

Thomas Drake is a former employee at the U.S. National Security Agency (NSA), who after going through internal channels unsuccessfully, contacted a journalist at *The Baltimore Sun*. According to Drake, he was careful not to disclose classified information to the journalist,<sup>375</sup> but he did provide her with enough information to successfully report on the government waste, fraud and abuse that he had witnessed at the NSA. In fact, she won journalistic awards for the story.<sup>376</sup> But the administration's lawyers alleged that Drake "mishandled" documents and threatened to send him to prison under the Espionage Act of 1917.<sup>377</sup>

At his trial, Judge Richard Bennett ruled that "there is no evidence that Reporter A relied upon any allegedly classified information found in Mr. Drake's house in her articles". On June 9, 2011, all 10 original espionage charges against Drake were dropped. He eventually pled to one misdemeanor count for exceeding authorized use of a computer.

In Drake's case, there is no question as to whether he embarrassed the NSA, and thereby the administration. But would that call into question his ability to keep legitimate national security secrets?

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<sup>375</sup> He sent her emails through Hushmail, an encrypted service, and claims that he was very careful not to give her sensitive or classified information and that one of the basic ground rules he set out at the beginning of their communication. "THE SECRET SHARER: Is Thomas Drake an enemy of the state?", BY JANE MAYER, *The New Yorker*, MAY 23, 2011.

<sup>376</sup> Gorman wrote several articles about waste, fraud, and abuse at the NSA and received an award from the Society of Professional Journalists for her series exposing government wrongdoing.

<sup>377</sup> IBID.

The Washington Post editorial board had concerns that the administration may have been too punitive, and that some actions may have a chilling effect on future whistleblowers.

Mr. Drake, a former employee of the National Security Agency, did not hand information to al-Qaeda. His alleged crime: communicating with a *Baltimore Sun* reporter about an NSA surveillance program that he believed had been grossly mismanaged and was wasting billions of taxpayer dollars... The question here is whether the indictment and proposed punishment are proportionate to the alleged infraction.<sup>378</sup>

But perhaps more interestingly for our purpose is that the *Washington Post* editorial board differentiated between the two punishments: that of losing one's clearance and of losing one's job, displaying the naïve supposition that they are not one and the same result. Which, for an employee in Drake's position, they most certainly are. "At times, revocation of security clearances may be the most appropriate action; dismissal and prosecution may be called for when more serious violations are confirmed. Mr. Drake's prosecution smacks of overkill and could scare others with legitimate concerns about government programs from coming forward...."<sup>379</sup>

#### ***Guideline L: Outside Activities***

According to the Guidelines, the concern is that

involvement in certain types of outside employment or activities is of security concern if it poses a conflict of interest with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

**Conditions that may raise a security concern and may be disqualifying include:** any employment or service, whether compensated or volunteer, with: (1) the government of a foreign country; (2) any foreign national, organization, or other entity; (3) a representative of any foreign interest; (4) any

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<sup>378</sup> A case that could be overkill against a whistleblower, Washington Post, June 6, 2011.

<sup>379</sup> IBID, A case that could be overkill against a whistleblower, Washington Post, June 6, 2011.

foreign, domestic, or international organization or person engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs, or protected technology; failure to report or fully disclose an outside activity when this is required.

**Conditions that could mitigate security concerns include:** evaluation of the outside employment or activity by the appropriate security or counterintelligence office indicates that it does not pose a conflict with an individual's security responsibilities or with the national security interests of the United States; the individual terminates the employment or discontinued the activity upon being notified that it was in conflict with his or her security responsibilities.

### **Current Complications**

Dr. Abdel-Moniem ibn Ali El-Ganayni is an Egyptian-born American nuclear physicist, who formerly worked for the Department of Energy's (DOE) Bettis Atomic Power Laboratory in Philadelphia. His work at the Lab required a clearance. In October 2007 his clearance was suspended, effectively barring him from any work at Bettis. DOE regulations stipulate that an individual may appeal a suspension, however El-Ganayni's right to appeal was denied and the DOE would not tell him why they suspended his clearance.

But prior to his suspension, he was interviewed by DOE security officials, and later the FBI. In these interviews, he was questioned about his political beliefs, religious views, and his work as an Imam in the Philadelphia prison system. No questions related to his work or any potential breaches of security were asked in either interview.<sup>380</sup>

While apparently unconcerned with El-Ganayni's work at the lab, the interviews did focus on his criticism of American foreign policy and the FBI's mistreatment of Muslims after September 11, 2001. Specifically, he raised concern over an FBI raid of a

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<sup>380</sup> Muslim physicist leaves U.S. after losing security clearance, By Sally Kalson, Pittsburgh Post-Gazette, November 28, 2008 5:00 AM.



Pittsburgh mosque during Friday prayers, where attendees were searched and forced to stand outside while being questioned.

After his clearance was revoked, the American Civil Liberties Union (ACLU) filed a lawsuit on his behalf alleging that the DOE revoked his clearance due to criticism of the FBI and U.S. foreign policy. The suit demands that the DOE reveal their allegations against El-Ganayni and restore due process, allowing him to contest any allegations made against him.<sup>381</sup>

Sally Kalson reporting for *the Pittsburgh Post-Gazette* noted the ACLU's claim that national security was jeopardized was,

invoked solely to shield the agency from having to disclose the unconstitutional retaliatory and discriminatory reasons for its action. In reality, it says, the decision was made "because he is a foreign-born Muslim who has spoken publicly and critically about U.S. foreign policy and the FBI's treatment of Muslims." "Many [native-born] Americans say what I say about the war," Dr. El-Ganayni said yesterday. "But when I say it, I become a traitor. I want to show that the laws apply to me the same as to any other citizen."<sup>382</sup>

### **Current Complications**

Mahmoud M. Hegab is a former budget analyst for the National Geospatial-Intelligence Agency (NGA), who told officials during his orientation that he had gotten married between the time of his security clearance investigation and the date he reported to work. The agency revoked his clearance citing concerns about his wife's background. She is a program associate with Islamic Relief USA, a global nonprofit that provides food aid and public health and educational programs in poor or disaster-prone regions and

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<sup>381</sup> See "Worker suing intelligence agency claims anti-Muslim bias" by Ed O'Keefe, Washington Post, November 1, 2011.

<sup>382</sup> Muslim sues over loss of security clearance, By Sally Kalson, Pittsburgh Post-Gazette, June 27, 2008 12:00 am.

whose director advises the U.S. Agency for International Development and at the State Department.

According to Ed O’Keefe, reporting for *The Washington Post*,

Hegab’s attorney, Sheldon Cohen, argued in court papers that the decision to revoke his client’s clearance “was based solely” on his wife’s religion, Islam, her constitutionally protected speech, and her association with, and employment by, an Islamic faith-based organization. Cohen described Islamic Relief USA as a “noncontroversial organization” and said he did not know of other cases where someone lost clearance because his wife or a close relative worked for such a group.... during the course of its investigation, the NGA discovered a photo believed to be of (Hagab’s wife) attending a 2003 anti-Iraq war protest in Washington — when she was 16 years old... Hegab said his wife attended the anti-war rally along with thousands of other Americans, including military veterans and lawmakers... the NGA told Hegab that he lost his clearance because of ... (his wife’s) “current affiliation with one or more organizations which consist of groups who are organized largely around their non-United States origin.” When Cohen asked the agency for further details, officials did not deny they were expressing concerns with Islamic Relief USA, he said.<sup>383</sup>

#### ***Guideline M: Use of Information Technology Systems***

According to the Guidelines, the concern is that

noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology Systems include all related computer hardware, software, firmware, and data used for the communication, transmission, processing, manipulation, storage, or protection of information.

**Conditions that may raise a security concern and may be disqualifying include:** illegal or unauthorized entry into any information technology system or component thereof; illegal or unauthorized modification, destruction, manipulation or denial of access to information, software, firmware, or hardware in an information technology system; use of any information technology system to gain unauthorized access to another system or to a compartmented area within the same system; downloading, storing, or transmitting classified information on or to any unauthorized software, hardware,

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<sup>383</sup> “Worker suing intelligence agency claims anti-Muslim bias”, *The Washington Post*, Ed O’Keefe, October, 1, 2011.

or information technology system; unauthorized use of a government or other information technology system; introduction, removal, or duplication of hardware, firmware, software, or media to or from any information technology system without authorization, when prohibited by rules, procedures, guidelines or regulations; negligence or lax security habits in handling information technology that persist despite counseling by management; any misuse of information technology, whether deliberate or negligent, that results in damage to the national security.

**Conditions that could mitigate security concerns include:** so much time has elapsed since the behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment; the misuse was minor and done only in the interest of organizational efficiency and effectiveness, such as letting another person use one's password or computer when no other timely alternative was readily available; the conduct was unintentional or inadvertent and was followed by a prompt, good-faith effort to correct the situation and by notification of supervisor.

### **Current Complications**

Edward Snowden is a former National Security Agency (NSA) employee who leaked classified agency documents to members of the press. Snowden identified himself as a whistleblower and alleged the NSA was running unconstitutional programs and lying to Congress and the American people about it.

As Richard Esposito, and Matthew Cole report for CBS news, the NSA had left the door open for someone like Snowden to obtain and release documents by using antiquated IT security methods. Security experts also admit that part of the problem with “insider threats” like Snowden may be that so many people have clearance.

When Edward Snowden stole the crown jewels of the National Security Agency, he didn't need to use any sophisticated devices or software or go around any computer firewall. All he needed, said multiple intelligence community sources, was a few thumb drives and the willingness to exploit a gaping hole in an antiquated security system to rummage at will through the NSA's servers and take 20,000 documents without leaving a trace. “It's 2013 and the NSA is stuck in 2003 technology,” said an intelligence official. “U.S. intelligence has invited so many people into the secret realm,” said an intelligence official. “There are

potentially tons of Edward Snowdens. But most people aren't willing to vacuum everything up and break the law.”<sup>384</sup>

According to the administration and Defense officials, Snowden is a traitor for breaking his oath to keep classified documents secret, thereby putting national security at risk. But he claims it is the government that is at fault. “I swore an oath to defend the Constitution of the United States and I witnessed NSA violating it on a massive scale. I knew what I had to do. I kept my oath.”<sup>385</sup>

The Executive Order does not specify that the Guidelines A through M are in priority order. For example, there is no written rule of thumb that a concern about Guideline A, Allegiance to the United States, carries any more weight than, say, Guideline H, Drug Involvement. But there is no question that it is Guideline A that is the bellwether for the personnel security clearance process. In its origins are visible the history of the United States as a national security state, beginning with the Revolutionary War, through the World Wars, the Cold War and into the twenty-first century. Indeed the first sentence of Guideline A seems to sum up what the state has most feared since its inception, “sabotage, espionage, treason, terrorism, or sedition against the United States of America.”

At the Defense Security Service, when individuals would call and ask me why their clearance had been suspended, denied or revoked, I did not have access to the database with that information. But I did articulate to them the guideline categories, thereby enabling the caller to surmise which guidelines or combination of guidelines may

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<sup>384</sup> Esposito, Richard and Cole, Matthew, “How Snowden did it”, CBS News, August 26, 2013.

<sup>385</sup> “Defending Disclosure, by Ken Wizner, STAND, Volume 1, Issue 2, Summer 2014, American Civil Liberties Union Foundation Inc., New York.

have been applied to his or her specific situation. “They’ll know what they’ve done” my boss told me while instructing me to respond to queries in this manner. But as we will see in the next chapter, that is not always the case.

### **Summary**

Gramsci observed the relationship between state power and capital noting that cultural hegemony is vital to the maintenance of the capitalist state and is maintained through a mix of force and consent. One can understand that mix when viewed through the prism of the personnel security clearance process, wherein individuals consent to surveillance along with other physical intrusions because their livelihoods depend upon it. But also because they believe the process has merit. Almost without exception, those interviewed for this study reported that some type of personnel security clearance was necessary, even if the current system is flawed. Indeed much of the clearance process has proven to be flawed. Investigators are at times overworked, negligent or fraudulent. Databases, designed to “connect the dots” by monitoring and flagging risks, are incomplete and unreliable. Methodologies to accurately assess and identify behavioral or personality disorders as security risks are nascent. The scientific basis for the polygraph is discredited and random drug tests can also be inaccurate. With these flaws, it is no mystery that spies, leakers, and insider threats remain.

One reason that the system remains flawed is that, just as in the snowflake analogy, each individual is different. So finding a system, tool, measurement or process that will consistently apply to every individual may be an impossible task - an ephemeral goal. Even more so, if part of that goal is to predict future behavior.

In this chapter I have reviewed the mechanisms through which individuals are processed through the clearance system. I have reviewed some examples, from contemporary news reporting, of how the system sometimes fails those within it. Without denying the need for some sort of bureaucracy of secrecy, I have tried to map out some of the complications that ensue when that bureaucracy fails. One such complication is that the process is not as rigorously scientific as many would hope (or some pretend) it to be. Next, I will explore, firsthand, how individuals, when challenged by the system, experience it.

## CHAPTER 4. RUNNING AFOUL OF THE SYSTEM

“‘I believe what you say,’ said the flogger, ‘but...I’ve been hired to flog and flog I will.’”  
– Franz Kafka, *The Trial*<sup>386</sup>

### Introduction

As discussed in the previous chapter, those seeking national security work must endure an initiation that includes a background investigation, finger printing, urinalysis and, for some, the polygraph.

In this chapter I will begin to interrogate those within the system about the efficacy and meaning of the system to them. During my research I interviewed a number of people about their experiences with the national security personnel clearance system. And I used the transcripts of these interviews to bolster my observations. I also tried to glean from the interviews ways that individual experiences can educate us about the power relationship between the individual and the state. My interviews began with lawyers who represent government workers who have had clearances revoked. I spoke with individual clients of those lawyers about their experiences. I also spoke with government security professionals who work within the system, Hill staffers and run-of-the-mill government workers, some of whom are my friends. I interviewed 24 people over a two-year period. I make no claims to have selected a representative sample.

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<sup>386</sup> Kafka, Franz, *The Trial*, New Translation Based on the Restored text, Schocken Books, New York, 1998.

While I am aware of the methodological limitations of my process, I believe that what these people have articulated illuminates the complex power relationship between individuals and the state that they have chosen (sworn) to serve.

I nearly always came away from these discussions with three distinct yet related feelings: sympathy for the individuals caught in the overwhelming power imbalance between the individual and the state (this includes both those who maintain power structures as well as those who run afoul of them); respect for the enthusiasm, patriotism and energy with which individuals perform service to the nation and express their love of country; and admiration for the resilience with which those who have lost a clearance recover from that loss and with which those who continue to maintain and work within the system endure it.

In my discussions, I found near unanimous support for the need for a personnel security clearance system along with the understanding that the current system is flawed. There is little ambiguity surrounding the meaning of the state and national security. That is to say, common notions of citizenship, patriotism and duty to the nation are given.<sup>387</sup> But many feel that the emphasis on the components of the system outlined in the previous chapter – interviews, investigations, polygraph exams – is misplaced, clearing spies (like Aldridge Ames) and leakers (like Edward Snowden) for access to classified information while severing other, more loyal, employees from productive service.

Interviewees (who are individuals and family members) described to me the way that losing a clearance makes one feel in terms of identity, often citing feelings of

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<sup>387</sup> I call this concept of shared national security assumptions “working for the unexamined state,” which I address further below..



isolation and depression as concurrent with the loss of a clearance. Families are important support structures for individuals but can also crumble under the full weight of bureaucratic scrutiny and power.

Patriotism is one trait that all interviewed share. So many were surprised to find themselves, after having given their careers to the patriotic service of their country's ideals, like constitutional rights and due process, denied these basic rights when confronted by the state they serve.

Most federal workers never lose a security clearance. So these individual experiences are not the standard. For this reason they are uniquely descriptive of the complex power relationship between individuals and the state. Out of respect for individual's privacy, I used pseudonyms for all interviewees.

### **Working for the “Unexamined “State”**

David Campbell, observes that “Undertaking a critique involves an intervention or series of interventions in established modes of thought... an effort to disturb those practices that are settled, untie what appears to be sewn up, and render as produced that which claims to be naturally emergent.”<sup>388</sup>

One of the purposes of this research is to undertake a critical study of the national security personnel clearance process to help “render as produced” the ways in which normative frameworks for thinking about the state, its secrets and national security work have evolved. In my discussions with study participants, neither the “state” nor the need

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<sup>388</sup> 1998:84.

for “security” within it, were questioned. Both of these terms for the sake of this study are treated, as Campbell would say, as if they were natural.

Normative thinking surrounding “the state” and “national security” are a “given” framework within which my interviews and discussions took place.

Foucault has argued that dissent and debate, rather than bringing needed change, can serve to perpetuate the hegemonic norm.<sup>389</sup> It is a concern therefore, that this study not serve to reinforce negative characteristics (albeit unwittingly) of the security clearance framework.

Another point of Campbell’s is that “the boundaries of a state’s identity are secured by the representation of danger...”<sup>390</sup> and the security clearance system is all about the representation of danger. The personnel security clearance system is about protecting the state from the threat of disclosure by those trusted to hold its secrets. But it is about other perceived dangers as well. My discussions focused on what happens when individuals who work for the state become perceived threats.

Cultural Studies approaches should refute the naturalness of commonly held beliefs like those surrounding national security and the state and examine how such beliefs are manufactured in order to envision a different (hopefully better) natural state of reality. But in order to examine the smaller sub-set of assumptions that comprise the security clearance process, I find that normative references about the state and national security are inevitably perpetuated.

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<sup>389</sup> In Michel Foucault, the History of Sexuality, he argues that the state’s need to control population lead to the constant discourse on the “secret” of sexuality, thereby expanding the state’s ability to monitor such discourse and in turn normalize sexual behavior.

<sup>390</sup> 1992:3.

### Unanimous Agreement on the Need for Clearance

All interviewees had a strong understanding of what is meant by the state they have been cleared to protect and it is notable that, with very few exceptions, individuals determined that some kind of clearance process is necessary and were resigned to participate within that process. All participants acknowledged that the system, while necessary, is also flawed.

As Ferguson observed in, *The Feminist Case Against Bureaucracy*, specific bureaucratic abuses are frequently noticed and decried, but never bureaucracy itself, noting that

The “debates” that commonly go on within the literature on administration center on small questions, questions that beg the larger issues of coercion and control. Authors habitually and endlessly discuss the merits of different administrative ratios, of overlapping versus exclusive jurisdictions, of more or less centralization of mechanistic versus organic organizations.<sup>391</sup>

Ferguson’s disgust is with the academic community’s willingness to accept the precepts of public administration on its own terms. The similar inability to address deep problems from within the federal bureaucracy is evident to anyone who has worked in it. The usual approach to perceived problems within an agency or organization is a “re-org” as if tweaking the org chart would bring any meaningful change. After going through a few, what one learns about re-orgs is that what they bring is activity, which has the appearance of change.

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<sup>391</sup> Kathy Ferguson, *The Feminist Case Against Bureaucracy*, Temple University Press, Philadelphia, 1984. Note Ferguson blasts the more scholarly voices within the literature of public administration analyses for classifying organizations endlessly rather than studying them objectively, for example, “Parsons in terms of what organizations; Etzioni, in terms of types of resources and compliance structures; Woodward and Perrow, in terms in types of technologies and raw materials” (page 81).

Daniel (not his real name) an attorney who represents clients who have had security clearance revoked, makes the point that even those who have run afoul of the system tend to seek leniency within the system, never a way around it. Individuals rarely if ever question the necessity of the system itself.

Having dealt with many people who've lost their clearance or had their clearance under scrutiny, I don't think I've ever heard anybody actually criticize the need for the process or say, "The system shouldn't care about that." Now, they may complain about the individual circumstance, like, "They're being too strict with the rule. They're not being fair to me." But there seems to be pretty universal understanding that we need the system, and that the rules are in place the right way.

Martin, another attorney representing those who challenge personnel actions related to security clearance, articulates the normative response regarding the personnel security clearance system. "Well, let me say this. If I did something where I deserved to lose my clearance and they caught me and I lost my clearance, I don't think I would have anything to complain about. I wouldn't feel the system was unjust."

Much of the acceptance of the system, even with its flaws, is enshrouded in the national security discourse within which the security clearance system has evolved. Administrations from Washington, through Eisenhower and up until Obama have articulated consistently the need for national security and the potential dangers entrenched in what has become the national personnel security clearance process.

Doug began a legal career after retiring from the U.S. Marine Corps where he served with Special Forces units in Afghanistan and Iraq. He articulates the normative national security discourse surrounding the need for clearance.

The commonsense answer is there's no way to avoid responsibly having a system to do our best that the folks that review classified information are trustworthy.

It's information that could endanger the lives of our intelligence operatives, reveal our sources and methods of secret national security missions. It's as old as the concept of spying, that we don't want the enemy to be privy to that material in advance...to me it's a no-brainer.

Individuals who have lost a clearance – either through their own actions or as victims of the systems failures – also see the process as inevitable and important in determining individual commitment and loyalty to the nation. Many also cite other perceived benefits of the system that include screening for individual suitability and filtering out individuals with potentially negative characteristics or personality traits.

Frederick (I should note that I use pseudonyms for all interviewees, even though some subjects have been made public in the media and in some instances by individuals' books, op-eds, memoirs etc.) lost his security clearance at the Department of Defense in, what was later determined by the Secretary of State among others, to be a whistleblowing incident.

I think it's very important in the sense that you want people who support the constitutional foundations of this country to be hired in a way that kinda guarantees that they're gonna be supporting that. You don't wanna hire people that would potentially work against the best interest of the state. So the security clearance process is great. You can weed out crazies. You can weed out people who are easily incentivized by bad things. Corrupt. You can weed out personality types. And I guess the way you call that, you'd call that security. Getting cleared for a security clearance is just...you can be considered reliable in support of that mission, and it supports the Constitution. I don't know how else to put it. I think it's essential if you wanna have a functional government that survives over time—a functional Department of Defense, for example—you've gotta know something about the people you're hiring, and you've gotta have a choice on that. You want people who will promote the mission and not work against it.

Jill is a supervisor at an intelligence agency. Part of her job is to cooperate with security investigators conducting initial and reinvestigations of personnel under her

supervision and she sees this role as an important part of her work. “You have to know who it is you’re trusting with all these security issues, sensitive information. We have a responsibility to the people who are already serving in government to make sure that their coworkers are trustworthy. It has to all be a trustworthy team. And we’re obliged to do that.”

### **Flaws in the System**

The sense that the system provides a useful mechanism in weeding out inappropriate hires is pervasive and seen as necessary, though many acknowledge that the overall system, as with its components discussed in the previous chapter, is flawed.

Individuals suggest that some reasons for the system’s flaws range from lack of technology, the size of the bureaucracy, limited budgets and other resources, and the imperfect science of predicting human behavior. Those who study and criticize the system, and those who participate in and perpetuate it, point to these flaws noting that little is being done to recommend improvements to counteract flaws and consequent abuses.

Stanley runs an institute for the study of government and military power and while he references the flaws in the system, he also acknowledges the difficulties posed by the complexities involved.

I think the security clearance system can be understood as an effort to accomplish the nearly impossible task of ensuring the trustworthiness of the workforce. I say it’s an effort and it’s nearly impossible because we know it sometimes fails. People with the highest clearances occasionally go astray, engage in espionage on behalf of a foreign power or in other kinds of illegal activity. But it’s a consequence of the bureaucratization of the national security apparatus. There are millions of people in the system. There is no way for any one person or group of people to be assured of the trustworthiness or patriotism of all of the other

members without some sort of procedural filter. And so the security clearance system, as it has developed, is the best that anyone has come up with up to now. It is flawed. It involves both false positives and false negatives. That is, people get through the system who are not trustworthy. People get excluded from the system who are perfectly patriotic and trustworthy. So like any bureaucratic institution, it is defective. And yet it seems to fill a requirement.

Charles is a psychiatrist who has a clearance and treats individuals with security clearances. “The whole system... is maybe intrinsically almost impossible to pull off that well anyhow. With post 9/11, there's been such a huge growth in everything connected with security that I think it's literally exponential the amount of clearances that were called for, which I think just stressed the system to the max...”

Many interviewed also expressed concerns that, while the system is flawed, they must work within it, often hoping for the best while bracing for the worst. Throughout the interview process, I detected a level of stress in most respondents - part of which I attributed to talking to me and part to the polymorphous dangers associated with national security work.

Megan works on Capitol Hill as a staffer on a congressional committee. She articulated an underlying and recurring theme in the efficacy of the system - namely, its reliability.

It's analogous to when the lone gunman walked into the capitol and shot those two police officers and was trying to shoot other people. If there's a lone person who's basically bound and determined to release classified information, they're gonna release classified information, and it won't matter how many background investigations you've done of them.

As discussed, background investigations are conducted as part of the personnel clearance process as are face-to-face interviews and various tests. In the next section we will explore some of the flaws within these various components.

## **Problems with Background Investigations/Interviews**

Executive Order 12968 signed by President Clinton in 1995, stipulates that an “appropriate investigation” must be completed to determine if an applicant’s “personal and professional history affirmatively indicates loyalty to the United States.”<sup>392</sup>

The State Department website explains the process to prospective job seekers explaining that

the personnel security background investigation begins after an individual has been given a conditional offer of employment and has completed required forms. The forms authorize release of any and all background information to security clearance investigators. A Background Investigation is performed which usually includes field interviews. When conducting field interviews, the investigators will normally begin with individuals listed as references in the questionnaire. They then use those references to develop names of additional references. Investigators talk to current and former neighbors, supervisors, co-workers, classmates, and to the references an individual provides. These references are asked about the applicants honesty, reliability, and trustworthiness, and their opinion on whether the applicant should be given access to classified information or assigned to a sensitive position or position of trust.

References are asked questions about past and present activities, employment history, education, family background, neighborhood activities, and finances. During the investigation the investigators will try to determine any involvement with drugs, encounters with the police, drinking habits, and other facts about personal history. The investigators will attempt to obtain both favorable and unfavorable information so that adjudicators can make an appropriate clearance determination.<sup>393</sup>

Lately, the background investigation process has come under scrutiny in the wake of publicized clearance infractions. Private companies that the government hires to conduct investigations have been found negligent. For example, a number of former employees at USIS, the largest private contractor handling background checks for the

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<sup>392</sup> Executive Order 12968, signed by President Clinton in 1995, August 4, 1995.

<sup>393</sup> All About Security Clearances - US Department of State [www.state.gov](http://www.state.gov).



government, have been charged with falsifying records. As reported by Jia Yang, writing for *The Washington Post*,

According to reports, investigators claimed that they were under pressure to meet unrealistic quotas, “It was like wink, wink, do this as fast as humanly possible...there was this intense pressure to do more and faster” according to investigators. According to Mark Riley a former Army officer who works as a private security clearance lawyer interviewed by the Washington Post, the private companies had more than national security as a goal. “They don’t ask the right follow-up questions...the bottom line is the buck, rather than national security.”<sup>394</sup>

But even when interviews are conducted by government employees, and in accordance with standard methods and regulations, they still come up short sometimes. Bringing into question how useful the current standards and methods have proven to be.

Hugh Gusterson, a professor at George Mason University, notes that students often list him as a reference for their investigations when applying for clearance. He is amused by, but used to the “formulaic idiocy” of the questions investigators ask. For example, when investigators ask about drug use, he can only reply, “they certainly haven’t done any drugs around me.”<sup>395</sup>

One of the problems with investigations is that these same methods that are used to screen potential candidates are the same ones that may be used, unfairly, to revoke clearances of existing employees.

Jill is a supervisor at a federal agency who must cooperate with security investigations and reinvestigations of personnel under her supervision. While she has participated in hundreds of security investigations interviews over the years, and sees that

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<sup>394</sup> Yang, Jia Lynn, “Vetting Company’s Employees felt stress”, *The Washington Post*, September 21, 2013.

<sup>395</sup> Gusterson/Deutscher discussion, June, 2014.

responsibility as an important part of her job, she also has doubts about the efficacy of those interviews.

Well, having been a federal employee for zillions of years, I know what the process is, and also being a supervisor I know. I don't even like it when the interviewers come in and interview about a person. It is such a checklist... It's a rote thing. It's not about the real person. You are given an opportunity to say something about a person, but the questions are so routine and so rote, and I really don't think they really explore who the person is. And I'm not sure, like I can't really conceive of a better way of doing that, to be honest with you. You know, ask your coworkers, ask your friends, but... And it's not even a matter of the questions. It's just that it's... It's okay for the initial screening, definitely. You're going to get a sense of a person, whether they're trustworthy and all that. You're going to get a sense. But if there's a question, I don't think that's adequate.

Charles, as a psychiatrist who holds a security clearance and sees, among others, patients who hold security clearances referred to him from the CIA, also voiced concerns about the usefulness of investigator's interviews.

I think there are real limitations to it, because it is just a filter, and I know, because I get visited all the time by officers of one agency or the other for people that I see as patients. At the present time, I can get by with just simply answering one question with the answer "no" and that's the whole deal... it's very thin support for anything that's of any depth to have such a limitation. It's a one-pager, and there's a block at the bottom, that's the key one that you can literally check off a box that says yes or no, and the question is precisely — I don't remember the exact wording of it — but "Do you have any reason to be concerned about" blah, blah, blah. All I have to do is say "no" and that's the end of the story in nearly all cases. Now, it's true they do follow-up BI's [Background Investigations], five years out. I understand that. But again, I'm not terribly impressed that they're all that thorough, though, how one does this in the real world, God only knows.

Andy, who held a clearance for 20 years at the Department of Defense, before losing it in a whistleblowing incident has some ideas about improving the efficacy of interviews that include researching and interviewing a wider array of acquaintances who really know him (as opposed to his neighbors) and making better use of social media.

The...thing that obviously I think they don't do enough of is talk—for example, the people I work with, or the people I both served in combat with or I've known for 30 years, some of the people on my Facebook, for example, I would have no problem with people looking at my Facebook to ascertain things which are...If there's things regarding my reliability, I have no problem with people looking at my Facebook. ...Not your neighbors. Like, "Hey, is he a good guy? Does he put his Christmas lights up on a timely basis and take 'em down before January 15th?" It's insane.

Andy doesn't have a problem with the government monitoring his social networks, and that seems to be the way things are moving. Reporting for *The Associated Press*, Stephen Braun notes that during a congressional hearing on improving the security clearances process in the wake of the Edward Snowden insider threat, new methodology for constant monitoring of workers' online activities is underway. "What we need is a system of continuous evaluation where when someone is in the system and they're cleared initially, then we have a way of monitoring their behavior, both their electronic behavior on the job as well as off the job," Director of National Intelligence James Clapper told Congress..."<sup>396</sup>

Braun's article points to the expansion of the ACES system (described previously) to include capabilities to monitor social media activities and when necessary, cross reference it to other data available on employees, "The system could also link to outside databases to flag questionable behavior, said the officials, who spoke anonymously because they were not authorized to publicly discuss the plans.

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<sup>396</sup> Braun, Stephen, U.S. intelligence officials to monitor federal employees with security clearances, *Associated press*, March 10, 2014.

Investigators will analyze the information along with data separately collected from social media and, when necessary, polygraph tests, officials said.<sup>397</sup>

Following the hearings, the Department of Defense, the National Security Council and the Office of Management and Budget delivered their Suitability and Security Process Review.<sup>398</sup>

Recommendation C.2 of the Review addresses the need to develop and execute an enterprise Reform IT strategy to among other things “ensure interoperability and improve sharing of relevant information.” Toward that end, the report recommends “Incorporation of authorized and relevant new data sources, to include social media.”<sup>399</sup>

In addition to the investigations that occur in the original application process, individuals who run afoul of the system are often interviewed by investigators who provide details for re-adjudication, once the clearance is in question. Such interviews can be unsettling for individuals who, in some cases do not know what (if anything) they have done to occasion additional scrutiny. In most cases, individuals are unaware of the parameters within which investigators may navigate. For women, in particular, interviews can take on an even more palpable power dynamic as questions by male interviewers skew to a sexual nature.

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<sup>397</sup> IBID Braun, Stephen, U.S. intelligence officials to monitor federal employees with security clearances, Associated press, March 10, 2014.

<sup>398</sup> In the wake of the Edward Snowden leaks and the Washington, D.C. Navy Yard shootings, in the Fall of 2013, the President directed the Office of Management and Budget (OMB) to conduct a “review of Federal employee suitability and contractor fitness determinations as well as security clearance procedures”. This Review complimented related efforts of the Department of Defense (DoD) with respect to physical and personnel security and of the National Security Council (NSC) and OMB on access to and security of classified information.

<sup>399</sup> Suitability and Security Processes Review. Report to the President, February 2014, Problems with Face-to-Face Interviews.

As noted by Sullivan in the polygraph program at the CIA, detailed sexual specificities were included in reports compiled on female subjects that were not applied to males.

Regarding the reporting of heterosexual activity, in all the reports that I read...I rarely saw a comment on the heterosexual activities of a male. A case could be made that the Office of Security was ...sexist, with a tinge of racism thrown in. On one memorable occasion, I picked up a file for my morning case and in reading the [Background Investigation] saw the notation, “subject dates blacks!” underlined. When I went to pick up this female subject, I was rather surprised to find that she was an African American.<sup>400</sup>

Laura was interviewed by agency security officers after it was reported that she had befriended a foreign national (whom she subsequently married) while on detail abroad. Because of the friendship (and subsequent romance) her clearance was revoked and she was summoned for a face-to-face interview at the personnel security office. She describes the incident as “traumatic” primarily because of the invasive nature of the questions asked of her and her discomfort at not knowing what boundaries (if any) the interrogators were obliged to maintain. She articulates discomfort in the power dynamic between her and the investigators.

The agency and OPM (Office of Personnel Management) investigators...there's a potential for a lot of abuse of authority. There don't seem to be very many checks on the kinds of things they can ask...It's really hard to identify what exactly their boundaries are and there's really no one to ask, and you're in this very — I don't know how to explain it — I guess an analogy would be like if you're a prison guard and a prisoner. They're in a position of authority, so you don't want to push too hard, because they hold the keys. So with the people that do this, it's really

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<sup>400</sup> Sullivan, John, F., *Gatekeeper: Memoires of a CIA Polygraph Examiner*, Potomac Books Inc., 2008 Page 22. The exception being gay males, which as Sullivan points out was, in addition to Communism, the main focus of the polygraph program from its inception at the CIA, “In the early years of CIA’s polygraph program, polygraph tests focused on detecting Communists and homosexuals. Early tests had more questions dealing with Communism than other issues, but the homosexuality issue was pursued equally vigorously”. Sullivan, John, F., *Gatekeeper: Memoires of a CIA Polygraph Examiner*, Potomac Books Inc., 2008 Page 12.

hard to know what their boundaries are, and you're kind of — or at least I was — a little afraid to push on things that I thought maybe were inappropriate. Because what if they get mad, and your job is kind of on the line. So they came and they interviewed me and it was one of the most traumatic experiences of my life basically, because they were so invasive. That's why I said, there should be some checks and limits to what can be asked, because there's no — I'm sorry, I was totally determined not to cry, but... They asked me such intimate questions, like, what difference does it make? “Where did you do it?” It's like, are you serious?

It was difficult for Laura to discuss the invasive nature of the questions she was forced to answer though she did say that agents asked her where she had had sex, and in which sexual position(s).

This of course, is not an uncommon experience for women who find themselves in a power struggle with the national security state. Mark Thomas reporting on the trial, for *Time Magazine*, of three male cadets accused of raping a fellow female cadet at the Naval Academy writes about the “graphic, repetitive questions” that the victim endured during her interrogations. “The lawyers wanted to know if she wore underwear... how wide she opens her mouth during oral sex and if she ‘grinds’ while dancing.”<sup>401</sup>

We know that the national security state’s methodology is a bit behind the times (and the rest of society) when it comes to battling sexual violence. No lawyer in a civil courtroom may ask a victim “what were you wearing”? But the state likes to make its own rules when it comes to meting out justice to its own workers. One need only look at recent failed attempts (by female legislators and others) to wrest power over military rape victims’ fate from the national security state.<sup>402</sup> The fact that the national security state is

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<sup>401</sup> “It Has to Stop: A rape case reveals an unbalanced military-justice system,” Mark Thompson, *Time* magazine, September 16, 2013.

<sup>402</sup> “The strongest, most effective approach we can take to reduce sexual assault is to hold commanders accountable,” said Senate Armed Services Chairman Carl Levin, D-Mich. “To do this, we must maintain the important authority to prosecute sexual assaults that our military commanders now have, and add

behind the times when it comes to gender bias (among other things) is apparent to some on the Hill and also to many in the academy who study this issue.

In particular Carol Cohn's, research focused on gender and security issues, delves into these inequities. But she makes the point that, as James Carroll has also made<sup>403</sup> that when it comes to running afoul of the national security state, while women and others may be observed, occasionally in the public eye, to receive strikingly stark treatment, few humans win against a system that is inherently inhuman.

In her work, *Sex and Death in the Rational World of Defense Intellectuals*, Cohn applies what feminists have always known to her study of nuclear strategic doctrine, principally that work surrounding such technologies of war has been conducted by men with a very narrow and specific point of reference. But she also observes that the focus of such work is the concept of security itself. Not the human beings that the national security state is designed to protect, or even those doing the protecting. "In other disciplines, we have frequently found that the reference point for theories about 'universal human phenomena' has actually been white men. In technologies discourse,

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greater accountability for those commanders." ("Senate blocks change to military sex assault cases", By Leo Shane III Mar. 6, 2014, Marine Corps Times).

<sup>403</sup> "Carroll, an ex-seminarian looks to Paul's Letter to Ephesians (6:10-12) to try to articulate the underlying problem with the national security state. That being that while the state professes to, as the U.S. Constitution demands, provide for the common defense, it is very hard on the human beings in the process. "'For we are not contending against flesh and blood' Paul wrote in his letter... 'but against the principalities, against the powers, against the world rulers of this present darkness'. These are not fallen angels, and they are not individual villains. They are 'sovereignities', in his word, and the thing to understand about them is that they are constitutionally hostile to human beings." And further notes that "Scholars tell us [Paul] is surely thinking of the Roman tyrants and the crushing force of an uncaring imperial bureaucracy, but he is pointing to something about the human condition" (Carroll, James, *House of War: The Pentagon and the Disastrous Rise of American Power*, Houghton Mifflin Company, Boston, New York, 2006, page 306).

the reference point is not white men, it is not human beings at all; it is the weapons themselves”<sup>404</sup>

And as any good soldier can tell you, it is winning that counts – mission first, people second - or as then Secretary of Defense Robert Gates so eloquently put it in 2009 during a speech to the Association of Military Surgeons, “I take the issue of wounded warriors most seriously. Other than winning the wars in Iraq and Afghanistan, the Department of Defense has no higher priority than taking care of those who are serving or have served.”<sup>405</sup>

Laura describes the incident as traumatic not only because of the sexual nature of the questions or way she was treated by the investigators but also because she was not told (until the interview) why she was being questioned.

So they come down, two of them, and they interview me. One of the things during those three weeks, I went to my boss and I was like, “What's going on?” And she knew, but she couldn't tell me. She was like, “I'm sorry, I can't share it with you.” It's like, this whole thing is like, are you serious? I don't even understand what's going on here.

### **Problems with Self-Reporting**

As discussed, security offices encourage individuals to “self-report” any security incident they feel relevant. According to the Personnel Security Office Guidelines of the U.S. Department of Agriculture, “All holders of a security clearance must keep their security office informed about anything that might have a bearing on their continued

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<sup>404</sup> Cohn, Carol, *Sex and Death in the Rational World of Defense Intellectuals*, Signs, Vol. 12, No. 4, Within and Without: Women, Gender, and Theory (Summer, 1987, pp. 687-718, page 711).

<sup>405</sup> “Greetings from Secretary of Defense Robert M. Gates read during the Opening Ceremonies of the AMSUS 114th Annual Meeting.”



eligibility for access to classified information or that might signal an increased vulnerability to foreign intelligence targeting.”<sup>406</sup>

According to the Guidelines, information that must be self-reported by all cleared personnel includes: Change in Personal Status; Foreign Travel; Foreign Contacts; Financial Problems; Arrests; Other Involvement With the Legal System; and Psychological or Substance Abuse Counseling.<sup>407</sup>

Laura notes that some of the troubles she endured may have been mitigated if she had “self-reported” the incident. But she said that she did not see the incident as important at the time and that she was afraid of the moral judgments that may be passed upon her. “So not as an excuse, but as an explanation, I didn’t disclose the full nature of my relationship with who is now my husband. Honestly, I didn’t really ever intend for it to go that far, and it was a one-night thing, but it was fear. It was like, they’re not going to understand. They’re going to think whatever.”

Andy, on the other hand, always kept investigators informed of his activities. He developed a positive relationship with the personnel security team at his agency and was confident that they had his best interests in mind – until he was not. After his clearance was revoked, he worries that information he has self-reported to investigators and security specialists will be used against him.

...during the early days of the security process...I had no problem being totally honest with my investigator. As a matter of fact, I would call out of cycle and just say, “Look, this is what’s going on. I’m doing X, Y and Z.” I had no problem saying, “This is something I’m sure is of concern, but even though it may be of

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<sup>406</sup> Self -Reporting on Your Personal Activities, USDA, <http://www.dm.usda.gov/ocpm/Security%20Guide/S4self/Intro.htm>.

<sup>407</sup> Ibid.

concern, it's not gonna be used against me because I'm telling you about it." Therefore, I felt, for example, if I was sleeping with someone that may be married, it's like, "Here's the deal. I'm sleeping with her. And they can't blackmail me on it because I've already told you about it." "I'm having a drinking problem and this is what I'm doing about it." I felt totally able to talk about my personal problems and be a human being. Now I see how the security clearance system has become something used to really just hammer people for personal faults. You have to be almost a warrior monk, if you will, to sustain yourself in the current system, because you can't be a human being and just say, "I've got a problem. These are the things I have to do to fix it. I'm working on it." And to me, the whole idea should be that you take and give the system the information so they can say, "It can't be used against him to blackmail him." That's the whole issue. Instead, it becomes something that is used to hammer people for their personal growth issues. Look, I'm no saint...I don't hide the fact that I'm no saint. With that said, I'm not a threat to national security. I do everything I can to support the country...

Most of us are not warrior monks. Laura also worries about the possibly unattainable standards to which cleared government workers are held.

It doesn't have to be that way, because people have problems. There's just got to be some reform, so that you can actually be a normal person like everybody else and have your problems or whatever, without somebody questioning your integrity and your suitability for government employment, because you have a lousy husband, or because you had a bad break, because you're upside down on your house because of the economy...But government employees are held to a higher standard. That's another thing. I was underwater in my house in Miami, and I held onto it and made payments to it because I was like, "Oh my God. I don't want to lose my job." Normal people don't have to deal with these things.

### **Problems with the Polygraph**

As noted, a polygraph is an instrument that measures and records several physiological indices such as blood pressure, pulse, and respiration while the subject is asked and answers a series of questions. Proponents argue that, when conducted by a competent and experienced polygraph examiner, deceptive answers will produce physiological responses that can be differentiated from those associated with non-deceptive answers. In other words, the machine and the machine's operator together, can

tell when someone is lying. But as also noted, the National Academy of Sciences has advised that polygraph examinations are dangerously unreliable and the federal government should cease depending on them to screen for security risks.

And there are many other critics of the polygraph as a tool to screen prospective and existing employees. In 1983, the U.S. Congress, Office of Technology Assessment (OTA), came out with a technical review “Scientific Validity of Polygraph Testing” in which they determined that the polygraph was not a scientifically valid tool for screening government personnel.

Congress found that

The available research evidence does not establish the scientific validity of the polygraph test for personnel security screening... OTA recognizes that NSA and CIA believe that the polygraph is a useful screening tool. However, OTA concluded that the available research evidence does not establish the scientific validity of the polygraph for this purpose.<sup>408</sup>

Congress also cited two of the ongoing concerns that critics continue to have.

Principally, that liars may pass, while truth tellers may be falsely accused.

There is a legitimate concern that the use of polygraph tests for personnel security screening may be especially susceptible to: 1) countermeasures by persons trained to use physical movement, drugs, or other techniques to avoid detection as deceptive; and 2) false positive errors where innocent persons are incorrectly identified as deceptive.<sup>409</sup>

A quick online search will surface many critics of the polygraph, along with advocates and polygraph proponents.

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<sup>408</sup> Ibid, “Scientific Validity of Polygraph Testing: A Research Review and Evaluation”, A Technical Memorandum, Washington, D. C.: U.S. Congress, Office of Technology Assessment, OTA-TM-H-15, November 1983.

<sup>409</sup> Ibid, “Scientific Validity of Polygraph Testing: A Research Review and Evaluation”, A Technical Memorandum, Washington, D. C.: U.S. Congress, Office of Technology Assessment, OTA-TM-H-15, November 1983.

According to George Maschke and Gino J. Scalabrini in their e-book, *The Lie Behind the Lie Detector*, the polygraph is not science, but rather a “dirty little secret” that the government keeps from unsuspecting applicants for federal jobs.

The person being “tested” is not supposed to know that while the polygraph operator declares that all questions must be answered truthfully, warning that the slightest hint of deception will be detected, he secretly assumes that denials in response to certain questions -- called ‘control’ questions -- will be less than truthful. An example of a commonly used control question is, “Did you ever lie to get out of trouble?” The polygrapher steers the examinee into a denial by warning, for example, that anyone who would do so is the same kind of person who would commit the kind of behavior that is under investigation and then lie about it. But secretly, it is assumed that everyone has lied to get out of trouble.<sup>410</sup>

Yet the polygraph is still with us. In fact, it is often the polygraph examination that makes or breaks a clearance determination, placing individuals into a pass or fail category.

Kevin lost his security clearance after failing a routine reinvestigation polygraph examination at the Department of Defense. He feels that the polygraph is still particularly important to the counterintelligence organizations for which he has worked for more than twenty years, but he has some issues with the way the test was administered, the kind of people who administered it, and how they made him feel.

Kevin, who was born in Ireland but is now an American citizen, was told by the polygraph administrator that there was a problem with questions regarding a trip he made to Communist East Germany (prior to the reunification of that country in 1990). Kevin explained that he made the trip, while stationed by the U.S. Department of Defense in West Germany, with a German friend whom he knew to be trustworthy. The polygraph

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<sup>410</sup> 2005:18.

team found that his answers regarding the individual who accompanied him were “deceptive”.

...They seem to be slaves to the polygraph, and it’s odd that if they suspect you and you fail the polygraph, you have no hope... and there’s been lots of evidence to expose the weakness of the polygraph, and the very high rate of false positives. But the counterintelligence community doesn’t appear to have recognized this...Now, I wasn’t a history minor. However, I took lots of history classes, and I’m an amateur historian. I’m aware of all the abuses that occurred in the fifties, with the McCarthyist era, and I can imagine the mindset of the FBI counterintelligence people under Hoover... But the attitude in the counterintelligence agencies that I was forced to, that I was abused by, and I include the FBI and DIA, was a shock to find out that this mentality still existed. Xenophobia, ignorance, arrogance, and bullying was prevalent.

Kevin articulates the normative response regarding the personnel security clearance system and the discourse surrounding the polygraph, noting that he shared the general public perception of the polygraph until he came under scrutiny for failing an exam. “...when I would hear about someone being, having a false polygraph, or a negative polygraph, I would always assume it was something behind it. You know, a normal, conservative person, and not knowing that much about it, I’d say, ‘well, it must be something there, if he’s having security problems.’”

Kevin was surprised that the polygraph exam carried as much weight as it did. His assumption was that “the whole person” approach to security clearance adjudication would be applied. It was not.

The White House released its Revised Adjudicative Guidelines for Determining Eligibility to Access for Classified Information in 2005.

According to the Guidelines,

The ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security

must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of *the whole person*. [italics added]

Familiar with these guidelines for agencies to use the whole person approach, Kevin was surprised that, after failing the polygraph exam, no further discussion surrounding his “whole person” ensued.

Because, you know, we live conservatively, well within our means, we pay our bills on time, no credit card debts, alcohol abuse, all the usual things were absent that would normally make a person vulnerable to spying or to exploitation by a foreign intelligence service. None of those things were present, or were ever present. And I assumed that that would come out, that would be seen and evaluated and assessed. It wasn't. They didn't do any follow-up. The polygraph was enough.

As previously noted, with the espionage arrests in 1985, the issue of using polygraphs to uncover spies came to the forefront of public debate when the Reagan Administration and Congress battled over plans for expanded government use of the polygraph. An executive order issued on March 11, 1983, known as National Security Decision Directive 84, would have sanctioned for the first time "adverse consequences" for a federal employee who refused to take a polygraph test when asked.

Bernie, a former executive at the Defense Department during the Reagan administration, became embroiled in a leak investigation at that time. He passed a polygraph. However, his colleague did not.

I gave a brief to the Defense Resources Board, basically, that said even with the Reagan buildup, we still had some shortages, and we need to think about. Actually, it was written by a guy working for me. So what happened was *the Washington Post* ran with it the next day. And of course the Democrats had a field day saying, “Oh, Reagan's spending all this money and things aren't getting any better.” So guess who was suspect number one? Me, because I knew the reporter. And the thing that drove me nuts, well, I knew I didn't do it—when they told me to take a polygraph, I should've said, “Look, I'll take it to show you I

didn't do it, but here's my resignation." That's what I should've done, looking back on it.

Bernie, like Kevin was surprised that by "failing" the polygraph exam, an individual's entire record is overtaken by that one event. The "whole person approach" did not come into play. He was also surprised at the Pentagon's readiness and desire to fire or demote an individual with a proven track record.

Well, the interesting thing is the guy who flunked the polygraph worked for me. He was the guy who wrote the brief. So he was a Silver Star winner in Vietnam, he was a West Point graduate, and the way they ask those questions, with the thing fluttering up or down and all that kind of stuff, that really bothered him, so the results didn't come out the way... The reporter said that he wasn't the leaker, but they wanted me to fire the guy anyway. I told him, "I'm putting you on paid leave. Get yourself a good lawyer," because I didn't believe that he did it. And it turned out, they wanted me to transfer him to Defense Surplus Property Disposal Unit in Siganello or something, I said, "No, if you've got a case, make it," and of course they didn't, and he went on to have a very very good career in the government. I think he just retired.

Unlike his employee, Bernie "passed" his exam, but not without difficulties. He described some of what he endured getting to that point.

One of the questions the guy says to me, "Have you ever cheated on a government form?" So I said "yes," so then he starts, "What are you doing?!" all this kind of stuff. I said, "Come on, everybody exaggerates how much they give to charity on your IRS."

Years ago—people forget this—you used to be able to deduct cigarette tax and things like that, that they're never going to check on. We get through that. Then he says, "Other than that, have you ever done it?" I said, "Yeah." So we went through this whole long thing. When we deployed overseas, as typical government things, we got three dollars a day per diem. But if you were flying during a time when they gave you a boxed lunch, you could only get one dollar that day. So of course when we filled out our form, we never flew during lunchtime, so we'd get the maximum three dollars a day. Things like that.

Bernie points to the normative discourse surrounding those who fall under suspicion of a security violation, noting that even after being cleared, the stigma of being

under suspicion remains. “In fact, everybody in my office thought that I had leaked the thing. So I got back, I said, ‘There's good news and bad news. The good news is I didn't leak; the bad news is they're going to go after me for cheating on my taxes.’ And of course the guy did tell me, ‘Whatever you say there can be used against you on these other questions.’

Brian held a top secret clearance working for the intelligence community until he retired after 24 years of service. Every five years he was required to submit to a polygraph examination. He describes the power dynamic at work in the polygraph experience.

So your career depends on getting that clearance. You have to have it. So that really gives the clearance people, including polygraphers, a real strong upper hand because they're the ones who decide whether you're gonna have a job or not. So there's a lot of pressure on you there psychologically. There's just tremendous psychological pressure.

Brian also noted that integral to the polygraph experience, instead of the typical presumption of innocence, is the presumption of guilt.

Now, I passed every polygraph I ever had, so I'm not one of these people who are saying, “Oh yeah, the polygraph is all screwed up.” It was never a pleasant experience. It was always intrusive. It was always... In a way, it was a bit demeaning. Because when I first came through, the first time, when I first joined the agency, I had been in the Army for 14 years. I was a combat vet. I had put my life on the line for my country. But when I went through that the first time, there's this sense of “You're bad, and I'm gonna find out what you did that's bad.” And it didn't matter that I had done all this good stuff. It's like, “No, no, that doesn't matter. You're bad. You're sitting across from me and you're bad, and I'm gonna find it out. And maybe by the end of this, you might convince me that you're not.” But there's the presumption of guilt.

And along with the presumption of guilt comes the need for confession. Brian describes the “incentive to cooperate” when the polygraph requires appeasement.



If you're in that position where it's like, "Oh, my God. I have to pass this thing." And they're telling you, "There's something wrong. There's something that keeps coming up." I think it would make a person disinclined to turn to the polygrapher or whoever is asking the questions and say, "No, there really isn't. I don't know why your machine is doing this, but there is nothing. I have not done anything wrong." Because you know that your job is on the line. So there is real strong incentive to cooperate. Your job's on the line. If you don't pass the polygraph, you don't get a job. If you don't pass the clearance process, you don't get a job. I would think any reasonable person realizes going into that, that you hold no cards; they hold all the cards. There's really no sense in arguing. ... In my personal experience, I wrack my brain, and I come up with a thing that, "Well, maybe it's this." And I tell 'em. So they formulate the question, and then they ask me. And then, after that, they will either say yes or no—you have satisfied the polygraph god. You have appeased the polygraph god. Or not, in which case you have to make another sacrifice. "Let me cough up this bit of information...."

While it may seem outrageous to think that individuals submit false confessions in order to "pass" a polygraph exam, it makes more sense in the context of what is at stake if they do not. As Brian puts it, the odds are against you if you don't appease the polygraph.

Obviously, you can always appeal the results of the clearance process. You can appeal. If you don't get your clearance, you can always say, "What's the problem?" You can do that. I don't know anyone personally who has ever successfully—I know no one. I was working for the government for 24 years. I know of no one who was ever in the position where they had to appeal the results of the polygraph. I know of no one who ever did that and was successful, no one.

In his book *The Torment of Secrecy*, Edward Shils notes that

One of the reasons why there is so much disturbance about the protection of secrets is that it is so extraordinarily difficult to do it well...It is not a matter of putting a guard at a given place and preventing documents from being removed. It is rather a matter of entrusting documents to a person whose probability of disobeying the security rules must be estimated. The estimate must be made on the basis of very poor and fragmentary data of uncertain reliability in accordance with principles of interpretation which are extraordinarily primitive at best, which have never been formulated and which perhaps can never be adequately formulated. Moreover, the standards of conduct to be avoided are vague and

unstable. The confusion of loyalty and security-reliability adds to the unmanageability of the task.<sup>411</sup>

Shils wrote that in 1954 and little has changed to improve the personnel security process since. He notes that back then, as now, the country was ill prepared or equipped to design a personnel security clearance system. “Not only did the ethos and experience of the country not provide guidance, but there was no professional tradition either. The rapidly expanding demand for security officers drew into the activity many men whose skill in detection might have been considerable, but whose skill in personnel assessment was less good.”<sup>412</sup>

And so the government, in the early days of personnel security practice, relied in part on private sector security firms and practices. And it still does. Especially when it comes to the polygraph. It was during the 1950s that John Reid, a former Chicago cop developed a technique, using the polygraph, specifically designed to elicit confessions. Today, John E. Reid & Associates, Inc., trains more interrogators than any other company on the world. Reid & Associates clients include police forces, the Department of Defense, the F.B.I., the C.I.A., and the Secret Service.

Critics have demonstrated that Reid-style interrogations, which use coercive techniques, can produce false confessions. Just as Brian felt compelled to “cough up” bits of information that polygraphers required as confessions, the Reid polygraphy interrogation technique, currently in use at the C.I.A. and other government entities, is now under scrutiny for having contributed to some of “the most notorious cases of false

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<sup>411</sup> 1954:76.

<sup>412</sup> 1956:75.

confession in recent memory.”<sup>413</sup> For example, Douglas Starr writing for the *New Yorker* describes a case in which an Illinois man was arrested for raping and stabbing to death an eleven-year-old child. Starr explains that even though the suspect could confirm that he was at home at the time of the murder (he was wearing an ankle bracelet, awaiting trial for stealing a car stereo) and had a history of mental illness, the police interrogated him for four days allowing only four hours sleep.

According to Starr, the break in the case came when a Reid employee administered a two-part polygraph test that was inconclusive,

but told [the suspect] that the evidence conclusively showed he had caused the girl’s death. Even then, [the suspect] vehemently denied the accusation, but afterward when the interrogation was continued back at the jail, he confessed. By then, he had been reduced to a state of psychosis: according to a prison nurse who saw him...A jury found him guilty and sentenced him to life.

Later, new DNA evidence came to light incriminating another man. After 20 years in jail, the suspect eventually was released. According to Starr he is now suing John E. Reid & Associates along with the police department that questioned him.<sup>414</sup>

Clearly polygraph examinations are administered by the government for government purposes. Andy describes the time, when his clearance was being revoked after a whistleblowing incident, he tried to take a polygraph in his own defense but was denied.

You might find this ironic. I’ve never had a problem getting through the CI polygraph at DIA. I knew the guys very well. As a matter of fact, I would joke with ‘em. It was like, “I’m ready. Put me on the friggin’ box.” When this all came up, Martha, I actually offered to do a polygraph. “You can polygraph me on

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<sup>413</sup> Starr:2014.

<sup>414</sup> Starr, Douglas, “The Interview: Do police interrogation techniques produce false confessions?”, The New Yorker, December 9, 2013.

the allegations. You'll find out that I didn't do anything wrong. There was no intent." These were the things that were in my thinking. And I offered to take a polygraph on it. But they wouldn't allow me to take a polygraph.

### **Polygraph: A Failsafe in the System?**

Michel Foucault, in *Discipline and Punish*, outlines the evolution of scientific methodology in state control of populations. His observation about the apparatuses of modern government control is that they tend to take on a life of their own. Many bureaucracies are so large and their systems and processes so entrenched and normalized that they no longer serve well those who originated or maintain them, but rather begin to control outcomes on their own. Of Bentham's Panopticon he notes that the geometry of the apparatus makes it "a machine in which everyone is caught, those who exercise power just as much as those over whom it is exercised... it becomes a machinery that no one owns."<sup>415</sup>

Many security professionals that I spoke to, working within the system, readily acknowledge that the polygraph is not scientific. Rather they refer to the "box" as a "tool" that should be used in concert with the other tools – interviews, investigations etc. to make determinations regarding clearances.

Noting the flawed nature of the personnel security clearance process in general, and the dubious efficacy of the polygraph specifically, Karl a Pentagon security administrator, says the polygraph serves a function. It gives a sense of comfort to those who need to believe that something scientific is being done. That there is a "failsafe" in

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<sup>415</sup> 1980:156.

the system, that the polygraph offers a kind of placebo for the insurmountable ailment of personnel security.

My point about the polygraph... number one, the big idea that we have this apparatus, this personnel security clearance that's doing something, that gives people comfort. And then when you get down to the polygraph, whether or not it's really effective, there's this whole thing that this is really going to ratchet up, so squeeze these people down, and that's like the failsafe and... But still, no matter what you've done, unless it's, "Did you?" a yes or no answer, "Give away a bunch of classified documents?" It might be effective in that, I don't know. But I still believe it's just another... Sociopaths probably can get through them, and in your own mind, if you can convince yourself that the answer's no, you'll pass.

Charles, a psychiatrist who holds a security clearance and sees patients with clearance, has his own theory about why good people get bad results from the polygraph.

My perspective is derived from my having seen people in the IC (Intelligence Community) for many years, mainly CIA... I got a string of people that came to me who had "flunked" their poly. It was a very peculiar situation, because not one of the ones that I saw was a bad dude, not one. But they all shared probably one feature of their personality, namely they were obsessional and they were worriers, so that they got hung up on the poly, and even though they didn't do anything of any real consequence, that was enough for them to flunk the poly. Each time they tried it again, it got worse, and that had all the earmarks of what I've treated over the years so many times, namely phobias, phobic reaction. It was misinterpreted or led to confusion about how to interpret the results. Well, what would happen? "Well, the poly is only a tool." No, it is not. In the real world of the IC, if you get hung up on the poly, you're dead.

In addition to the technical difficulty of false positives on worriers, Charles also put his finger on another underlying persistent theme of several of the interviews. And that is the fact that bureaucrats are risk averse, and they tend to protect themselves from any threat of scrutiny. "As you know — the default answer of any bureaucrat to anything is 'No,' because it's safer for that person. If they say he's okay and something bad happens, it's on his watch, and who wants to risk that for their career?"

Even though the polygraph has been debunked by scientists, Charles points to another reason why the polygraph appeals to the personnel security clearance community. That is that it serves as an “instrument” thereby removing human judgments from the determination of eligibility - but not really.

It is an instrumental act. Why do surgeons make more than internists of all sorts? Because they do their thing, an operation or procedure, and psychiatry is one of the least well paid of medical specialists. What procedures do we do? ...All the rest of what they've got is all vaporware in a sense. It's talking to people, it's firsthand, secondhand, third-hand information, rumor, innuendo. Fuzzy, amorphous, ambiguous. But with a poly, it's a thing, which involves an instrument. Now, we all know that the guy doing the poly and interpreting it is no more scientific than anything else. But at the end of the day, the polygraphist has to come up with an answer, either yes, no, or not sure but they'll have to do it again. But in the end, they're going to have to come up with answer, but even if the answer is ambiguous, that's also an answer, and the answer is bad. But think of how much having an instrumental intervention spares having to think... Life presents so many decisions and choices. Isn't it nice when you can narrow it down so that you have one thing that either comes up yes or no, and you don't have to think? It does the thinking for you. So even though, like I say, they all say it — and I've heard it many times — “it's just another tool.” No, you're using it like a pass/fail.

Tim is a security officer for a DoD agency. He expressed frustration with the intelligence community's dogged determination to maintain the polygraph program. In his opinion, other techniques, like one-on-one security reviews are a better use of scarce resources and a better indicator of potential threats. Tim argues that personal, human interaction, on a regular (preferably annual) basis between security officers and those employees assigned to them, is the best way to ascertain whether an employee has undergone experiences or personality changes that may lead to loss of clearance. Such personal interaction gives the security officer the opportunity to ask pointed questions –

“how’s everything going financially? Any debts that are bothering you?” which may shed light on potential issues before they erupt into security threats.

I’m not a big fan of the polygraphs. I think they’re a waste of money. I think if you took that money that was in the polygraphs and people that support it and you put it to do those annual reviews, you’ll get a bigger hit on the people that are actually doing or are more subject to a possible threat of espionage or criminal activities, ... You’re gonna catch that. But polygraphs don’t. Tell me what polygraphs stop?

### **Problems with “the Systems”**

Sisella Bok, in *Secrets*, discusses, among other things, the role of secrets in trade and corporate policy. Her insights are particularly relevant to my research regarding the partnerships between government and the defense industry. She concedes that secrecy is necessary to ensure corporations return on investment but she also notes that,

It is possible, that these solutions, combining accountability and protection, will be aided by the greater difficulty of permanent concealment, in industry and elsewhere; and by the growing realization that much secrecy, unthinkingly applied, is counterproductive. It is also possible, however, that government will choose to rely more and more on industry-generated information...rather than on independent sources of evaluation. To the extent that they do, corporate secrecy with all its drawbacks is likely to spread.<sup>416</sup>

As noted, in 2009, the Deputy Secretary of Defense directed the transfer of existing Department of Defense enterprise wide IT systems associated with personnel security clearances from the Defense Security Service to the Defense Manpower Data Center. The applications that transferred from DSS to DMDC include: The Joint Personnel Adjudication System (JPAS); The Defense Central Index of Investigations (DCII); the Secure Web Fingerprint Transmission (SWFT); and The Investigative Records Repository (IRR) (also referred to as the “Improved” Investigative Records

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<sup>416</sup> 1983:150.

Repository (iIRR). The program management and operational responsibilities of these four transitioned applications now fall under the Personnel Security/Assurance (PSA) Division, which is a component of the Identity Management Directorate at DMDC.

In addition, according to the Department of Defense Personnel and Research Center (PERSEREC), changing technology has had a major impact on the way personnel security adjudicators do their work.

With the development of automated databases, a primary focus of our activities has been on the automation of the investigative process. What began as an automated process for the continuing evaluation of cleared personnel is now developing as a cost- and time-saving method for conducting initial clearance investigations through database checks.

PERSEREC (and commercial contractors working for them) are in the process of trying to design IT systems that will further help automate the personnel security clearance system. The government and private industry are working together on personnel security clearance process systems under which both want to maintain proprietary control. And the work on these systems, as on other work within the defense industries, is both profitable and secret.

Bok notes that this partnership of secrecy between the government and the defense industry goes on within the normative discourse surrounding national security but has a peculiarly commercial bent, adding that

the need for corporate secrecy is translated in a cost-benefit argument writ large. Translated from national to international terms, it warns of possible catastrophe for societies that do not guard commercial secrecy in the name of *national security*. The costs of industrial openness, or even slackness about security regulation, according to this argument threaten not only individual firms but entire nations and defense alliances.



Bok references security services experts who propose, among other things, tightening up the Freedom of Information Act and

placing a total embargo “on information relating to research, technology, manufacturing, and marketing of all American products, military and consumer” and extending security checks to all persons who receive “information of a quasi-classified or highly classified type.” She also references academics who argue that efforts that have been initiated to control technology transfer in the university setting are themselves likely to weaken the U.S. position, and thus do not serve the national interest.<sup>417</sup>

Government and defense industry executives are both very concerned about the need to increase secrecy. From his executive post at the Pentagon, Karl worries that we are placing ourselves at risk by not increasing secrecy both in the defense industry and the academy. In fact he foresees many new academic and industrial areas where a personnel security clearance should be required.

So we used to segregate people and give them clearances based on what we thought were their responsibilities. But now, as we watch the trends in the cyber attack game... it's not just about classified anymore. So now we have even the R&D, the university level of information that is not classified, which is maybe non-intuitive to some, but it's more important to some of our adversaries because they want to get in on the ground floor of the research and development. It's technically not classified. So it's not just to classify information more, but it's the associated unclassified and the developmental processes.

Karl's concern is that not enough classification is going on in industry and the academy. And that these institutions are not culturally predisposed to understand new and emerging threats. In the case of the academy and its tradition of scientific openness and peer review and in industry, conversely, its need to keep secret attacks on systems that may imperil their stock process.

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<sup>417</sup> 1983:152.

So it's morphed, and it's more complex now. So we're not even admitting what kind of information is important. People would be very surprised. Yes, everybody knows that if it's top secret, locked in a skiff..., that's really easy. And we built most of the moat and the protections and all that kind of stuff there. But if the target has moved, now people are even looking at things like what goes into a water purification system—A certain little physical pipe or connector to a pipe that is very important to a country who is now thinking about how to attack our water systems or our critical information. So it's a bigger thing that needs to be protected. Certainly, now we're not going to extend (security clearances) to people who work in water purification systems or nuclear...I won't say nuclear plants, they're protected.

As a security executive, Karl also worries that, more and more, it is the defense industry and not the government who are holding the reins when it comes to secrecy.

And that the objective of national security may take a back seat to corporate profits.

...and now we're even in a position, we see information being exfiltrated, but it's not our mission set to be able to do anything about it. We can't tell industry directly. We can't help them stop that. Because even in the industrial base you have—like at Boeing, for instance, they have a great commercial business. If they're being attacked on the defense side, [we] can't make a big deal of that in public, because it might hurt their stocks. And the CEO wants to sell his 787. So we're asking them to report when they're being attacked and we're trying to change the way we're doing it, because now the assumption we're trying to promulgate is everybody's under attack. We all are. So don't feel like it's just your company. But it's hard to change that culture, because as much as they want to, the CEO who wants to sell the Boeing 787s around the world, can't be saying to his shareholders that you're leaking information, because it's being stolen from you out of your systems every day.

But Bok makes the argument that spending ever-increasing time and money on protecting corporate secrets in the defense industry, as others have argued of the academy, may be counterproductive.

We must ask, finally, just how much information the new practices of secrecy will succeed in safeguarding. Such practices hardly guarantee *actual* secrecy – least of all in a world where the technology of detection and surveillance has been so assiduously pursued. Even from a strictly military point of view, extensive industrial secrecy may therefore be unwise. If implemented, it may offer yet another version of the Maginot Line; a set of fortifications erected at great human

and commercial cost that gives a false sense of security even as new practices of intelligence-gathering continue unabated, and satellites glide across with ease.<sup>418</sup>

Bok proves prophetic in her observations as most recently the U.S. Justice Department indicted a group of Chinese hackers from the People's Liberation Army and charged them with stealing corporate secrets. But, as Schmidt Sanger and Perlroth report for *The New York Times*, "private security researchers say the indictments have hardly deterred the People's Liberation Army from hacking foreign targets, and American officials are increasingly concerned that they have failed in their effort to deter computer attacks from China or elsewhere."

So both Karl's and Sisella's concerns are both valid and in evidence. Yes, the national security mission has expanded from keeping safe that information which is classified, to keeping safe all potentially harmful information (an arguably impossible task). And paradoxically, the harder the government and industry try to keep their secrets, the more unable they are to do so. For example, by designing an enterprise information system to process security clearance holders, the government and industry leave themselves open to new dangers posed by hackers of those systems.

Perhaps the most ironic example of hacking into U.S. government systems is demonstrated by the Chinese infiltration of e-QIP. This amounts to hacking into the U.S. Office of Personnel Management (OPM) systems designed to collect information for the purpose of adjudicating security clearances. As Schmidt, Sanger and Perlroth describe, the hacking into the OPM systems

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<sup>418</sup> 1983:152.

was particularly disturbing because it oversees a system called e-QIP, in which federal employees applying for security clearances enter their most personal information, including financial data. Federal employees who have had security clearances for some time are often required to update their personal information through the website. The agencies and the contractors use the information from e-QIP to investigate the employees and ultimately determine whether they should be granted security clearances, or have them updated.<sup>419</sup>

So it is becoming clear that the IT systems, of which PERSEREC is so proud, e-QIP among them, come with their own built-in set of problems. Among them are as Kevin pointed out, you cannot classify everything and as Bok reminds us, everything secret will eventually out. But there is a third problem inherent in the large IT systems and that is the government's (and industry's) unerring faith in the notion that technology can solve our most critical national security needs.

Charles notes that the government tends to fall back on the big system approach to counter many of its problems. And this is not a new approach.

Yeah. I think they're working on these big systems. It's going to be about the data, the big data, and if all of these systems talk to each other — I heard that story — I've been in Washington since '73 — I've heard this story so many times in different agencies that there's going to be a big solution, because this new system will finally override all these other legacy systems that are not talking with each other and blah, blah, blah. I can't think of one that has worked, that I've heard about. It's all — let's face it, big contractors, IT contractors, will sell the same story and literally hundreds of millions of dollars will be spent, and at the end of the day, it's not accomplished. It's the FAA, the FBI, I know of those. I heard a story about the CIA that there was a big area in the basement of the CIA that is filled with all kinds of legacy, very expensive, but now way OBE equipment. That was one of these concepts that failed and they just tucked it under the edge of the carpet in the basement. All this machinery, and nobody wants to know or say anything about it. It's disappeared...It's just not possible for such a thing to be made is what I'm thinking, in the real world.

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<sup>419</sup> “Chinese Hackers Pursue Key Data on U.S. Workers”, By Michael S. Schmidt, David E. Sanger And Nicole Perlroth, July 9, 2014, The New York Times.

On a personal note, I share Charles' concerns. I observed years of contractors "helping" the Department of Defense and the Department of Veterans Affairs to build an Integrated Electronic Health Record (iEHR) to provide a single electronic health records system for both departments, to no avail. I also worked for the Defense Business Transformation Agency that pulled the plug on the Defense Integrated Military Human Resources System (DIMHRS). That system was to provide enterprise resource planning for the Army, Navy and Air Force replacing over 90 legacy systems. The Pentagon killed it after spending more than 10 years and a billion dollars on it.<sup>420</sup>

As Charles has observed in his Washington career, and in both of the above instances, private contractors convinced beleaguered federal agencies that technology was the answer to their problems. Then they proceeded to incur the kind of cost overruns for the government that would never be tolerated in the private sector.<sup>421</sup>

### **Problems with Leadership**

In *The Feminist Case Against Bureaucracy*, Kathy Fergusson observed that in bureaucracies,

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<sup>420</sup> Military Update: Mullen pulls plug on problem-plagued DIMHRS pay program, February 21, 2010|By Tom Philpott, Hampton Roads Daily Press, <http://www.dailypress.com>.

<sup>421</sup> What is extraordinary about DIMHRS is not that the program was such a failure, but that the BTA was successful in killing it. Ten years of IT development failure and losses is not unusual in federal agencies. Anthony Brino quotes David Powner, director of the GAO's Information Technology Management Issues, testifying at a House Committee on Oversight and Government Reform in 2013, "bringing examples of IT projects cancelled, overrun or gone awry — and further urging the Office of Management and Budget to step up its oversight of federal projects. Federal IT projects 'too frequently incur cost overruns and schedule slippages while contributing little to mission-related outcomes,' Powner told the subcommittee. And despite about \$600 billion in IT spending over the past 10 years, he said, "the federal government has achieved little of the productivity improvements that private industry has realized from IT." Tom Philpott writing for the Hampton Roads Daily Press quotes then Secretary of Defense Robert Gates on the project, "I would say that what we've gotten for a half billion dollars is an unpronounceable acronym," Gates quipped, though his cost estimate was short by half. The Government Accountability Office says a billion dollars had been spent on DIMHRS through 2009."

The effort to eliminate uncertainty and assure control creates a distorted political situation in which individuals are isolated, social relations are depersonalized, communications are mystified, and dominance is disguised. The usual defense of the hierarchical division of labor within bureaucracies relies on an appeal to greater efficiency and fuller utilization of expertise within the work process. However, the appeal to efficiency is largely a guise to conceal the control function that hierarchy performs. Considerations of efficiency and effectiveness are at best secondary and frequently irrelevant; they are justifications, rather than explanations, of bureaucracy. The fragmentation of the work process, the isolation of workers from each other, and the expendability of any one worker due to the partiality of her/his contribution to the end product, all operate to control the workers by making them dependent on management within the organization.<sup>422</sup>

As noted earlier, individuals who run afoul of the personnel security clearance system are often fired, demoted, warehoused, or otherwise removed from their livelihoods. Interviewees noted the lack of intervention on their behalf by managers, supervisors and other officials who knew them and perhaps, because of their positions of authority, could have helped them maintain the clearance.

Bernie was a rare exception when, as noted above, he rejected the order to re-assign his employee and put him on paid leave instead and counseling him to find a lawyer.

This failure of leadership is particularly evident when it comes during a whistleblowing incident - when an employee speaks out on a matter of conscience and runs up against the full force of government power.

While the government espouses adherence to formal rules protecting whistleblowers,<sup>423</sup> it is not unusual, during these cases, for employees to lose a security

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<sup>422</sup> 1984:10.

<sup>423</sup> For example, President Elect Obama promised new whistleblower protections during his administration on his transition website stating that “Often the best source of information about waste, fraud, and abuse in government is an existing government employee committed to public integrity and willing to speak out.

clearance for having “embarrassed” government officials. As noted, the normative discourse surrounding the questions of personnel security clearance, is so fixed and punitive, that losing one’s clearance indicates the beginning of the end for the accused, whether they are guilty of a security breach or not.

In his book *The Social Production of Indifference: Exploring the Symbolic Roots of Western Bureaucracy*, Michael Herzfeld observes, “Skilled actors that they are, bureaucrats put a face of unemotional neutrality on their every action. It is only when one makes a conscious effort to contrast their practices with those of everyday sociality that the systematic oddity of what they do begins to emerge with any clarity.”<sup>424</sup> Herzfeld is questioning the anthropologist’s penchant for focusing on the exotic at the expense of studying the mundane, like Western bureaucracies. And there is an argument to make for scientists getting involved. Because when the bureaucracy’s participants point to its systemic oddities, they often fall victim to those oddities defined.

Andy relayed his experience testifying to Congress about the effects of whistle blowing on his career, noting that removing his security clearance was the first salvo of governmental reprisal. He also noted that he is far from alone in such bureaucratic assaults.

And I...actually testified...That, you know, the security clearance system is used as a punitive measure of management’s tools, rather than on trying to determine reliability. When I testified, there was a specialist right next to me, an E4 Army type, also in uniform. We talked about the fact what when he discovered wrongdoing regarding the Abu Ghraib interrogations and reported it, they took his

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Such acts of courage and patriotism, which can sometimes save lives and often save taxpayer dollars, should be encouraged rather than stifled.” But he took that site down after the transition was complete, “Obama Promises, Including Whistleblower Protections, Disappear From Website”, The Huffington Post, Luke Johnson, Posted: 07/26/2013.

<sup>424</sup> 1992:46.

clearance. Are you kidding me? The guy reports something that he's supposed to and they revoke his clearance? This is where they've completely—leadership, the way they use it, completely makes a mockery of it, because it makes it a punitive tool rather than a bellwether of reliability for the purposes of having access to national security information.

And the same thing in the security system process here. They've trampled all over my rights because all I've said is, "Follow the friggin' rules. Follow your own rules." That's all I'm asking you to do. "Follow your own rules." And they won't do it."

Frederick makes a distinction between the Marines that he served with overseas and the support establishment in Washington, remarking on his disappointment in the leadership associated with the latter.

I'm extremely disappointed in the Marines that I have encountered. I'm disappointed in Marine Corps behavior off the frontline. And we call it the "support establishment." It means the Pentagon, Quantico, everything that goes on in the United States. The close ties of Marine generals to industry, to the extent that our commandant of the Marine Corps, who just left a couple of years ago, is now on the board of directors of Textron, a monster defense contractor who, if not already, certainly potentially will sell major programs to the Marine Corps. All of these ties are things that connect to what I reported. In other words, what I was reporting was all of that interconnectedness as well. And so instead of reflecting on themselves and saying, "Hey, wait, we're not behaving like Marines," they went after the messenger. "Shut [Frederick] up by any available means." And that's been disappointing.

Frederick would still be disappointed though perhaps not surprised had he read Ferguson on the bureaucracy's need to shoot the messenger.

Often those officials and employees closest to the bottom of the hierarchy observe its failings first hand...But for those at the bottom, or even the middle, to try to correct abuses and to improve performance is to violate the hierarchical chain of command and jeopardize the power of the elites. Since bureaucracies are fundamentally authoritarian forms of organization, any effort to air grievances or alter policies from below must be suppressed, and any real effort to create such channels is seen as illegitimate. Political struggles over organizational inefficiencies and abuse go on ceaselessly within bureaucracies...when the reality of political struggle contradicts the myth of administrative neutrality,



bureaucracies generally seek to preserve the myth, even at the expense of organizational goals.<sup>425</sup>

### **Clearance, Identity, and Community**

As Priest and Arkin note, in *Top Secret America; the Rise of the New American State*,

A top secret clearance is a passport to prosperity for life. Salaries for employees with top secret clearances are significantly higher than those for someone doing the same thing at an unclassified level. A clearance is also a guarantee of permanent employment, even in economic hard times. Top secret clearances are coveted for those reasons, and also because they are a sign of acceptance into an elite corps of individuals entrusted with knowing what other citizens cannot know, and with securing the country's future.<sup>426</sup>

But as my interviews have demonstrated, all of the financial security and prestige conferred by a clearance prove ephemeral the moment an individual falls through the cracks of the personnel security clearance system.

David is an attorney who specializes in whistle blower protection cases. He describes the unique nature of the situation in which individuals lose government positions and with them, much of their sense of identity.

I think for a lot of people who have held clearances, it's very wrapped up in their professional identity. Whether it's because they're a government contractor or more likely because they were a member of the military, or possibly a member of the intelligence community, for them, having a clearance is kind of a badge of honor, and it means they're part of that community. And losing oftentimes affects their sense of belonging and their sense of self-worth because they're no longer part of that community. They're not part of the tribe anymore.

So if you cannot share in secrets, you're no longer part of the community. And that alienation is hard for individuals to take.

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<sup>425</sup> 1984:22. Herzfeld has a different argument on this. In his discussion of secular theodicy which he describes as "the idiom of grumbling against the state through which people seek excuse their humiliation at its hands" (1992, page 127).

<sup>426</sup> 2011:158.

Ferguson has observed that, “If we see that the human self is created by a process of interaction with others, in which individuals arrive at their own unique identity through viewing themselves from the perspective of others, then the destruction of personal relations through bureaucratization threatens the foundation of self-identity.”<sup>427</sup>

David stresses the fact that the loss of a clearance is always traumatic to one’s identity and social self, even if the loss is not due to an individual’s actions.

“Oh, yeah, this affects their life.” It’ll impact their social life, it impacts lots of things. Sure, it’s livelihood, but there’s a lot more to it. There’s a significant degree of depression that will come for a lot of these folks, especially the folks that have been in the business for many, many years, and all of a sudden something happens — after decades of service, someone’s calling to account their trustworthiness.

Frederick, a whistleblower, falls easily into the category David describes. As a former Marine, he was a star performer on the fast track for bureaucratic success before he came up for security reinvestigation for embarrassing his bosses at the Pentagon, by writing a report that outlined their failures.

And so clearly they interviewed my supervisors. That took them down all sorts of rabbit holes. Now, remember, I was a praised, popular guy before I did those things...So it was like falling off a cliff. I had just graduated. Right before I went to Iraq, I had just graduated from the Industrial College of the Armed Forces. They sent me to ICAF. I came back from Iraq with a recommendation to be considered for the SES service.

Frederick’s career came to a screeching halt because he identified and reported on misconduct on the part of his superiors. He describes how his bosses, who were displeased with his behavior, managed to use his security clearance to sideline his career, even though he had committed no infraction.

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<sup>427</sup> 1984:13.

But, hey, there's no forgiveness on certain things. And so, bam, off the cliff. So then I'm getting this reinvestigation during this period... They sent me off for a polygraph because they were concerned. I wrote a paper at ICAF (International College of the Armed Forces). The subject was China. And in the process of this, I interviewed the number-three guy at the Chinese Embassy. And all of this stuff was approved, of course, but when you get someone who's angry at you and they spin it in an interview - of course, that leads to these rabbit holes. So that was delayed. Re-adjudication was delayed for a long time. And as things progressively got worse with my situation... then comes that fateful date where they said, "Okay, we don't trust you anymore. We're booting you outta here. We think you used a flash drive illegally in the SCIF. We're stripping you of all your clearances and we're kicking you outta the Pentagon." Which they did.

Frederick described being ostracized, after a story reporting his clearance violation appeared in the local newspaper, by members of the military with whom he had served and who had previously been collegial.

...I guess my primary concern about a reader is the reader's...well, everyone will parse an article apart; they'll find out the pieces they want. "Security violator" was the key point on me there. I guess I was—being brainwashed, I was worried about what my Marine Corps thought of me. Because the guys I'm surrounded by all these years in the Pentagon, who used to love me, all the way up to the—the commandant of the Marine Corps retired me right there, under that tree. I had admirals in there...All these people used to love me. And they spit me out like green mucus.

Despite the stress that accompanied his clearance revocation, Frederick describes his experience of trying to find something meaningful to do while the Pentagon kept him in clearance limbo.

I tried to get other places around government. I kinda searched around during that bad year. I looked for congressional fellowships. I looked for anything where I could make a contribution, even a couple nonprofits—not government, nonprofits. And everyone pushed back on me and said, "Well, you know, ... while this whole thing is going on, it's kinda difficult..." You know what I mean, right? It's like, "No, because actually we don't trust you anymore either." That's how fast it happens. Or maybe they do, but they don't want the stigma. They don't want a guy who's having problems suddenly working for them. What does that look like? It's awful.

Doug represents clients in the intelligence community, noting the devastating effects of both the social stigma and the career ramifications of losing a clearance.

The worst thing about losing a clearance? “It’s like putting a “T” for “Traitor” on their professional chests. It not only will likely result in loss of current employment, but blacklisting for the rest of a specialist’s professional life.”<sup>428</sup>

Laura also felt she was wearing a letter of shame after she lost her clearance. And describes the feeling of isolation she felt. “I really thought I was wearing a scarlet letter basically, and just so completely isolated, and that's one of the things that led to such a deep depression and anxiety. I have to tell you that I still suffer from anxiety periodically...”

David handles personnel cases for clients who work both in government and in the private sector, noting that, while they may not be wearing scarlet letters, those government workers who have had a clearance revoked are uniquely marked.

So the process itself, I think, is uniquely traumatic. And then, as I said, the consequences are much more long term than a traditional termination. Normally, people have—very commonly, people have the option to resign rather than being fired, and that puts them on higher ground for starting over. Once your clearance has been suspended, unless you’re exonerated, that mark’s gonna follow you forever.

Jill describes her husband’s loss of a friend, due to the ostracization, stigma and “guilt by association” that followed when, after years of government service, he lost his clearance. “His clearance was revoked after many years. One friend just put up a wall,

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<sup>428</sup> Others interviewed made mention of feeling as though they had a “scarlet letter” on one’s chest referencing the 1850 work by Nathaniel Hawthorne in which Hester Prynne, who conceives a child through an adulterous affair, is forced to wear a scarlet “A” on her dress as a symbol of having broken the communities ethical standards and as a sign of shame.

because to continue association with him would have been to be tainted, or he thought it might taint him. That was very difficult. It was very difficult.”

As other subjects have noted, that mere accusation of a security breach is enough to cloud an individual’s integrity for some. In this case, risking a friendship with someone who had lost a clearance was deemed a risk. To befriend a security clearance loser was to put one’s own character in question and one’s career at risk.

She goes on to describe his loss of a sense of belonging to community with whom her husband had shared a mission and a history. “These are the people that he built his life with, and to have it closed down was...and not be able to share the same things anymore, to have all those connections and all the respect and all the ability to make a difference taken away was very, very hard for him...Once you’re outside the family, you’re outside the family.”

David describes the particular and unique pain of those in the clandestine service, who land on the wrong side of a security clearance adjudication. The power relationship here is particularly acute. As a clandestine worker who is ousted from the government, virtually has no resume, no demonstrable work experience, no way to start over.

Without a doubt, here in the intelligence world, in an agency such as DIA, CIA, NRO, NGA, orgs like that, it’s fundamental. If you don’t have your access, whether it’s suspended or revoked, you’re out of the community. You’re escorted out of the building; you can’t get back in the building, you’ve gotta be escorted to go to the bathroom... those who are NOCs, Non-Official Cover CIA, you lose your clearance, you’ve lost your entire identity. No one knows where you work, that you really worked for the U.S. Government in the first place, and now you’re completely on the outs. You’re a pariah. You can’t do anything with anybody. That’s the worst situation.<sup>429</sup>

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<sup>429</sup> The agencies referenced are the Defense Intelligence Agency (DIA), the Central Intelligence Agency (CIA), the National Reconnaissance Office (NRO) and the National Geospatial Agency (NGA).

David has represented individuals who, when a clearance is revoked, are left to guess which of the guidelines they have transgressed. This can lead to personal feelings of loss and self-doubt. This practice seems particularly cruel and is key to the amorphous fear that disciplines those with clearances.

You marry, all of a sudden, you've been a Marine for 25 years, and had Top Secret clearance, and you marry someone from another country, and they're an American citizen, but they have family members overseas. Your clearance is revoked, and they look at it as, well, you're calling to account my trustworthiness. Which, realistically, they are, but technically, under that guideline, they're not. They're just doing a risk balancing, depending on the country involved. It's not calling in to the person's account of trustworthiness. But clearances are always viewed as being attached to trustworthiness, because that's the determination. So they take it very, very personally.

While David understands the trauma experienced by his clients, he admits that, when it comes to the circumstances under which individuals lose clearance, there is not much he has not seen. This in juxtaposition to the alienation and embarrassment that most clearance losers feel. They feel isolated. Often convinced that they are alone and unique in their happenstances and feeling.

And there's a huge embarrassment factor to it. So many of the clients, or, I'm sure, any of the lawyers that have it, we've seen it for so many years. There's nothing that surprises me anymore. I've pretty much heard it all. Every once in a while, there'll be something. I had a situation with a guy and a horse. Sorry. That was a little bit unusual, but that was, like, once in 20 years. Never had that happen again. Most of them are pretty much within the box of normalcy. You might not like it, it could be child porn, not stuff you really like, but it's seen it, done it — well, not done it, but that type of case, all the time. But to them, it's so unique, the person going through it, and they're so embarrassed by it. Even if it's just like a DUI. So there's a social stigma, absolutely, that attaches to it, someone who has lost a clearance like that.

David contrasts the offenses of child pornography and DUI to show an adjudicative spectrum. While an individual may not necessarily lose clearance for a

single incident of driving while under the influence of alcohol, they may find it harder to convince an adjudicative panel that they landed on the child porn by mistake. As David also notes, adjudicators are people and they have their own prejudices and predispositions. Some may have alcoholic (ex)spouses and some may have school-aged daughters or sons. It is unrealistic to assume that such personal characteristics do not come into play when adjudicative decisions are made.

Charles references the reticence of bureaucrats to back down from a security clearance determination, even if it is questionable.

Because trying to get the thing reversed is very uphill, because it runs into all the things that we were talking about. It's just easier to just say no and keep saying no, because that's safer. Why do you ever want to admit you made a mistake in the first place? If you were the officer who denied the clearance, now you're going to say, "Well, I changed my mind." No, it's safer to just leave it alone, even if it ruins a person's career. I have several like that right now.<sup>430</sup>

Charles notes that in "some cases, there's some plausibility, let's call it". One could imagine that the IC would want to be more careful. Sure." But he finds that in most case, removal of the clearance, "made no sense at all."

But I'll tell you, I know what the affect is. It's devastating to these men. Mostly, we're talking men. It's just the — that'll change over the years. But it's really like a castration. I've never said that before, but that's really what it is. The thing that defined them in terms of their identity has now been ruined. They used to be on the inside and now they've been shoved out, like an expulsion, being sent to Coventry. They are bewildered, usually for good reasons, because it makes no sense. They are hurt. They're angry, and they feel very defeated.

Hegel and others have described the concept that the self requires the "Other" to define itself. And that the other had been that against which he defined himself. To lose

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<sup>430</sup> Herzfeld refers to this as the "often inadvertent sanctioning of indifference:...indifference is a rejection of those who are different, made tolerable to insiders because it is presented in terms that are at once familiar and familial. Indifference is arbitrarily selective. Like 'benign neglect', which is one of its varieties, it provides a moral alibi for inaction.

one's clearance is to be defined as an untrustworthy other. This feels bad for the individual in question. But it may also ultimately hurt everyone. Because we do not have a good track record, contrary to President Lincoln's urging, of appealing to our better angels when it comes to defining others.

Shils reminds us to be careful about the kinds of societal judgments we make and the discourse we perpetuate by defining and separating others by reminding us of our "nativist tradition – the tradition of rancorous intolerance, of parochial jealousy, of intellectual inferiority, of the dislike of foreigners, of the distrust of urbanity, of the paranoid fear of subversion."<sup>431</sup>

### **Ethical Concerns and Abuses**

#### **Left in Limbo**

In their book *Sorting Things Out: Classification and its Consequences*, Geoffrey Bowker and Susan Starr examine the classification system in the South African Apartheid regime noting that those who wished to challenge the state's classification of them (as "White, Colored or Bantu"), would undergo an arduous process and that "within the internal logic of apartheid, an apparatus had to be constructed to adjudicate these cases."<sup>432</sup>

While the apartheid system attempted to "create a normalized, systemic bookkeeping system embedded in a larger program of human destruction,"<sup>433</sup> the personal security clearance system only focuses on suitability for government work. Yet,

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<sup>431</sup> 1956:15.

<sup>432</sup> 2000:206.

<sup>433</sup> 2000:206.



there are similarities in the process. One of those is the amount of time individuals were (or, in the case of security clearance, are) held in “limbo” waiting for adjudicators to determine their fate.

Bowker and Starr’s work is instructive in the discussion of ethical concerns surrounding classification and bureaucratic procedures. They note that in the instance of the apartheid regime, “The ethical concerns are clearly basic questions of social justice and equity; at the same time their very extremity can teach us about the quieter, less visible aspects of the politics of classification.”<sup>434</sup>

Just as South African bureaucrats would argue their activities were far from the extremes undergone by the Nazis, current bureaucrats in the security clearance system would say they are not wielding the power of total social annihilation over those whose clearances they administer. Nonetheless, it behooves us to remember how badly things go when policies and bureaucrats leave human beings in their dust. I have reference here to the Red and Lavender Scares and the techniques used to classify individuals, based on faulty assumptions that ultimately destroyed lives.

One of Bowker and Starr’s central arguments is that classification systems are often sites of political and social struggles, but that these sites are difficult to approach. Politically and socially charged agendas are often first presented as purely technical and they are difficult even to see. As layers of classification systems become enfolded into a working infrastructure, the original political intervention becomes more and more firmly

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<sup>434</sup> Bowker and Starr also reminds us that “We walk here in a line similar to that of Hannah Arendt in her *Eichmann in Jerusalem: A Report on the banality of Evil* (1963). The quiet bureaucrat ‘just following orders’ is in a way more chilling than the expected monster dripping with grue. Eichman explained what he was doing in routine, almost clerical terms; this was fully embedded in the systematic genocide of the Holocaust” (2000:196).

entrenched. In many cases, this leads to a naturalization of the political category, through a process of convergence. It becomes taken for granted.”<sup>435</sup>

In previous chapters I have noted how layers of the national security clearance system have evolved and through that evolution have precluded much discussion surrounding the process, indeed bringing those who do question the system into question. Because the system is about secrets, there is a reluctance to entertain open discussion. But discussion is required if we are to work against current abuses of and by the system.

One ethical concern of classification systems, including the national security personnel clearance system is the way individual lives are disrupted, and often “put on hold” while waiting for an individual classification to take place.

Some of Bowker and Starr’s observations on the apartheid classification system mirror those described by those I interviewed about their experience in the personnel security clearance. Among them was what I shall call the “limbo factor.”

Bowker and Starr describe the lengthy appeals process available to those classified under the apartheid regime and some of the effects of the process on lives.

The Registration Act had a proviso that if the person objected to a classification, he or she had thirty days in which to appeal. Several local administration boards were set up to hear borderline cases and reconsider classifications. Their decisions could be appealed up to the level of the Supreme Court, a costly and time-consuming business. The average waiting time for an appeal was fourteen months (many were longer), during which time the person existed in limbo. For example, if someone wanted to be classified as white, but was classified coloured, she or he could not go to a white school. If they enrolled at a colored school, this could later become legal evidence that they *were* coloured. Several took correspondence courses as a solution....<sup>436</sup>

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<sup>435</sup> 2000:196.

<sup>436</sup> 2000:206.

Those who fear proving themselves colored by attending a colored school, experience the same Catch-22 as clearance holders who, during a polygraph exam confess to things that are then held against them.

Megan describes the way her Congressional staff colleagues had entered into limbo as, without a clearance, they lose their ability to function at the level required and eventually their jobs. Unless the government has no case, in which case limbo can be eternal.

They're kinda left in limbo. Eventually they lose their jobs because they can't perform at the level which they're assigned or graded, so their performance evaluations just basically show up as non-performing. Then after a while they're fired. Or you have people sitting in positions and doing nothing for years and years and years, because the government basically won't deal with 'em.

Laura describes the emotional, psychic and physical toll that more than a year in clearance limbo took on her and her family and home life.

Months passed. Months, with nothing, no information, no information. Months and months and months and months. So I started getting really depressed and really anxious. Seriously depressed, seriously anxious, and my husband and I started having marital issues, because he felt so, I guess, guilty, that I was having this huge problem ...which of course, it wasn't his fault...So our marriage started really just, I mean, going downhill. So we went to counseling. We both saw counselors. We both have prescriptions for anti-depressants. It was really a very, very, very tough time, and we just — I had physical symptoms, like vomiting from the stress...so I've been like under this incredible stress to the point of a nervous breakdown...Not eating, I lost so much weight. I was smoking like two packs of cigarettes a day. My husband and I didn't talk. It was just terrible. It was just terrible, terrible.

After her 17-month wait in limbo, Laura received the agency's findings and was allowed to reply to them. After more limbo, the agency had apparently used "the whole person" approach to determine the good news — her clearance would not be revoked — the bad news - the government would dock her two weeks' pay as a punitive measure.

I finally get something in writing with their findings and their recommendation or whatever. When I got this, I didn't know what to do. I had an opportunity to respond, and so I did... So I wrote this long thing — it took forever —and finally, I sent it off. Another three months of no response, and then finally in October I got notification that they were not revoking my clearance, and I was being suspended for two weeks without pay, and that they took into account at that time my 17 years of government service, my multiple details overseas, my outstanding, every year of government service, blah, blah, blah... Yeah.

Frederick describes his time in limbo as a kind of “house arrest”. He could not report to work at the Pentagon. But he had to call there every morning.

So they sent me home on administrative leave for over a year. But they didn't stop paying me. I was very happy about that. My wife was very happy about that. But, yeah, it was a pretty scary time. So...I was on administrative leave and banned from the Pentagon. And every day I had to call in to my boss and report that I was like alive. By 8:00 in the morning, I had to call in, report that I'm here. I don't know what they were thinking. But that was the rule. And so I went through with that.

David has represented clients who have been terminated as a result of personnel security clearance actions and describes the stress that ensues as the limbo drags on.

...there's more emotional trauma and frustration than getting fired through the front door. The security clearance actions drag on a lot longer than a conventional termination. I remember one GAO study that people's clearances were suspended before they got to deciding whether to revoke them or not. But for an average of three years at the Department of Defense and the Department of Energy. So that's one factor that makes it more stressful and kinda drags out the misery. But then there's the additional stress of not knowing what you're accused of. Going for years where unknown charges that have the ugliest inferences and implications about them: possible traitor, not loyal enough to even look at important information to our country's defense. And you don't know why. There's nothing you can do about it. You're twisting in the wind for years.

In these examples we see clearly what Herzfeld meant when he asserted that “time is a social weapon.”<sup>437</sup> For individuals stuck in the limbo of a personnel security clearance investigation, the bureaucracy has the power to make time stand still – but just

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<sup>437</sup> 1992:165.

for that one isolated individual. For the government and the world at large, time continues to march on in an orderly fashion. But if you are in limbo, you don't get to join in. In fact you may begin to feel isolated from the rest of the world. "Time is a crucial component in concepts of the person. By brusquely delaying action, a bureaucrat can deny the client's humanity...."<sup>438</sup>

Charles, a psychiatrist who treats cleared patients, observes that even the best and brightest CIA officers do not stand a chance against the security clearance system if they've run afoul of it - and the limbo factor sets in.

So the system is built to defeat people. So what I saw is that some of these people were true national heroes — I'm talking about CIA officers — for what they did, the personal risk they took on and the lifetime of their career until this particular moment, and then what would happen is that they would go into an Alice in Wonderland zone, namely they would no longer be qualified to go worldwide in their main job.

Charles observes the deterioration of individuals who, after having failed a polygraph, or under some other security cloud are prohibited from going overseas, which is the kiss of death for careers in the clandestine service. He notes that by alienating these individuals, and by placing them in security clearance limbo, the government ends up transforming good workers into something else.

Well, they weren't cleared...However, they were allowed to stay stateside in the job that they were occupying...So they were neither fish nor fowl. Their progression in their careers was completely halted, because they couldn't go out of the country and they couldn't get promoted for that reason...So what happened is they were thrown into a state of anger, puzzlement, resentment, bitterness, and also forced mediocrity because what's the point of working hard if a) you're not recognized; in fact, you're punished for it; b) you have no more chances for promotion. Well, fine, I'll just run the meter until my retirement. So you take a decent officer and you convert that officer through this thing into the very thing

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<sup>438</sup> 1992:165.

you didn't want to have... So it was very self-defeating on the part of the Intelligence Committee to handle it that way, but it just evolved that way as a bureaucratic stupidity.

Laura echoes many of these same feelings, although her clearance was reinstated, she remains somewhat bitter. “So anyway, they suspended me for two weeks without pay, and this caused huge turmoil for us financially... but it was like, okay, thank you. Thank you for not firing me? I don't know, it was sort of like a — I was sort of bitter about the whole thing, because it's like ... look how much time I paid for that in terms of emotional pain, whatever.”

The financial hardship experienced by many in losing a clearance cannot be overstated and it is the rare exceptional case when a clearance revocation has been successfully appealed. Such cases involve expensive legal battles that most applicants are precluded from pursuing.<sup>439</sup> (After the clearance is lost, it is particularly difficult for individuals to find employment in the national capital region. As Erwin has noted of his whistleblowing clients (that he often represents pro bono), “What’s the job market for national security professionals who lose their government jobs? Contractors? You have to have a clearance to be a contractor.”

The same Catch-22 example of Bowker and Starr’s “coloureds” in South Africa completing correspondence courses while waiting to be classified into a “white” school is evident as Erwin describes how his clients, having lost a clearance, cannot regain it even

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<sup>439</sup> Marisa Taylor at McClatchy Newspaper reported that Michael Pillsbury, a consultant, had to fight claims by CIA polygraphers that he made admissions of leaking sensitive information. Two things worked in his favor. He had the money for good lawyers and he was not a federal employee. “With the help of some of Washington’s top lawyers, Pillsbury realized he was a rare exception.” (Taylor, Marisa, “As polygraph screening flourishes, critics say oversight abandoned, McClatchy Newspapers, December 6, 2012, <http://www.mcclatchydc.com/2012/12/06/176310/as-polygraph-screening-flourishes.html#storylink=>)

if they are exonerated. The revocation appeals process takes so long to reverse that individuals no longer have the financial standing to obtain a clearance again.

That's been a big concern, the sort of financial stability as a criterion, for whistleblowers who were fired, they lost their homes. They may, two or three years later, have won their appeals and got their jobs back, but they can't get a clearance because their credit got ruined during the interim. So it's another way to circumvent conventional legal remedies and rights that are exercised successfully, because you can say, "Well, during that period before vindication, they lost the necessary financial base to be trustworthy."... And that's not just hypothetical. I've had a number of clients that have just been terrified. Their cases are still pending. We're working our heads off to reverse those terminations and get them the vindication. They say, "What difference is it gonna make? I lost my home. I went bankrupt. I'll never get a clearance again. And just by applying for a clearance, I'm gonna be worse off than having been fired, because it'll be denied."

### **Kafkaesque**

Just as Charles described the "Alice in Wonderland" that CIA workers enter when they are deemed "neither fish nor fowl", David describes the rare attributes that are required of his clients as they enter the limbo factor.

"It takes the rare exception to have stamina to stay strong during a process that typically has no deadlines, can drag on indefinitely. It's like Kafka's 'The Trial.' That's the security clearance legal system, only it's not nightmare fiction; it's the facts of life for national security professionals." He goes on to use Frederick's case as an example, noting that even with certain clearances reinstated, Frederick still cannot really get back to work.

In [Frederick's] case, it illustrates how protectoral the charges can be. In that case, the thumb drive the Marines charged him with using—they said, "We've got the serial numbers and everything. We can prove it." Then the manufacturer says, "There is not such a numbering system for our thumb drives, so we don't know what you're talking about. But it wasn't from us."...Now, luckily, the Office of Special Counsel acted based on everything surrounding the clearance,

and their legal victory against all the surrounding circumstances was so impressive that the Marines dropped the clearance action. But that leads into...It's not just the clearance. It's all the layers of security that are ancillary to the clearance. So he's got his clearance back, but he doesn't have access to the specialized compartmental information facilities, where the information is kept for him to use the clearance. He can't reach the document. If he could get there, he could read 'em. But he can't get there. And that's on indefinite delay. It could be years. It's truly Kafka's "The Trial."

Another part of the Kafkaesque nature of the system is the feeling of constant threat – of fear. Individuals are placed in a relentless state of worry that they will somehow transgress the regulations of the system and end up losing a clearance. Part of the problem is that no one seems to know, exactly and fully, what constitutes such transgressions. Gusterson found that this led to increased self-surveillance on the part of weapons scientists at Los Alamos, "For example, one scientists told me that because of signs around the laboratory warning people not to discuss classified information on the telephone, she presumed, though she did not know for sure, that calls from within the laboratory were randomly monitored."<sup>440</sup>

Laura describes her experiences with a state of worry and fear. "So my security clearance, it's always there, and one of the reasons is, of course, what exactly affects your ability to keep your clearance and how does that whole process work. The underlying thing is fear. It's fear. If I lose my job, I'm going to live under a bridge with my children. What's going to happen to us? Fear, fear, fear, fear, fear."

Laura describes her worry about being prescribed anti-depressants and the potential impact such a prescription may have on her clearance. While she does not

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<sup>440</sup> 1998:85.



understand the underlying logic behind such a practice, she has heard from colleagues that such a diagnosis is a potential threat.

Well, because of course, if you're suffering from depression and anxiety, that makes you unstable and a risk to the security of this country. Hello. How?...I have a co-worker friend, Pauley, who has suffered from depression, and he takes medications up the wazoo, but every time they're going to do that re-investigation, he just goes into this frenzy of like, this time, are they going to yank it? This time?

This fear may be partly reinforced through popular culture. In the first episode of the television series *Homeland*, Carrie Matheson, the C.I.A. agent portrayed by Claire Danes hides her mental health medications and keeps the fact that she is on medication from her government bosses. According to the *Homeland* website, “From the age of 22 she has been dealing with bipolar disorder, which is why she secretly takes an antipsychotic medication named clozapine.”<sup>441</sup>

Medication may also be a lifesaver however, for those who have lost a clearance. David, in describing the limbo effect on one of his clients, notes that physical as well as mental resilience required if one is to withstand the effects of having one's clearance revoked.

It's beyond feelings. It's physical. For example, one client, a woman ...blew the whistle. She worked at the Department of Agriculture, never had any national security duties. She blew the whistle on spending the money for emergency planning to deal with natural disasters, like Katrina and other things like that, on junkets rather than serious emergency planning work. ...She had her security clearance yanked. She was fired on the basis of having it yanked and got a good lawyer and he filed an EEO suit and got them to back off on the termination. So what they did instead, since her clearance was yanked and she wasn't trustworthy, is basically put her under professional house arrest. Reassigned her duty station to be her home and kept her there without any assignments for three years. She

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<sup>441</sup> <http://www.sho.com/sho/search?q=homeland>.

was a prisoner of her home. She would leave and they'd call. She'd be AWOL. The idea was to try and drive her crazy or something.

Another similarity between the personnel security process and Kafka's *The Trial* is that in many cases, individuals lose clearance, or are ordered into an investigation without knowing why.

In Kafka's novel, the protagonist K, is reminded by his lawyer that he must not overlook the fact that the proceedings are not public, they can be made public if the court considers it necessary, but the Law does not insist upon it. As a result, the court records, and above all the writ of indictment, ... Under these conditions the defense is naturally placed in a very unfavorable and difficult position. But that too is intentional. For the defense is not actually countenanced by the Law, but only tolerated, and there is even some controversy as to whether the relevant passages of the Law can truly be construed to include even such tolerance.<sup>442</sup>

Laura remembers trying to find out from her supervisor why she had been singled out for an investigation and interviews due to "allegations of impropriety".

I had put in for a detail for a deputy director assignment, and I was accepted and I was going to go on detail, and a week before I get an email saying, "we're sorry. You will not be able to go." No further explanation. I'm like, "okay, this is really odd"... and by the way, I had gone to XXX [another country], I had gone to XXX [another country] in the interim. So I had been on several other details...I got an email from OSI — Office of Security and Integrity —that they were going to come and interview me. With no further information. "Allegations of impropriety." Okay...I am, I'm totally, like I have no idea what they're talking about, ... One of the things during those three weeks, I went to my boss and I was like, "What's going on?" And she knew, but she couldn't tell me.

Part of the difficulties that individuals face when up against the state and the personnel security clearance process is that, while they are federal workers, they are also American citizens. And it is bewildering to find oneself at the mercy of an institution that so nullifies due process protections. Americans are used to being told that they have

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<sup>442</sup> 1983:114.

the basic right to know what charges are being levied against them. It is unnerving, for many to realize in such a manner that they have basically signed those rights away by applying for a security clearance.

In *American Prometheus*, Bird and Sherwin describe Robert Oppenheimer's feelings when he learned, from his lawyer, that he was to undergo a security re-investigation and was presented with a draft letter describing the nature of the charges against him. The lawyer also informed Oppenheimer that "the first step" of the review would be immediate suspension of his security clearance. Anne Wilson Marks remembered driving her husband and Oppenheimer to their Georgetown home, "on the way, Oppenheimer said, 'I can't believe what is happening to me.'"<sup>443</sup>

In Kafka's *Trial*, K's lawyer reminds him that,

...in general the proceedings are kept secret not only from the public but from the accused as well. Only insofar as possible of course, but to a very large extent it does prove possible. For even the accused has no access to the court records, and it's very difficult to ascertain during the interrogations which documents are involved, particularly for the defendant who after all is timid and disconcerted, and distracted by all sorts of cares.<sup>444</sup>

And indeed Bird and Sherwin demonstrate that government lawyers placed hidden microphones in Oppenheimer's lawyer's office that allowed the government, through transcripts provided, to monitor Oppenheimer's private conversations with his defense attorney. The FBI also wiretapped the telephones at Oppenheimer's home and office at Princeton. Oppenheimer and his counsel were never alerted to the fact that the

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<sup>443</sup> 2005:482.

<sup>444</sup> 1998:115.

government held (and made use of) these records during his security clearance hearing nor were they aware of their existence.<sup>445</sup>

David describes an attempt to represent one of his clients at a security clearance hearing conducted by the Department of Homeland Security.

As far as her due process rights, she had an hour hearing. She was not—they never told her what the charges were. We learned all these other things subsequently, after we went to the hearing. All we could do was sort of like give a eulogy for her. She couldn't present evidence. She couldn't present witnesses. She couldn't confront witnesses. The three people who were conducting the hearing, none of them made the decision. They were there to tape what her lawyers said, to be delivered to some other body who would never meet her. And at the end of an hour, in the middle of a sentence, they said, "Stop" and clicked the tape recorder. That was her due process.

As in Kafka's *Trial*, sometimes individuals never do find out what happened.

Charles related how he is often baffled by agencies' decisions to remove clearance from his patients. "Now, I have worked with people who had clearances for a long time and then get them removed for this or that reason. In several cases ...it's a total mystery..."

Andy worries that the Kafkaesque nature of the national security personnel security clearance system is doing damage to the nation it is set up to protect. He notes that his clearance has been reinstated several times since it was revoked for particular meetings and missions, when he was requested by the government to attend. He fears that such arbitrary removal of clearances from whistleblowers and others, will come back to haunt us. If the system holds no respect by those who live within it, what does that say

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<sup>445</sup> 1998:483. In his account of the Security Clearance hearing, "In the Matter of J. Robert Oppenheimer", Richard Polenberg makes reference to the hearing as having an outward appearance of fairness for the uninitiated, but Kafkaesque for those involved. "Yet if the 'odious courtesies,' as Kafka would have called them, were fully observed, the hearing in truth lacked fundamental elements of due process, the most egregious example being the surveillance of Oppenheimer by the FBI, which began on January 1, 1954." ("In the Matter of J. Robert Oppenheimer: The Security Clearance Hearing, Richard Polenberg, Cornell University Press, Ithaca and London, 2002: page, xviii).

about the ability of the state to maintain security safeguards? Herzfeld notes that such breakdowns in trust of bureaucratic systems can lead to a more organic approach.

“...since those in authority cannot be trusted, one must seek more intimate bases of reliance. If the state has proved unable to fashion a perfect national universe, people have grounds for seeking self-exonerating explanations of their own failures to deal with bureaucratic mismanagement.”<sup>446</sup> And it would be a shame if the government spent all the time and money that it does on the personnel security clearance system only to find that in the final analyses, people rely on other mechanisms, like the “old boy network”.

Andy explains his dismay when he found this to be the case. After losing his security clearance for embarrassing his superiors, he is still called into classified meetings within the intelligence community when his expertise is required, often obtaining an interim clearance for that purpose (or that meeting), or he must be escorted by colleagues.

It’s been very fascinating, just sitting, doing what I do. In my next meeting, I’ll be talking about nuclear weapons. It’s not like the people I deal with have any less confidence in me based on the process, which is sad. If you set up a whole mechanism for establishing the reliability of someone and it becomes a joke, then people go back to what they always do: their gut. “I know you. I trust you. Therefore, I don’t care what they say.” And that’s not the way the system should work. The system should reflect reality, not some...if you will, Seinfeldesque [sic] alternate universe that things are just completely out of sync with what really goes on.<sup>447</sup>

Brian felt that his experience with the personnel security clearance system, particularly the polygraph, had a “bizzaro” quality that also ran counter to his sense of

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<sup>446</sup> 1992:9.

<sup>447</sup> The Seinfeld reference is to the episode Bizarro Jerry, which in turn, extensively references the Bizarro (the polar opposite of Superman) that originally appeared in DC Comics. Bizarro Superman is Superman's exact opposite, who lives in the backwards Bizarro world. Up is down; down is up. He says "Hello" when he leaves, "Goodbye" when he arrives.

justice. Just as in Kafka's *In the Penal Colony*, were "Guilt is never to be doubted,"<sup>448</sup> he found himself in the uncomfortable position of having to prove a negative.

My problem isn't so much that we go through it, that we have to go through it. My displeasure is that I think it isn't done as well as it could be, and the focus is misplaced. That's my problem with the whole clearance process and obtaining clearances: the focus is misplaced. 1) There's an absolute over-reliance on the polygraph. 2) There seems to be an institutional mindset that you go into it with something wrong with you, that people who are interrogating you, "You did something, and I'm gonna find it out." And you may have done nothing, but it's incumbent upon you to prove that you're innocent ... It's a reversal of what we grow up with, what we learn: You're innocent until proven guilty. No, it's just the opposite. You're guilty until you can prove to them that you're not. You did something wrong, until you can convince them that you didn't, especially if that machine starts doing funny stuff. You are definitely guilty until you can prove that you didn't.

### **Self-Surveillance**

Foucault, in *Discipline and Punish*, outlines the evolution of scientific methodology in state control of populations. In his discussion of Bentham's Panopticon, a geometric design for prison surveillance, Foucault notes that one efficacy of the apparatus is that it inures those observed to surveillance to the extent that they begin a routine of self-surveillance, thus doing away with the need for actual state power and control over individuals who are essentially taught to police themselves.

The efficiency of power, its constraining force have, in a sense, passed over to the other side – to the side of its surface of application. He who is subjected to a field of visibility, and who knows it, assumes responsibility for the constraints of power; he makes them play spontaneously upon himself; he inscribes in himself the power relation in which he simultaneously plays both roles; he becomes the principle of his own subjection.<sup>449</sup>

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<sup>448</sup> 1971:145.

<sup>449</sup> 1977:203.

Frederick finds that surveillance from the government has changed the way that he looks at himself. He has begun to mirror the expectations of the personnel clearance system in his own self – assessments. While he admits the process of self-surveillance is “painful” he ultimately believes it beneficial.

What is wonderful about clearances and polygraphs and everything else is you have to painfully look in the mirror... You have to painfully look in the mirror all the time. And, you know, that is healthy for any human being. And, sure, you end up living in a fishbowl, right? But you know what? I'm convinced you end up living a better life in many respects. You can't have a concealed life. It's very difficult to do. That's good. That's a good thing. So, in other words, the fishbowl does make you weigh your decisions very carefully, but, in the end, I think it leads to better people. ...I assume now, because I've been investigated so many times... But I'm assuming at all times that my personal email and my phone are monitored... I mean, this is an assumption, and it's a good assumption to go through life with...if they wanna hear my dirty laundry business on the phone, that's fine. But it doesn't bother me. All I know is that there's no place to run. There's no place to hide and have hidden conversations. And it kinda feels good because...it just does. I don't know. That's been the way I've come to look at the world. By having nowhere to go and hide, it kind of stifles mischief in me, if you know what I mean. And I'm just saying, because I'm human, human nature, etc., etc. So something about the fishbowl that's okay... It's a very positive thing. It's not necessarily... I believe—this is more of a technology thing, but I believe the issue of privacy—you can forget about it. And don't try and hang onto it. You see how the society is desperately trying to hold onto privacy...It's gone.

Karl is an administrator at a Defense Agency. He also believes that the system's constant surveillance is helpful in keeping his own behavior in check.

I think that I've been here long enough in my life, I personally believe that it's not the expectation that the system would fail me at this point; it would be me, for whatever reason, not upholding my responsibilities or accountability to the system in that way. It would really be delightful to think that everything that happens would be, somebody made me do it, but I don't believe the devil can make you do it or whatever else. So if you're in a place and you're alone and you're in the wrong situation and you just happen to be there and you don't have people around you to help you or dissuade you or let you know you're crazy if you do something, it's easy to do it. So it's sometimes better not to have the availability to get into mischief; it kind of withstrains [Karl's word] us. So I know better now—because I don't believe there's anything that's beyond any human being's ability to do

under the right circumstances or conditions. We'd all like to think we're impervious to that, but my faith tradition tells me this and I know of myself, sometimes it's just you're better off not being—you look up to an athlete who has exposure or a movie star or something like that: They just have options that I personally don't. I'm really grateful that I don't, because I don't trust myself under those conditions.

Laura was unsure of the rules when it came to discussing her security clearance problem with her mental health professional.

...throughout this entire process, my feeling of isolation was so extreme and when I sought help for my depression, I couldn't even tell — that's how so engrained it is in me to not talk about that I didn't even fully divulge to my therapist exactly what — other than I'm having this huge problem at work — so I was still censoring myself, despite everything.

The awareness of government surveillance on individual backgrounds and activities also pervades those who aspire to, but do not yet, work for the government.

Kerry, a staff advisor to a congressional committee finds that his potential choice of a government career curtailed his actions and behavior even prior to application.

I think there was some deterrent effect in knowing that adverse things showing up on your record could potentially jeopardize your ability to get a clearance. I will say that there were a lot of things I didn't do in school, knowing that this was a potential path for me and that I was thinking about government service and so didn't wanna ruin the opportunity by having some type of blemish on my record that might prevent getting employment here.

Kerry does not say specifically which activities he curtailed in his youth. He may have declined to smoke pot at a party, for example, in anticipation of a polygraph exams or other questioning around illegal drug use. But as Gusterson has observed, the self-



surveillance that individuals experience around clearance can negatively impact one's sense of political agency and civic freedoms.<sup>450</sup>

In a discussion of the Obama administration's insider threat guidance to agencies and personnel to police each other, Ron is optimistic that the new policy of peer surveillance may serve as a deterrent to leaking classified information. Though he notes that such policies are in no way foolproof.

And I actually think that's one of the areas where the reform has helped some, is this idea that you don't just go through the process once every five or ten years and then nobody bothers you again until it's time for your next investigation. And the idea that someone is kinda looking over your shoulder all of the time, or the potential to have someone looking over your shoulder all the time, I think is much more of a—has the potential to be more of a deterrent effect. Though, that being said, again, you can look back at these other examples, like Ames and Hanson...

Laura had her clearance revoked and later reinstated. Now, even though she is no longer in a cleared position, she “self-polices.” “It is just paranoia that's engrained in you. I mean, honestly, I don't even have a clearance right now, because the position that I occupy right now doesn't require a clearance, but I'm my own clearance police. I have not changed how I behave about my job. I'm still, like I don't talk about it. Frankly, what I do is dry as toast.”

Like Kerry, Laura is thinking of future government work when she coaches her daughter in the art of “self-policing”

My daughter...I've basically molded her into being a government employee with this whole thing of like, “Be careful what you say, be careful what you do.”... she actually did an internship with the government, and I'm pretty sure at some point

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<sup>450</sup> Gusterson found that internalized surveillance had a chilling effect on laboratory employees signing petitions. “In one example, An older scientist who tried to circulate a petition protesting new drug-testing rules found many younger scientists sympathetic but too nervous to sign” because they feared their clearance may be revoked.1998:86.

she'll wind up working for the government because this is what she knows...and she totally gets it. Like you don't talk about stuff, you don't do stuff... She has grown up that way... it's just engrained. I'm not paranoid, I always monitor. The reason I got on Facebook was to monitor what my daughter was doing when she first went on Facebook, and guide her to the best of my ability through that process. So occasionally, she would post some rant about somebody, and I'd be like "Nope. Gotta go, because if you ever want to work for the government, this can come back and haunt you." So I've taught her that self-policing of what you can — or what you should, not can — but what you should or should not post on Facebook, or any other media basically. So like I said, she knows she's being — she's been molded to be a government employee.

The implications of Laura's policing her daughter's behaviors, for example monitoring and coaching her on her Facebook activities with an eye toward future government employment, is disturbing. Not because she wants her daughter to have a clean record, should she opt to apply for the federal service, but rather because she is exhibiting the same behavior that was turned against her. To police her daughter, the way she was policed by the security clearance apparatus, indicates that she is replicating a cycle of repression. Remember, according to Laura's description of her experience with the security clearance system, it was frightening, humiliating and painful. One cannot imagine a parent wanting that experience for a child. So Laura's preventative strike against her daughter's autonomy can be seen as an attempt to spare her from that pain in the future. Laura exhibits a kind of fatalistic acceptance that her daughter will fall naturally under surveillance, should she choose government service. And that since such surveillance is inevitable, better to learn to live with it than to run afoul of the personnel security clearance system.

## Family

Government workers are also family members. In most cases a loss of security impacts the entire family. Priest and Arkin have noted that the benefits and sacrifices enjoyed and endured by government workers “spawn a tendency for the cleared not only to marry the cleared but to live around others with comparable restraints, gathered in neighborhoods populated by people like themselves in a version of a traditional military town.”<sup>451</sup>

One can understand the proclivity for the cleared to marry the cleared particularly in light of what may happen to those who run afoul of adjudicative Guideline B: Foreign Influence and Guideline C: Foreign Preference. David gave an example earlier in this chapter of a Marine who lost his clearance for marrying an American citizen, but one from the wrong country. This poses a particularly grim problem for clearance holders.

Herzfeld and others have explained that nation states must develop a certain amount of nationalism in order for bureaucracies to function within them. In many instances, uniting the citizenry against the Other with allusions to family and blood ties to the state is effective, for example in “Mother Russia” or in Germany’s, “Fatherland”. The American dilemma is that we are a nation of immigrants. So the best we can muster is a “Homeland”. And as we have observed, the perceived national security threats to the United States embodied by foreign Others can change with the wind. Marrying a German on the verge of WWI would be disastrous for a clearance holder at the time (if they had clearance regulations similar to today’s). By marrying a Japanese American in

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<sup>451</sup> 2011:159.

WW II, one could lose one's clearance and be relocated to an internment camp.<sup>452</sup>

Marrying a Russian American during the Cold War may have been perilous. Even, as my own experience and that of many others has shown that immigrants from the former Soviet Union were and are among the most fiercely patriotic (if not jingoistic) U.S. citizens.<sup>453</sup> As the climate of threats continues to shift, how is one to know which foreign Other will be identified next?

All of this ambiguity leads to a “better safe than sorry” default position for clearance holders. Marry another clearance holder. Yet this circular logic does not work. Just as one can lose a clearance for marrying a security threat – one can lose one's clearance for being a security threat. Without lifting a finger, one can turn into the Other.

Jill, who held a security clearance, describes some of the concerns her family had after her husband, who also worked for the government, lost his clearance. Jill's husband was an XXX-American who lost his clearance during a routine polygraph exam. As explained to him by the agency that later dismissed him, the problem was not that he was of XXX decent but rather surrounded a trip he took to East Germany while stationed, by the US. Government in West Germany, prior to German unification. The loss of clearance, and subsequently his job, left the couple unsure about how or if the incident would impact their children's future chance to enter government service. As in Laura's case, the parents are happy that their children have chosen federal service jobs, even

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<sup>452</sup> Japanese Americans were released from camps at the end of the war, unlike interned German Americans who, according to novelist, Amy Bloom, Truman worried would blend in with “normal” Americans so he did not release the last German Americans from U.S. internment camps until 1947!

<sup>453</sup> As a child my sister and I played with children from a Latvian family on our street who had immigrated the United States fleeing Soviet oppression. They hung an American flag in the yard and constantly reminded us how lucky we were to live in America where we were free.

though they feel they have suffered at the hands of the personnel security clearance system.

When we were debating about what to do about this when this was all happening... We have one kid—well, two kids in JROTC. One wound up going into the military. And it was like, you know, would this...? There were unknowns. Is this going to affect their opportunities? And that was scary. So we talked about it as a family, ...But that was potentially affecting their futures as well, so they had to buy into...you know, they believed in their dad, and they said, okay, we're sticking by you. But even with the risk of it affecting their lives and their career choices and what they wanted to do. So it was a bunch of unknowns. But daughter No. 2 has since received a secret security clearance, so that's a good thing.

Laura describes the financial and emotional effect that losing her clearance has on her home life.

My husband and I almost got a divorce over it. That's because he wound up having an affair after this whole thing was over, because I was so traumatized and so bitter about the whole thing, and then that two weeks without pay, it happened to coincide ...that there was a period of overtime available, which there never is. So because that was such a huge hit to us — because we're not exactly rolling in money, we're okay — but two weeks of no pay, when I'm the primary breadwinner, is huge. So I wound up working a lot of overtime to make up for that time, and it was just — so he wound up having an affair. ... So we were separated for like a good three or four months, where he was not living in the house, was off with that woman.

Laura also conveyed the sad story of a colleague who stayed in an abusive marriage because she was afraid of losing a clearance.

I had one co-worker who was in this terrible, terrible, terrible marriage, and she could not, would not, leave because she ... was going to wind up filing for bankruptcy, and she was afraid she was going to lose her job. So she stayed with this man...because she was afraid. I talked to her years and years about it, and — this is a long-term thing — finally she decided to leave him. She still has her job, so I don't know what happened, but can you imagine? You stay, like, somebody's who's just downright abusive, and you stay because of your job? I don't think anybody should be put in a situation of such sacrifice for something that we don't even understand.

It is unclear whether Laura's friend would have lost her clearance for leaving her abusive husband. But is clear that security clearances are used by abusive husbands to intimidate wives. Caitlin Gibson reporting for *The Washington Post* interviewed domestic violence victims' advocates some of whom were new to Northern Virginia and the personnel security clearance system,

“Right away, I noticed that I had victims with abusers who worked for the Department of Defense, for intelligence agencies, who were high-ranking in the military, all of whom had security clearances...I had to learn new ways of safety planning for them.” Another counselor reported hearing “over and over again about an abuser telling the woman, ‘If you report this, I will lose my clearance.’ And given what the environment is now, that's not an idle threat...Is he saying that to manipulate her? Yes. But he is also describing accurately what will happen if she has a valid complaint.” According to Gibson, federal agencies are taking more seriously a history of domestic violence among cleared workers that, according to her sources, has noticeably increased in cases where domestic violence constitutes grounds to revoke or deny a clearance, “That shift is reflected in the paperwork required to obtain a clearance... Just a few years ago, the government's questionnaire for security clearances did not ask about domestic violence in the section devoted to criminal history. But the form was updated in 2010 and now requires applicants to specify whether any prior arrests involved domestic violence, and to disclose whether a domestic violence protective order has ever been entered against them.”

Gibson describes the domestic abuse counselor's adjusting to work with victims of domestic abuse in the national capital area. “When the woman...talked about her husband's work, ‘it was James Bond kind of stuff...Things I'd never heard except in movies. But after talking more with her, I understood why she felt how she did. She was smart. She understood what he had access to and what he was capable of.’”<sup>454</sup>

Domestic violence counselors, new to the National Capital Area, may be surprised by the cloak and dagger world that their clients inhabit, but they do not

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<sup>454</sup> “Spouses' classified access keeps abuse victims quiet”, By Caitlin Gibson  
The Washington Post, May 19, 2014.

underestimate the extent to which wives and girlfriends fear the power, granted through a security clearance and access to classified information, afforded their partners. For example, Siobhan Gorman writing for *The Wall Street Journal* reports that National Security Agency officers on several occasions “have channeled their agency’s enormous eavesdropping power to spy on love interests.”<sup>455</sup> Ryan Gallagher, reporting for *Slate*, details some of these encounters,

One spy entered six email addresses used by an American ex-girlfriend into a surveillance system on the first day he gained access to it. He later claimed he had done so because he “wanted to practice” how to use the snooping technology. Another NSA spy monitored the phone calls of his foreign girlfriend for a month, claiming that he wanted to discover whether she was involved with any local government officials or any other activity that might get him in trouble. The worst punishment that was handed out in any of these cases was a reduction in pay for two months, a reduction in grade, and access to classified information being revoked.<sup>456</sup>

Gallagher’s evident disappointment is that the worst punishment meted out by the NSA for these offenders was “access to classified information being revoked”. What we know from this study, that Gallagher does not, is that losing clearance is the beginning of the end for these formerly cleared workers. They cannot function at the NSA without clearance and it is surely a matter of time before that becomes evident, if not to Gallagher and the outside world, then at least to those errant spies and their families.

### **Resilience, Dissent and Disruption**

Ferguson posits that, “The ideology of bourgeois society claims that the greatest reward for individuals are material rewards, that material in private life is in fact a refuge

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<sup>455</sup> “NSA Officers Spy on Love Interests”, By Siobhan Gorman, *The Wall Street Journal*, Aug 23, 2013.

<sup>456</sup> “How NSA Spies Abused Their Powers to Snoop on Girlfriends, Lovers, and First Dates”, By Ryan Gallagher, *Slate*, Sept. 27 2013.

from the requirements of public life.” Furthermore that “The tendency is amplified even further as bureaucratization intensifies, because the routinization of work and the absence of avenues of participation and self-expression in bureaucracy further encourage individuals to seek refuge in off-work satisfactions. And that “By extending and refining the objectification and commodification of life, the bureaucratization of the family and personal life siphons both work-related discontent and potential disruptive personal needs and desires into channels that are harmless to the administrative and capitalist hegemony.”<sup>457</sup>

Fergusson also notes, “The maintenance of bureaucracy is an ongoing process that must be constantly attended to; its modes of domination must be reproduced and the opposition it generates must be located and suppressed.”<sup>458</sup>

But there are modes of opposition to the modes of domination exhibited in the personnel security clearance process that emerge from time to time.

One Avenue of disruption occurs when individuals create communities to combat the sense of isolation that losing a clearance induces. One such act of disruption is carried out by the Concerned Foreign Service Officers (CFSO).

According to their website, CFSO

is a group of current and former Foreign Service and Civil Service employees of the U.S. Department of State, created to investigate, document and expose alleged misuse of the security clearance process by the State Department's Diplomatic Security Service (DSS). CFSO's concern is the possibility that the clearance process can be used to circumvent Federal personnel regulations, to bypass equal employment opportunity laws and to punish dissenters and whistle blowers within the agency. The group investigates and documents allegations of improper and

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<sup>457</sup> 1984:52.

<sup>458</sup> 1984:7.



coercive interview techniques, fraudulent statements in investigative reports, suppression or destruction of evidence, improper seizure of personal property, misapplication of security regulations and similar allegations in relation to DSS cases. The group considers that such acts threaten the national security of the United States by reducing the reliability and integrity of DSS operations and by inhibiting the expression of dissenting views within the Foreign Service.

Another way to challenge the system is to chronicle and publish one's experiences. Andy wrote a book about his experiences that ended up on the New York Times best-seller list. After the book was published, and despite the fact that Andy had submitted the text for Pentagon review and had been approved, the Pentagon claimed that Andy had revealed classified information and ordered all the copies from local bookstores destroyed. In addition, the Defense Department threatened Andy and his publisher with legal action. This act generated attention and interest in the book, thus infuriating the Defense Department and enriching Andy. After re-submitting the book to Pentagon sensors, Andy's publisher's came out with a revised, redacted version titillating new readers and rendering the original copy a collector's item. Ironically, he determined that the more punitive the measures that the bureaucracy used to suppress him, the better it was for his book sales.

This is the grand irony. You can put this in your report if you want. The one thing that is most difficult for a clandestine operative to have is legitimacy, is for the government to say, "Yeah, he was really clandestine." It's like, ... You've taken a deep-cover operative who did a lot of stuff... and you've given him legitimacy. Because if I went to a publisher and said, "I did all this." Like, "Oh yeah, sure you did." ... So it's great for sales. It's great. They couldn't have helped me more by making me their enemy. It's like, "Yeah, he's our enemy. We hate him because he rebelled against us." It's like, "Oh, thank you. So you've admitted that I was an operative? Thank you for admitting that." So it's kinda like every time they do something—like the book, by the way they did it, they made people wanna read it more. They made it a bestseller. We warned 'em every step, "You don't wanna do it this way. It's gonna have the..." They didn't listen 'cause they were so wanting to make me suffer. They wanted to make it

punitive. And it's kinda like, "Okay. Throw me in that briar patch." And that's what they did. They gave me legitimacy, where if they had just said, "We don't know who this guy is. We don't know why he's doing this. Yeah, he had a clearance at one point in time, but a lot of people have clearances." They completely misinterpreted by just being so, "Oh yeah, he's bad. He's really, really bad. He's so bad we can't let you see what's in his book..." And then leadership backed 'em up. The leadership should've said, "Stop this. This is just insane." Instead, they backed up their bureaucrats and then they doubled down on stupid and it's gotten worse. It's kind of like they helped make me who I am by being so mean about it. So I just take it in stride.

Andy's experience points to the possibility that the personnel security clearance system and the national security state may be largely to blame for many of its own crises. And how the state's misdeeds are concealed behind the finger pointing and demonization of individuals within the system. When everyone is looking at the bad guy who has had his clearance removed, nobody is looking at the bad system that granted and then took it.

Sadly, best-selling authors are the exception to the rule when it comes to losing a security clearance. Most individuals who lose a clearance lose friends and livelihoods. They experience isolation, depression and family upheavals that can last forever.

Jill is still a government supervisor, but is now reluctant to recommend government service to young people after her husband lost his clearance.

And how do you even bring new people into that process when it's so, I mean, it can destroy your life? ...And you want to be able to say it's a just and fair process, and everything is going to be okay. Because they're going to put their whole lives on the line, saying, okay, take a look at me, this is what I want to do. But if the look is taken and the rejection is made, they've lost everything. That was one of the hardest things for me... being able to be continually supportive of the process... as we're still living the victimization of what it cost us.

Laura, in summing up her experience of losing her clearance, echoes many interviewees' experiences and feelings about the need to improve the system.

And I love my job, and I love the government. That's one of the things that, I guess, that hurt me so much about this whole thing. I mean, I'm like the last person that would ever do anything to hurt this country or my government, but they treated me like a criminal. And despite all of that, I'm still rah, rah. I think people like me just go quietly off into the sunset and never complain, never do anything. I would never dream of doing anything that would cause anybody harm. I have no respect for people like Manning and Snowden and all those people, because to me there's some sort of element of ego, and it's not — whatever they may think that they're saving the United States from, the damage that they cause is so much greater... They do need to have a system in place that is more transparent, and I think that would make it easier to ferret out your Snowden's and your Manning's and all those people. The way their system is set up now, unnecessarily and unfairly targets people who've not really done anything in the overall scheme of things that will harm the security of this country, but they're so focused on those, they divert their resources to that, instead of dealing with their problems that are right in front of them. No one like Snowden should have access to so much information. No one. So that's it. That's my story.

### **Thoughts on Puritanism**

Weber argues that ascetic Protestantism was one of the major "elective affinities" in determining the rise of capitalism, bureaucracy and the nation state.<sup>459</sup> Shils points to puritanical origins in the personnel security screening process and its disdain for privacy as a phenomenon of religious revivalism where "privacy is waywardness...and waywardness is wickedness."<sup>460</sup> Moynihan notes Senator McCarthy's use of religious terminology via his quest to "purge" the government of communist infiltration and spies via the House Un-American Activities Committee hearings.<sup>461</sup>

The binary nature of relationships of western puritan thought - good/evil, truth/lie, with us/against us - in the security clearance process and in the imaginations of those who monitor and are monitored by the system, is worth exploring.

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<sup>459</sup> 1930.

<sup>460</sup> 1956:207.

<sup>461</sup> 1998.

Weber, in *The Protestant Ethic and the Spirit of Capitalism*, examines the writings of Benjamin Franklin to demonstrate how Puritanism became entwined with the virtue of labor. Weber says Franklin's Calvinist father was responsible for many of Franklin's ideas, among them that of a "calling" to a given profession.

Benjamin Franklin himself, although he was a colourless deist, answers in his autobiography with a quotation from the bible, which his strict Calvinist father drummed into him again and again in his youth; "seest thou a man diligent in his business? He shall stand before kings" (Prov. Xxii. 29). The earning of money within the modern economic order is, so long as it is done legally, the result and the expression of virtue and proficiency in a calling....<sup>462</sup>

Jill describes what her husband felt when he lost his clearance. That he had lost what he had been "called" to do.

It was everything that he had ever worked for, everything he ever believed in. To him—and I think he told you this, too—he considered what he was doing a calling. And to be denied that is just to change your whole person. That's who he was through and through and through and through. And so to have all that invalidated, or not believed, or...was hideous as a human being.

Herzfeld explains that the link between religion and Western bureaucracies is an unavoidable and natural way for those within the system to help perpetuate it.

It treats rationality as distinct from belief, yet demands an unquestioning faith not radically different from that exacted by some religions. Even critics of the state bureaucracy implicitly accept its idealized self-presentation. The nation-state represents perfect order; only the human actors are flawed. This has all the marks of a religious doctrine.<sup>463</sup>

Many interviewees described the way that they were meant to feel "bad" during security investigations and "good" once the process was finished. Erwin describes his experience with the system, and particularly the polygraph exam, as a "cleansing".

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<sup>462</sup> 1930:19.

<sup>463</sup> 1992:17.

It seems that there's almost a mindset that the degree to which we can make it difficult and egregious and unpleasant is commensurate with how successful we feel we've cleared you. When I was in the Army, you could do things a couple ways. You could do things the easy way, or you could do things the hard way. And there was almost a tendency to do them the hard way because by doing it the hard way, somehow you were better afterward. By doing things the hard way, you could walk this way, or you could walk through the rough and difficult terrain. Rather than take the easy path, we always took the hard path, I guess with the mindset that at the end of that path, you will be a better soldier. I think we also—it was my personal experience that there's a mindset that if we can make the clearance process as unpleasant as possible, in the end, we will have a better person. We'll have done our job better... When you first clear the person, if you make it as difficult and unpleasant as possible, the end product is a person who you feel pretty good about. You feel like you have done your job well if it's lengthy and fairly unpleasant.

But somehow...at the end of this lengthy clearance process, you're cleaner. You're cleaner for having gone through this...There's an unconscious belief that the more unpleasant you make it, the more likely somebody is to come out and say something that they did—and there might be some truth to that. But there's also this mindset that that is the right and proper way of doing it, because somehow, at the end of it, you have a cleaner person...You have helped forge them by having put them through the process. You have contributed to making that person better at whatever it is that they're going to do in the future. That was just my impression. It just seemed harder than it had to be. It seemed more difficult than it had to be, and sometimes more difficult than reasonable. All with the mindset that if we do it completely thoroughly, if we give them the Spanish Inquisition, at the end, they're so clean that we can go for however many years before we do them again, before we cleanse them again. You're through the cleansing process, and then you're clean. And years can pass before you have to be cleansed again.

But, as many interviewees pointed out, it is impossible to corral human beings into the “good” and “bad” categories that, while changing with political whims and historical factors and norms, are nevertheless required by the personnel security clearance process.

Changing political whims and historical factors are noted in Richard Gid Powers' introduction to Moynihan's Book, *Secrecy*.

Moynihan and Shils both noticed how official secrecy during the Cold War took on overtones of ritual, that is, a performance intended to demonstrate who was in and who was out, who could be trusted and who could not – in other words, who should have the power and who should be powerless. In the beginning the struggle had been along ethnic lines, and the fear was of German Americans and their possible disloyalty; then the fight took on an ideological dimension, as Soviet Russia's American sympathizers were suspected of even more dangerous disloyalties.<sup>464</sup>

And we can trace the evolving threat post-terrorist attacks of 2001 in the United States and ensuing wars in Iraq and Afghanistan, through the current obsessions with “the insider threat” spurred by examples like Edward Snowden and Chelsea Manning. It is hard for the personnel security clearance system to keep up with current and evolving threats and forge new binaries of good and bad to go with them.

In addition, as William, an attorney who specializes in whistleblower cases, acknowledges the “good” “bad” binary doesn't work when it comes to human beings. There are too many grey areas.

You know, I... I actually don't care for the term whistleblower because it is a loaded word, it seems to me. When somebody says I am a whistleblower, they're saying what I revealed is injustice, and the people I revealed it on are the people who committed the injustice. And I want to be persuaded. I don't want to be beat over the head with it. So tell me you have something to disclose and I'll look at it, but if you tell me you're a whistleblower, you're already telling me that you're right and the other guy's wrong. And I rebel against that sort of heavy-handedness. I resist it because it is a loaded term. Now, it doesn't mean it's never appropriate. There are people who have taken profound risks as acts of conscience to expose wrongdoing. And in fairness, the term is recognized in law. The Whistleblower Protection Act uses the term whistleblower, so the term is recognized. But exactly who qualifies and what does it mean is a little bit complicated. I think one can be a whistleblower and still have engaged in wrongdoing. One can be a whistleblower and violate a nondisclosure agreement. One can be a whistleblower and still be kind of a bad guy. Life is complicated. So if you acknowledge all of those nuances, then it's possible to have a

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<sup>464</sup> 1998:18.

conversation. If it's a bid for "look at me, I'm a hero," then that creates skepticism in me...

As William notes, there are nuances in human behavior that are complex. There are shades of grey in individual behaviors just as there are in the behavior of the state. Yet, aside from Congressional oversight, there is little motivation, on behalf of the state, to interrogate itself as thoroughly as it does those who run afoul of the system.

Nor can the government expect help from the academic realm of public administration. Academics are bureaucrats themselves, as Ferguson reminds us "The literature of public administration is theoretically impoverished, politically dangerous, and, all too frequently, morally bankrupt...Authors habitually and endlessly discuss the merits of different administrative ratios...how best to control people; no one argues against control itself."<sup>465</sup>

The binary between good and bad obfuscates the polymorphous dangers posed by spies and leakers. And it leaves unexamined the ways the bureaucracy, focused on the national security state and the personnel security clearance system, has exacerbated those dangers through ineptitude, negligence, malice, prejudice, and magical thinking.

### **Summary**

In my discussions with participants in the national security personnel security clearance system, there is near unanimous support for the need for a personnel security clearance system along with the understanding that the current system is flawed.

Interviewees cited problems with the components of the system including interviews, investigations, polygraph exams and IT systems noting that such techniques

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<sup>465</sup> 1984:81.

have the unintended consequences of providing access to classified information to leakers and spies while severing other, more loyal, employees from productive service.

Bok and others have noticed that, as government relies more and more on industry-generated information...rather than on independent sources of evaluation, corporate secrecy, with all its drawbacks to democracy, is likely to spread. Recent forays into technological fixes to the complexities of the personnel security clearance process have delivered problems of their own.

Interviewees are individuals and family members. They described how losing a clearance makes one feel in terms of identity, often citing feelings of isolation and depression as concurrent with the loss of a clearance. In the clearance process, the government holds all the cards. The power imbalance between state and individual is at times so extreme as to leave one suspended in time – left in limbo. It is the rare individual who runs afoul of the personnel security clearance system and emerges unscathed.

Weber and subsequent scholars have pointed to the role of a Puritan ethos and terminology in the composition of the national security state. The binary between good and evil that such discourse promotes both obfuscates the many dangers posed by spies and leakers and leaves unexamined the ways the personnel security clearance system has exacerbated those dangers through ineptitude, negligence, and malice. These features are exhibited in the Kafkaesque experiences of individuals and exploits of a bureaucracy that demonstrate clearly the dominance of the state over individual workers.



Only rarely do leaders attempt to stand up for subordinates who run afoul of the system. But when they do, careers can be saved. As Shils reminds us, “since lunacy cannot be entirely eliminated, those who share responsibility for conducting our affairs must not form alliances with it.”<sup>466</sup>

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<sup>466</sup> 1956:15.

## **CHAPTER 5. SUMMARY AND RECOMMENDATIONS**

This study has critically examined the Personnel Security Clearance System, the process by which the federal government incorporates individuals into secret national security work. Through interviews with individuals who have experienced the system, and at times, the system's deformities, I explored what happens when a system built to create and maintain a rational balance of secrecy, turns irrational. I have also looked at ways that systems of security may promote insecurity. And how the state, through its treatment of some individuals in the personnel security clearance system, may be working against its own best interests. By doing so, I have further illuminated the power relationship between individuals and the state—through the voices of the system's participants.

I began with a survey of literature surrounding the state and its secrets, noting that previous scholars have observed, as I have during my research, the tendency of national security bureaucracies to outgrow their scale of need and the way reasonable security measures can slide into paranoia.

The study included a brief history of perceived national security threats in the United States and how the civil service grew to address them. I have explained how national security priorities, as derived through perceived threats and articulated in the documents and sentiments of presidential administrations, have evolved showing that, at

time, specific groups of Americans, including federal workers, have been perceived as threats to national security. I outlined the processes by which individuals are inducted into national security jobs, noting that many facets of that process are flawed.

Those interviewed for this study supported some type of personnel security clearance process, even if the current system is flawed. Indeed much of the clearance process has proven to be flawed. Investigators are at times overworked, negligent or fraudulent.<sup>467</sup> Databases, designed to “connect the dots” by monitoring and flagging risks, are promised, but yet to materialize. Methodologies to accurately assess and identify personality types that are predisposed to disseat or subterfuge are crude at best. The scientific basis for the existing tools used in the process like the polygraph has been discredited. Random drug testing, while more scientifically sound, can also be inaccurate. There is no rigorously scientific way to determine which federal workers are risks to the state. There is no diagnostic tool, as with medical science and disease. Though in many ways, it seems that is what the people in the personnel security clearance system are striving for.

One reason that the system remains flawed is that, in the end, the clearance system is one that processes people. And no two people are alike. So the process that will consistently and accurately evaluate and monitor every applicant and/or employee’s behavior and predilections remains elusive. The flaws noted in the system can lead to

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<sup>467</sup> The Department of Justice alleges that the a major federal contractor, USIS, “flushed” or did not complete 665,000 background investigations used for granting clearances. “Another blow for USIS as GAO rules for competitor,” Christian Davenport, Washington Post, October 21, 2014.

capriciousness. The system can be abused by those in power, who retaliate against employees that have embarrassed the bureaucracy they serve.

The allegiance to the state by those who serve it is strong. But questions remain as to whether this allegiance consists of a fatal attraction. The composition of the state served is rarely, if ever, examined by federal workers. And the allegiance demanded is virtually blind. Most federal workers are resigned to follow the dictates of their responsibilities to the state. But when running afoul of the personnel security clearance system, they are surprised by the punitive nature of the bureaucracy they encounter. I suggest, as have others,<sup>468</sup> that the punitive elements of the security clearance processes may be rooted in, among other historical and cultural origins, the Puritan ethic transplanted within the United States with its inception.

While I have never lost a clearance, I have, over my 23-year federal career, experienced the power and weight of bureaucratic wrath. And it is not pretty.<sup>469</sup> Such encounters always leave a residue of bitterness. I argue that the punitive nature of bureaucratic retaliation towards those who have sworn to defend it negatively impacts the

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<sup>468</sup> Weber argues that ascetic Protestantism was one of the major "elective affinities" in determining the rise of capitalism, bureaucracy and the nation state (1930). Shils points to puritanical origins in the personnel security screening process and its disdain for privacy as a phenomenon of religious revivalism where "privacy is waywardness...and waywardness is wickedness" (1956:207). Shills, in his search for the roots of McCarthyism and its covalent hysteria in America, came to the conclusion that we are predisposed to such mean-spirited behaviors by a "nativist tradition" that has been with us since the founding of the country.

<sup>469</sup> Once, while serving as spokesperson for a Defense Agency, I embarrassed my boss by confirming, for a journalist (what I then thought to be true at the time, but turned out not to be) facts in a government publication. My boss's response, "I want you out of your office by noon" was, (I found out later), not unusual for her, but it left me quite anxious. I was removed from my office, moved to a smaller one, (though not exactly a closet) and told to look for a new job. My boss also tried to demote me, but fortunately I moved to another Defense Agency before that happened. For more see "U.S. Warns About Canadian Spy Coins, By Ted Bridis, The Associated Press, Thursday, January 11, 2007). Also Scott McClellan's book "What Happened" describes the predicament that spokespeople face while briefing the press with (intentionally) limited knowledge of government wrongdoing. He was the longest-serving press secretary under George W. Bush, so he knows well how that feels.

very ethos the state needs to maintain it. So by using such measures, the state is actually working against itself. Every year the Office of Personnel and Management conducts an employee moral survey of federal employees. The 2013 report noted that the way employees are treated, in addition to factors such as “an unprecedented pay freeze, automatic reductions from sequester which included furloughs for hundreds of thousands of employees,” is an important element in recruiting and maintaining talent.<sup>470</sup>

Carroll has noted, a bureaucracy in the form of the national security state is “constitutionally hostile to human beings.”<sup>471</sup> And Weber reminds us that behind all authority lies the threat of violence. And the rules and policies that govern the personnel security clearance system were developed in and around wartime concerns. So the system remains infused with a culture that may contribute to its failures—to its own worst fears.

Durkheim<sup>472</sup> reminds us (and we do need reminding) that the state is made up of people—of citizens yes, but also of leaders (the government). He sees the relationship between governors and the governed as a moral obligation or compact. Security

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<sup>470</sup> Friday, November 08, 2013, OPM Press Releases 2013 Federal Employee Viewpoint Survey Governmentwide Results.

<sup>471</sup> “‘For we are not contending against flesh and blood’ Paul wrote in his letter... ‘but against the principalities, against the powers, against the world rulers of this present darkness’. These are not fallen angels, and they are not individual villains. They are ‘sovereignties’, in his word, and the thing to understand about them is that they are constitutionally hostile to human beings.” Carroll further notes that “Scholars tell us [Paul] is surely thinking of the Roman tyrants and the crushing force of an uncaring imperial bureaucracy, but he is pointing to something about the human condition.” (Carroll, James, *House of War: The Pentagon and the Disastrous Rise of American Power*, Houghton Mifflin Company, Boston, New York, 2006, page 306).

<sup>472</sup> Durkheim’s major works include *The Division of Labour in Society* (1893). *The Rules of Sociological Method* (1895), and a monograph, *Suicide* (1897), studying rates of suicide in Catholic and Protestant populations. But for the purposes of this dissertation, I found most useful the books by Anthony Giddens on Durkheim that include “Durkheim in Politics and the State, (Stanford University Press, Stanford, 1986) and “Emile Durkheim: Selected Writings” (Cambridge University Press, 1972).

clearance holders know that their allegiance is to the state. But what do they expect in return? A representative Democracy should produce a strong state. And a strong state should guard its secrets, yes, but not at the needless expenditure of careers and morale of those who serve it. The state should be mindful of what Durkheim terms its civil morals.<sup>473</sup> “This being granted, the principal duties under civic morals are obviously those the citizen has toward the State and, conversely, those the State owes the individual.”<sup>474</sup>

From time to time<sup>475</sup> individuals are called upon by the state to study and make recommendations to improve the way security clearances are allocated and administered. Based on my research, I offer the following recommendations to enhance future discussions of an improved personnel security clearance process.

### **Recommendations for a Better Clearance System**

#### **Recommendation #1: Beware the “Chutzpah” of Government Retaliation**

“It’s like a free ride for harassment.”  
– David, an attorney representing federal workers

A primary recommendation resulting from the study is that state actors should be aware of and call attention to certain patterns of bureaucratic behavior associated with the revocation of clearances, particularly in the cases of whistleblowers. This includes a tendency for the bureaucracy to “blame the victim” in whistleblowing incidents resulting in retaliation and counterattacks, on the part of the state, to an individual’s character.

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<sup>473</sup> “... we apply the term ‘State’ more especially to the agents of the sovereign authority, and ‘political society’ to the complex group of which the State is the highest organ.”

<sup>474</sup> 1986:38.

<sup>475</sup> Most recently in the wake of the Navy Yard shootings in Washington, D.C. in 2013.

The tendency for some government appointees to behave in this way is not surprising, as some hail from political campaigns, where smearing one's opponent is de rigueur. But it is more distressing when conducted by career civil servants who ought to know better and are often actually employed to preclude such abuses from happening.

Pulling a clearance is often just the first salvo in the arsenal of government retaliation. David, an attorney who represents whistleblowers and has seen government retaliation against them so often, he has written books on the subject,<sup>476</sup> describes state action against whistleblowing employees as common and toxic.

Well, there's a few kneejerk reactions. One is to pull their clearance, to isolate them. The second kind of kneejerk, hidden agenda reaction with security clearance actions is to pull their clearance to discredit their dissent. Usually, the national security whistleblowers who are challenges breaches of security are going to run headlong into a subjective conflict of interest, a personal conflict of interest, where someone who's buried in the middle of the chain of command is gonna get in a lot of trouble for blowing it. And their personal ambitions or desire to avoid accountability become a conflict of interest with the institutional mission.

David describes how he has seen this scenario unfold time and again, pointing to what he calls "the classic tactics of retaliation."

One of them is to isolate the whistleblower by cutting them off from access to information. The other is what we call "chutzpah" in making the charges. Whatever the employee is blowing the whistle on, you accuse them of that misconduct, and usually an uglier version of that misconduct. So if someone is blowing the whistle on sexual harassment, they'll be fired for sexual harassment. If somebody is blowing the whistle on a security breakdown, they'll get their clearance yanked for being a security threat. It's very Orwellian. It's very effective. It's the most comprehensive way to attack someone's credibility. And it's sort of a subset of another classic retaliation tactic that's really the first principle. I called it "the smokescreen syndrome." It's to shift the spotlight from the message to the messenger. So the first reaction to whistleblowing typically is,

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<sup>476</sup> Similar observations are made in "The Corporate Whistleblower's Survival Guide: A Handbook for Committing the Truth" 2011 and "The Whistleblowers Survival Guide: Courage Without Martyrdom", 1997 by Tom Devine.

“We need some dirt on him. Open up a retaliatory investigation.” It’s the larger version of discrediting the messenger. The more surgical version of it is “smear them with the same alleged misconduct that they’re challenging.”

By using such tactics, the state loses focus on the real problem. (Most of us have had experiences that, when relayed out of context, can make us look crazy.) Smear tactics, on the part of agencies or other government entities against employees are designed to distract.

As David has seen, the impression given is that...

You can’t take anything this person says seriously. Security clearance retaliation is uniquely susceptible to that type of cheap shot because, depending on the agency—in all agencies, to an unprecedented degree—you don’t have to defend your attacks. The employee doesn’t even necessarily get to know the specifics that he or she is charged with, let alone confront their accusers or do discovery. You can avoid all the muss and fuss of due process or constitutional rights and have the ugliest possible smear that, due to its lack of specificity, is even scarier to discredit than someone who’s challenging a legitimate problem. So it’s been a very, very effective tactic to use against national security whistleblowers. It’s like a free ride for harassment.

## **Recommendation #2: Be Fair and Aim Carefully**

“A very sharp, a very heavy weapon that an agency holds over a person”  
– Megan, Congressional Committee Staffer

Megan, while working on a committee staff on Capitol Hill, has seen her share of colleagues lose clearance. She notes that many of those clearances were lost, not because of security concerns, but because of whistleblowing or other embarrassments to the committee or individual members. Federal managers should be careful to differentiate between infractions of security protocols which may justify pulling a clearance, and other infractions that may not.

I think where some unfairness probably comes in is when clearances are pulled without sufficient documentation, or pulled for less than security reasons. That is



a very sharp, a very heavy weapon that an agency holds over a person. It basically can affect their whole livelihood. All the hoops that have to be jumped through to get it back, it's basically a "guilty until proven innocent" situation, as opposed to the other way around, which is what the constitution is supposed to allow us. The onus is on you to prove your innocence as opposed to the onus being on the state to prove your guilt in this system.

Doug, an attorney who represents federal employees, explains that the removal of a clearance is often much easier for federal managers than the standard procedures for terminating employees for cause.

The SOP (meaning the Standard Operating Procedure) is—this is the back doorway to fire somebody without the muss and fuss of legal rights. And that means that it's uniquely susceptible to hidden agendas. On my beat it's whistleblower retaliation, but other folks, religious discrimination or race or sex discrimination, or buddy system agendas. I wanna get rid of somebody so I can get my own guy in there. There are so many ways that it can be misused. It's become—well, its official and legitimate purpose is a safeguard for the reliability, the trustworthiness of those who work with classified materials. In practice, because of the lack of checks and balances, it's a shield to accountability for illegal, hidden agendas. And that's why this is a real problem.

David sympathizes with federal workers who enter into the limbo of a clearance removed rather than being fired in the normal way. "Yeah, I think that is the worst. I think there's also a lot of—there's more emotional trauma and frustration than getting fired through the front door. The security clearance actions drag on a lot longer than a conventional termination."

While it may be easier for federal managers to warehouse an employee by pulling his or her clearance than having to account administratively for why an employee should be fired, it is not so easy on the employee. David has seen many cases where managers fail to consider the long-term ramifications of suspending a clearance on an employee's career.

So the process itself, I think, is uniquely traumatic. And then, as I said, the consequences are much more long term than a traditional termination. Normally, people have—very commonly, people have the option to resign rather than being fired, and that puts them on higher ground for starting over. Once your clearance has been suspended, unless you're exonerated, that mark's gonna follow you forever.

### **Recommendation #3: Consider Due Process**

“Then there's the additional stress of not knowing what you're accused of... there's nothing you can do about it. You're twisting in the wind for years.”

– Martin, an attorney representing federal workers

As Megan has observed, an individual whose employer has removed her clearance is “basically guilty until proven innocent...as opposed to the other way around, which is what the constitution is supposed to allow us. The onus is on you to prove your innocence as opposed to the onus being on the state to prove your guilt in this system.”

Daniel, an attorney, in noting how removing clearance is used as a de facto way of firing people, also sees firsthand how the personnel security clearance system turns our sense of justice on its head. And he understands how useful due process would be to federal employees in the personnel security clearance system. He represents federal employees from many agencies and organizations and must adhere to those individual organizations' policies and procedures for security clearance cases. Each agency has a different way of dealing with clearance cases, but Daniel points to the Department of the Navy's Central Adjudication Facility (DONCAF) as the most fair.

Well, the DONCAF process was unique in the sophistication of the due process appeal rights for the clearance. It's probably the gold standard for the executive branch. But even that was a ghost of normal Administrative Procedures Act due process or the due process under the Rules of Civil Procedure, the sort of due process rights a person would have if they were being criminally prosecuted for misuse of that same information, only this is blacklisting them for the rest of their lives. So, yeah, DONCAF is better than anything else that I've been exposed to.

But it's still negligible compared to even administrative due process. And when you're talking about something that's a back doorway to not only fire somebody but most likely professionally blacklist them for the rest of their gainful years of possible employment, there's no excuse for that.

Doug, another attorney, points to the propensity of federal agencies to drag their heels during clearance hearings and adjudication processes, noting that such stall tactics can sometimes make the problem go away. When the employee runs out of money for legal defense, or just plain loses patience, he or she will go away eventually.

Frankly, [it is] bullshit, but I had to go through the process, and the CIA's process, which is something maybe you wanna go into at some point, is so lengthy and punitive. Because of the length of time. I have lots of CIA cases, but there's just not that many that they have, that it takes that period of time, a year and a half to two years, to go through the...procedures. It's just ridiculous.

David has observed that many employees drop out of the process of contesting a security clearance decision just because they have been both financially and emotionally exhausted by the process. "It takes the rare exception to have stamina to stay strong during a process that typically has no deadlines, can drag on indefinitely. It's like Kafka's 'The Trial.' That's the security clearance legal system, only it's not nightmare fiction. It's the facts of life for national security professionals."

Perhaps the most helpful aspect of due process procedures for federal workers who must defend themselves against removal of clearance would be to know why the action has been taken in the first place. It would also be helpful to put a time limit on the appeal process. As Martin who has witnessed such cases puts it,

But then there's the additional stress of not knowing what you're accused of. Going for years where unknown charges that have the ugliest inferences and implications about them: possible traitor, not loyal enough to even look at important information to our country's defense. And you don't know why. There's nothing you can do about it. You're twisting in the wind for years.

#### **Recommendation #4: Use Technology, But Do Not Rely On It**

“I would say that what we’ve gotten for a half billion dollars  
is an unpronounceable acronym.”

– Robert Michael Gates, United States Secretary of Defense from 2006 to 2011.

Andrew Katz, writing for *Time* magazine after the Edward Snowden leaks on NSA programs, noted that college campuses routinely check applicants’ online presence, while federal clearance investigators do not. It may be a good idea to include online profiles and social media in the personnel clearance investigative process.

Just days after Snowden’s unveiling, snippets from more than a decade of his online history were uncovered that could have been cause for investigators’ concerns.... Ironically, the government might be able to prevent leaks like the one that revealed a widespread Internet surveillance program if they do a little more online detective work...it appears that college recruiters look more rigorously at applicants’ online lives than some federal departments.<sup>477</sup>

Doug, an attorney who represents federal clients, also recommended using online information to vet those seeking clearance.

What they should be doing is checking out your Facebook feeds and your LinkedIn and your activities online. Is a Google search even part of the security clearance process? It should be, right? You’re gonna learn more running someone through Google, People123, and Spokeo, than you will by knocking on their door and asking their neighbor.

Andy, who held a clearance for 20 years at the Department of Defense, recommended interviewing a wider array of acquaintances who really know him (as opposed to his neighbors) and making better use of social media.

The...thing that obviously I think they don’t do enough of is talk—for example, the people I work with, or the people I both served in combat with or I’ve known for 30 years, some of the people on my Facebook, for example, I would have no problem with people looking at my Facebook to ascertain things which are...if

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<sup>477</sup> Time magazine, Potential Blind Spots in Clearance Process that Gave Snowden Top-Secret Access, By Andrew Katz June 15, 2013.

there's things regarding my reliability, I have no problem with people looking at my Facebook.... Not your neighbors. Like, "Hey, is he a good guy? Does he put his Christmas lights up on a timely basis and take 'em down before January 15th?" It's insane.

While it may be prudent to use existing Internet technologies for investigative purposes, as college recruitment offices do, it would be less prudent to rely on promised future technologies, like the Personality Disorders Security and Safety Risk tool promised by PERSEREC.

Reliance on such technology, as Bok reminds us, may backfire, not just because the development of a machine that can detect current and future human behavior and proclivities is dubious, but also "If implemented, it may offer yet another version of the Maginot Line; a set of fortifications erected at great human and commercial cost that gives a false sense of security...."<sup>478</sup>

In addition to providing a false sense of security, we have seen large government systems become the victim of computer hackers as in the example of e-QIP, the systems designed to collect information for the purpose of adjudicating security clearances. So it is becoming clear that the IT systems, of which PERSEREC is so proud, e-QIP among them, come with their own built-in set of problems.

And, as Charles so eloquently notes, the government tends to fall back on the big system approach to counter many of its problems. But big systems take time to build and are very expensive so federal managers should consider carefully the costs and benefits associated with them.

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<sup>478</sup> 1983:152.

Yeah. I think they're working on these big systems. It's going to be about the data, the big data, and if all of these systems talk to each other—I heard that story—I've been in Washington since '73—I've heard this story so many times in different agencies that there's going to be a big solution, because this new system will finally override all these other legacy systems that are not talking with each other and blah, blah, blah. I can't think of one that has worked, that I've heard about. It's all—let's face it, big contractors, IT contractors, will sell the same story and literally hundreds of millions of dollars will be spent, and at the end of the day, it's not accomplished.

Secretary Gates made a similar observation when testifying on Capitol Hill about the planned Defense Integrated Military Human Resources System (DIMHRS). That system was to provide a joint pay and personnel services to the Army, Navy and Air Force, replacing over 90 legacy systems. The Pentagon killed it after spending more than 10 years and a billion dollars on it. The sad part is that, as Tom Philpot reported for the *Hampton Roads Press*, even the Secretary of Defense did not understand how much the debacle had cost. “‘I would say that what we've gotten for a half billion dollars is an unpronounceable acronym,’ Gates quipped, though his cost estimate was short by half. The Government Accountability Office says a billion dollars had been spent on DIMHRS through 2009.”<sup>479</sup>

#### **Recommendation #5: Reduce the Number of Clearances**

As of October 2013, the number of persons eligible for access to classified information has grown to 5.1 million persons, including over 1.5 million with Top Secret clearances. And, according to a report by the Office of the Director for National Intelligence,<sup>480</sup> only 60% of those persons had access to classified information,

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<sup>479</sup> Military Update: Mullen pulls plug on problem-plagued DIMHRS pay program, February 21, 2010, By Tom Philpot, *Hampton Roads Daily Press*, <http://www.dailypress.com>.

<sup>480</sup> 2013 Report on Security Clearance Determinations.

suggesting that vastly more clearances are being requested and granted than are actually required.<sup>481</sup>

Committees and working groups have long counseled that a way to improve the system is to make it smaller. Moynihan's 1997 Commission on Protecting and Reducing Government Secrecy recommended that "The best way to ensure that secrecy is respected, and that the most important secrets remain secret, is for secrecy to be returned to its limited but necessary role. Secrets can be protected more effectively if secrecy is reduced overall."

After the shooting at the Washington Navy Yard, in September of 2013, the Congressional Committee on Government Oversight conducted a hearing on the security clearance process. The consensus at the time was that too many clearances had been granted. "Far too many people have security clearances," a former assistant secretary of defense for homeland security Paul Stockton testified. And reduction in the number of clearances granted overall was also a recommendation of a Department of Defense Committee and Report on the Navy Yard incident.<sup>482</sup>

Most recently, The Office of Management and Budget made the recommendation in a February 2014 report to the President saying that "growth in the number of clearance-holders increases costs and exposes classified national security information, often at very sensitive levels, to an increasingly large population."<sup>483</sup>

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<sup>481</sup> Posted on Jul.16, 2014 in Security Clearances by Steven Aftergood, "Wanted: A Chef with a Top Secret Clearance."

<sup>482</sup> Slipping Through the Cracks: How the D.C. Navy Yard Shooting Exposes Flaws in the Federal Security Clearance Process, Staff Report, Committee on Oversight and Government Reform U.S. House of Representatives, 113<sup>th</sup> Congress, February 11, 2013.

<sup>483</sup> Suitability and Security Processes Review, Report to the President, February 2014.

Future analysis will undoubtedly make similar recommendations that both the number of secrets and of clearances be limited. But the question remains whether the personnel security clearance system, that has grown so big so fast, has the ability to contain itself. Given the tendency of bureaucracies not to shrink, I am left to fear that that the answer to that question seems to be a resounding “no”.

So to mitigate the inability of the executive branch to contain growth in the number of secrets and clearances, some lawmakers have introduced legislation imposing limits. Those efforts include the new intelligence authorization bill for Fiscal Year 2015 (S. 2741, sec. 311) that requires the Director of National Intelligence to prepare a report “describing proposals to improve the declassification process throughout the intelligence community.”

And A bill introduced by Rep. Bennie Thompson and by Sen. Ron Wyden (HR 5240) that would require the President “to establish a goal for the reduction of classified information by not less than 10 percent within five years through improved declassification and improved original and derivative classification decision-making.”

While none of these efforts are perfect, it appears that legislative fixes to limit the number of secrets and those with access to them are more likely than corrections from within the system.



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## **BIOGRAPHY**

Martha Deutscher retired in October 2103 after 23 years of federal service. During her tenure at the U.S. Department of Defense, she served as Chief of Public and Legislative Affairs for the Defense Security Service providing guidance and support to the Agency Director, the Under Secretary of Defense for Intelligence and the Deputy Under Secretary of Defense for Counterintelligence and Security.

As Chief of Communications for the Defense Education Activity, she planned and managed the activities, policies, and staff of the Office of Communications for the Department of Defense international school system operating over 200 public schools in 15 districts located in 13 foreign countries, 7 states, Guam, and Puerto Rico. At the State Department, she led the U.S. Global Technology Corps, a public-private partnership to spread the benefits of access to information technology worldwide.

For the U.S. Agency for International Development in Sarajevo, Bosnia Herzegovina, she coordinated U.S. participation in the development of Bosnia's first post-war multi-ethnic TV network.

At the U.S. Information Agency she produced live broadcasts with newsmakers like Jimmy Carter, Al Gore, Kofi Annan and other international policy experts for audiences worldwide.

As information officer for the U.S. Embassy in Lusaka, Zambia, she coordinated the press center and briefings for U.S. journalists covering the Lusaka Peace Accords addressing the civil war in Angola and edited and distributed a daily English-language Newspaper, The Washington Line.

Martha is the recipient of the Secretary of State's Certificate of Appreciation for Extraordinary Service to the American People in Support of the State Department's Response to the Terrorist Attacks of September 11, 2001; the U.S. International Broadcasting Bureau's Meritorious Honor Award for producing the first VOA TV broadcasts in Chinese, Serbian, Farsi and Arabic; and the Academic Achievement Award from the University of the District of Columbia's School of Business and Public Management.

She earned a BA in Mass Media Communication from the University of Akron in Akron, OH, and an MA in Public Administration from the University of the District of Columbia in Washington, D.C.