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OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE



## Examination of the Adjudicative Guidelines

Appendix C Part 1

External Subject Matter Experts: Focus Group and Interview  
Session Notes

LEADING INTELLIGENCE INTEGRATION

March 2011

ONCIX Special Security Directorate Research Program

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*These notes capture the discussion that took place among participants in a research context. They do not necessarily represent the positions of any agency or of the Security Executive Agent.*

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## INTRODUCTION

The *Examination of the Adjudicative Guidelines* Project has three components: reviewing the relevant social science literature, gathering the views of subject matter experts from outside the security community, and soliciting in a formal setting the thoughts and opinions of a body of government personnel security professionals on the substance and structure of the Guidelines. The notes that follow record the results from the third of those components.

Following the clustering model developed for the project, we conducted three focus groups for outside experts, one each to address Clusters I, II, and III, and two one-on-one interviews to address Cluster IV. The material in Cluster V (generic personal conduct and security practices) did not lend itself to soliciting outside expertise. The focus groups varied in detail, but all were meant to capture the views of people with professional interests in areas of concern but who did not come to the discussion with working knowledge of the personnel security system and were thus positioned to provide fresh insight.

Participants were selected based on the strength of their publications and professional reputations, and of course their willingness to participate. They were reimbursed for travel and lodging, but received no honoraria. All spoke in their own voices, not as representatives of their institutions. The participants of the first focus group requested non-attribution, a request that we have honored.

## CLUSTER I: GUIDELINES A, B, C, AND L

September 24, 2009

9:00 am—4:00 pm

Washington Dulles Airport Marriott Hotel

### Participants:

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### Others:

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*Participants requested that this session be conducted under terms of non-attribution.*

### **I. Is there a meaningful distinction between Allegiance and Loyalty?**

A: What does it mean to be a U.S. citizen? Consider the concept of *attachment* rather than assimilation. There is the idea of instrumental assimilation: "What's in it for me?"

B: There are three forms of employee commitment that may apply to commitment to country as well: affective (emotional: "I feel good when I see the flag"), normative (obligation: "I belong here") and instrumental (no other option: "I'm here because I have no choice").

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A: People want to be here, but why? Polling data suggest that the reasons are mostly instrumental (public funds, ease of travel), with only 17 percent expressing an affective reason.

C: In the course of the discussion we should also think about the subset of people who will be looking for a security clearance. They are not like the general population. The clearance citizenship requirement does not consider how long a person has been a citizen.

D: There is an issue with anything suggesting “conditional citizenship” such as a waiting period after citizenship for clearance eligibility. At one time we did have just that, but the courts struck it down in a case called *Huynh v. Carlucci* (1988). We need a more sophisticated solution because we cannot discriminate based on naturalization status. There is no such thing as probationary citizenship.

E: There’s evidence from psychology that *assimilation* should not be used because it assumes a uni-directional degree of attachment or affinity, which would mean that the more one is an American the less one is some other nationality. Assimilation as a concept is too limiting. *Cultural competency* or some other such term may be better.

F: Burton talks about information coming into the reptilian brain and then going to the cortex where it is edited. Maybe loyalty is the reptilian brain and allegiance is the cortex.

G: Neuroscience is important, but we need to be careful about making radical distinctions. Emotions are the giant elephant in the room and reason is the pony strapped to its side.

E: With loyalty, think about relationships—there’s commitment, you join something because you like it, it feels good.

H: Allegiance is straightforward, but there are different levels and interpretations of loyalty that you need to deconstruct to get at it. Allegiance is a contractual relationship, you’re either allied with a particular group or perspective or you aren’t. With regards to loyalty—loyal to what? The Constitution? Bill of Rights? Country?

I: What are the dimensions? Both terms are constructs, cognitive and emotional facets.

J: Look at predicting behavior— which is more predictive: affective or conscious, more explicit thoughtful attitudes? It is more important to demonstrate allegiance than the affective loyalty.

F: Behavior follows both from what comes from the outside (reality, objective) and from the inside (emotions, culture, expectations). In some situations you have 100 percent

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control from the outside, in others 100 percent control inside, but most of the time it's split. Look at the importance of the situation as an influencer.

C: Is there in fact anything meaningful about loyalty or allegiance? What does either add? How is loyalty to a country different from loyalty to a corporation? Shouldn't someone meeting the criteria get a clearance? The concepts seem anachronistic.

D: Can we use the term *attachment* in place of the word *allegiance*? If so, what makes attachment important? How do we translate this into meaningful language? What are tangible measureable aspects of attachment?

A: To what degree is the loyalty/allegiance distinction based strictly on national security concerns? To what degree are we interested in predicting attachments and identifying conflicting attachments? National security needs a high barrier regarding where people's attachments lie because, along with what is directly observable, there are hidden affective concepts behind what people do. The concepts are important because the U.S. is recruiting people with attachments pre-dating their arrival in the country. It's not a question of loyalty but conflicted attachment.

B: People attach to things for multiple reasons. Loyalty is important because the literature shows it makes a difference. Those who affectively commit to an organization are less likely to leave than those who commit in other ways. This applies to organizational citizenship behavior, which affective commitment predicts strongly and positively.

H: That seems like a binary outcome: you either give up commitment or maintain it. There's an assumption that loyalty and allegiance are the only things to have an impact on this outcome, but there may be other variables. Is it possible to come up with a multivariate model that gives a score on the model of a financial credit score?

A: Does loyalty equal attachment?

D: Loyalty and allegiance are proxy words. Can attachment be used in lieu of loyalty?

A: Yes.

B: Another concept to think about might be faithfulness.

D: Ross Perot wouldn't have anyone work for him who had had an affair because he felt that, if you couldn't be faithful to your spouse, he couldn't trust you to be faithful to him. Is that an example of the faithfulness you're thinking about?

B: That's an example of being confident and wrong. It doesn't follow that greater commitment in one area must mean lesser commitment in another: the issues involved are too complex.

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I: The question should be attachment or allegiance to what? Clearly to the U.S., but what aspects of the U.S.?

E: What does commitment mean to an individual – is it solid, thought out, affective?

D: Maybe we should discard loyalty and allegiance as relevant concepts and come up with something else instead of arguing these. If so, we need a more precise understanding of attachment.

A: I think it's a matter of accepting and integrating three things into one's own life: American institutions, the American way of life, and fellow American citizens. My theory of attachment encompasses five aspects: warmth and affection for, appreciation of, pride in, commitment and responsibility toward, and support of these three things. We also need to consider how to interpret the extent to which we can use a corporate model. The measure of affective commitment applies to a second layer of commitment, a determination of value beyond a job offer.

F: There is a need to focus on a model of the act of revealing secrets, which would involve an individual's self-concept, the norms for the group, affect, the consequences of the behavior, and the ease of getting caught. "Is this the sort of person who reveals secrets?" then becomes the relevant question.

J: If you think of yourself as an American and then give away American secrets, there's a conflict with your self-image.

E: But people rationalize.

J: After the fact.

I: Breaches occur against the norm, so the general criteria applied in adjudication may not deal with their direct causes. Personnel security evaluation is a risk assessment. Adjudicators would rather err on the side of being too careful than not careful enough.

G: The emphasis is on emotional valence. Beyond prediction, what is one's obligation to the government? Allegiance leads to loyalty, and loyalty is to the Constitution.

B: Maybe loyalty is not a good criterion for purposes of selection. There are different definitions of organizations by members of organizations. When we measure organizational commitment we usually see loyalty to the local environment, the team vs. the organization. Individual motivation may be very local in terms of the organization.

I: We might say, "All motivation is local."

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*Are there other indicators (positive or negative) that could be measureable or predictive of this notion of allegiance or attachment?*

J: Attachment may be to symbols.

I: In the investigative process, positives are rarely gathered or pursued. Thus it's assumed that allegiance exists in the absence of information proving that it doesn't.

F: People rationalize, and self-deceptions can be powerful. These cognitively simple deceptions are measureable in statements of hopes, needs, desires, and these can be a clue that someone is hiding cognitively simple deceptions. Examples are 9/11 terrorists who saw themselves as divine instruments, holocaust deniers, and Cheney in his view of Iraq. This may be a risk factor – relying on too many cognitively simple statements.

A: We should keep in mind that adjudication in DoD is an assembly-line process, and adjudicators are looking for hard and fast guidelines. Smaller agencies have the luxury of being able to ask more refined questions.

*Are there other indicators, observable behaviors that get at attachment? Is attachment to the U.S. sufficient?*

F: I would like to bring up the "I am" stem as a type of question. There was a study in which people with Korean backgrounds were asked to complete 20 "I am" statements. There were differences between those who gave two "Korean" answers and those who provided one or none. What responses do people give when prompted by this stem? How do these responses correlate with other scales?

E: I wonder about the foreign bank account question, which Guideline C identifies as a potential issue. Its value varies with country and other things. The same is true for passports. Often there are practical reasons for having two passports. The country the passport comes from is important; you have to look at it on a case-by-case basis. Having a 2<sup>nd</sup> passport doesn't affect how I feel about being an American, yet the Guidelines suggest that a person is less American because of attachment to a 2<sup>nd</sup> country, for which having a foreign passport is offered as evidence.

F: National identity alone is not sufficient; tribal and other similar loyalties are also important to consider.

C: There's a false premise that this is a zero-sum game. An assumption in the Guideline is that there is a conflict of interest; this is less true today. Identity is more salient than loyalty. How about grouping together passport with foreign military service as an

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indicator of divided allegiance? There's no nuance in the Foreign Preference guideline. Yet having an attachment to a high-risk entity doesn't necessarily mean anything.

D: The existing Guidelines worked backward from what can be measured to the concepts behind them. There is now a need to flesh out concepts in order to go forward and get better predictors. The rule in DoD mandating no clearance for anyone holding a foreign passport resulted from particular circumstances and was later made part of the Federal Adjudicative Guidelines. Intelligence Community agencies just want to know that you have the passport; there is no absolute requirement to surrender or destroy it.

A: How do you figure out whether in a specific instance holding the foreign passport means anything?

D: Agencies spend a great deal of time and effort trying. Destroying a passport is meaningless, the person can simply get another one. The real issue is why the person has the passport.

G: It's important to have measurable criteria. To predict people's behavior, ask others. This is more accurate than asking them themselves. Ask, for example, whether they can they keep a secret or whether they have expressed a desire for their country of origin to take precedence over the U.S. Interviewing neighbors is irrelevant; it would be better to send an email survey to people who know the person, you'll get a better feel for who he or she is.

D: Written inquiries were mandated back in the 1950s at the time of President Eisenhower's Executive Order 10450 and are still used today. However, our working experience is that most are not returned.

I: Why not email? People sign waivers. Why not mine their emails?

G: Using emails to make inquiries may be the best way to get information from third parties effectively, but I was not suggesting mining emails.

*Is there a perception of conflict between the country of origin and the U.S. within the individual? What are the specific questions?*

I: The current process is a series of close-ended questions rather than open-ended, "explain a time when..." questions. It would be better to elicit a narrative. You usually get nothing from neighborhood canvassing.

J: There's a method of content coding language. Record and listen to the narrative.

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D: This plays into the question about whether or not loyalty stays a part of the guidelines.

I: Look at a situation where someone stuck to their principles when there were good reasons not to.

G: Hypotheticals are important: "What would you do...?" sorts of questions.

B: Do supervisors and managers have insight into trust? What predicts trust? What makes an employee trustworthy? There's a biodata technique: which answer differentiates the most and least trusted employee (captured through managers rating employees). Then look to hire people who resemble the most trusted. Not sure if this is transferable, that's an empirical question. It would be necessary to get a sample from across agencies because they could be different by agency. It's a way to distinguish one group from another.

## **II. Foreign Influence and Foreign Preference: What should we look at? Do we need to look at all?**

K: The Guidelines retain much of the character they had during the Cold War when the staffing requirements of the national security community could be met with relatively little need to recruit from immigrant and 2<sup>nd</sup>-generation populations. However, the changing nature of the threats against the United States calls for skills present in those populations. Demographics are also changing, with immigrants and members of the 2<sup>nd</sup>-generation increasing as a percentage of U.S. citizens. In the face of these changes, we need to understand what is in fact important today and tomorrow to take into consideration when considering a person with foreign associations for a security clearance, always keeping in mind that the clearance, which itself is about the person's ability to protect classified information, is also a surrogate for assessing an individual's reliability and trustworthiness to work in the national security environment. As a tangential issue, it is clear that the framework we use today for personnel security is a quasi-legal one, as is suggested by some of the vocabulary used: adjudicators, investigators, mitigators, appeals of adverse outcomes. Perhaps a medical model would be more apt.

K: The Guidelines split foreign association and preference for practical purposes, making a distinction between things an individual has little or no control over (e.g., the citizenship status of one's relatives) and choices made (e.g., to vote or not vote in a foreign election). Is there an underlying concept that requires paying attention to?

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F: There is also something to think about in the relationship to technology and the ease of communication it brings.

I: The guiding question here is “What should we be looking at?” This begs the unanswered question of why should we be concerned. What kind of breaches are we concerned about? What is the threat? Otherwise this is unanswerable. Does foreign preference affect my security risk?

D: There’s a critical difference between Foreign Influence and Foreign Preference: with Foreign Influence, you can meet all factors including allegiance and still be a risk due to forces beyond your control; with Foreign Preference, you’re looking at volitional behavior.

G: We keep forgetting the environment. Who is the authority? Anthropology was developed to figure out who was the authority as a way to understand influence. This depends on the cultural environment—immigrants from other societies may have authority structures other than those of a nuclear society like U.S. or Canada. We need to rethink authority, it’s not necessarily nation-based.

E: I may agree. It comes to a consensus regarding authority, but the training of adjudicators will be vital. There are two threats: one from those who disclose protected information because it benefits their country of origin, and another from those who disclose it in order to harm the U.S. for whatever reason. The needs and goals of the country of origin and the U.S. may well be different, and loyalty and allegiance take time to develop.

I: That’s an open question if it takes time and, if so, how long.

D: We are in fact looking for people who are loyal to the institution. In the military, one can become a citizen very quickly. What is it about citizenship that we care about in looking for trust? Citizenship can be prosocial behavior, finding people who go beyond their roles as good citizens—which goes back to the five aspects mentioned earlier<sup>1</sup> when we think about citizenship with a small “c.” Can we trust this person is the main question.

B: Hypotheses are necessary, but it’s also necessary to ensure that the methodological approach used is sound. When validating, there are always going to be errors, and decreasing one error may increase the likelihood of another error. For example, when granting security clearances, reducing the likelihood of screening out candidates who

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<sup>1</sup> page 3.

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are in fact acceptable could well increase the likelihood of allowing an unacceptable candidate. Which error is more important to avoid?

A: We seem to be focusing on terrorism, but should be talking more broadly. There are many ways to harm a country. Any disclosure or action is relevant. There's a relationship between Foreign Influence and Foreign Preference. Foreign Influence is linked to attractiveness to a foreign power and Foreign Preference is linked to availability, that is, how available for exploitation the person is. Foreign Preference seems most important and most difficult. Be careful not to assume too much about people who are coming to the U.S. How individuals were brought up and when they came to the U.S. are relevant to the discussion. You have to take into account a person's association with and feelings for the home culture. The real question about the individual in question is, when a choice needs to be made, where will they stand? I agree with the point regarding narrative—it's not what they say but how they think. Look at people's grievances. There are different types: some historical, some policy, some personal. People with grievances are more likely to act out.

G: There is also the issue of human brain development, where were people at certain ages. There are important periods in people's lives; ask about those points in time.

J: The criteria should also be expanded. It is more difficult and less likely for a person to do something harmful to a country when he or she identifies with that country. Foreign contacts and associations have little to do with the extent to which they have a strong U.S. identity. There's an assumption that being a U.S. citizen automatically means loyalty, but this doesn't always happen.

C: Look at threat assessment in terms of historical experience. There are no instances in which dual citizenship has played a role in committing espionage. The number of dual citizens is increasing. Most countries allow citizens obtaining U.S. citizenship to maintain their foreign citizenship. It makes no sense to maintain the Foreign Preference guideline.

*When looking at the whole person concept, is vulnerability the key for Guidelines A, B, and C?*

D: There is one aspect of the Guidelines that addresses the potential for pressure. The whole-person factors require that all factors work together. Most important when looking at foreign influence and preference is the potential for coercion and duress. These are vital for guidelines B and C.

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C: The guidelines are based on a loyalty premise for other countries, but these authority structures have changed. Citizenship may no longer be determinative. Other relationships of authority may lead to new types of loyalty. Just by holding a 2<sup>nd</sup> citizenship doesn't make you more likely to act in ways harmful to the U.S.

J: This has more to do with a close family member in another country. In this instance, your family member could be threatened and this would influence you, regardless of citizenship status.

A: Risk increases because foreign governments see nationals as resources to be used. And they even have the tools readily in place in the form of embassies and consulates. We need to recognize trend lines.

E: This will vary from country to country.

L: The government considers that what matters here is the CI threat from your country of origin. This concern is status neutral; it has nothing to do with citizenship affiliation.

*Should foreign preference and dual citizenship not be eliminated as potentially disqualifying criteria but rather monitored?*

A: You can't totally ignore dual citizenship. Look at the voluntary steps an individual takes to keep relationships up in the home country. It's not exclusionary, but if you see a pattern, then maybe the individual's focus is elsewhere. You want their focus to be primarily on the U.S.

C: I disagree. We're looking to predict security threats—going home or voting in elections outside the U.S. is not predictive. Standard conflict of interest rules apply. This would be the case in industry; it should be the case in the government.

D: All of the subparts under Guideline C, para 10(a)<sup>2</sup> may be valuable as flags but should not be exclusionary on their own. But that's how adjudicators use them. They take on a life of their own because they are written down.

B: If we had good evidence that a particular configuration of attachments is problematic, should we not exclude people exhibiting that configuration? Is it worse to

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<sup>2</sup> “[E]xercise 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 passport; (2) military service or a willingness to bear arms for a foreign country; (3) 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.”

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keep a good person out or to let in someone who will do you harm? But you have to know that the attachment is a problem.

G: Ask why they're not willing to give up their foreign passport.

D: DoD used to ask cleared people to surrender their foreign passports to the issuing authority, but the exercise was counterproductive.

E: Yes, but it goes beyond that in the potential that acts such as making people give up their previous citizenship undercut support. If you asked me to give up my foreign passport to be here today, I would not. You would be making me choose and I wouldn't feel free to participate in the task then.

L: There is some inconsistency in how this is done. In some branches (legislative and governors) individuals have access to classified information even though they have dual citizenship.

*Back to the specific guidelines— are these the right things, are they relevant? There is sometimes the problem that a list of examples is interpreted as exhaustive. Does the list in Guideline C para 10(a) mean that some other relevant things are not being considered?*

D: Should possession of a foreign passport be a reason to exclude someone?

A: No. Instead you should consider clusters of facts and events. If you see one, look further at the rest.

J: Alone passports are neither necessary nor sufficient for exclusion.

F: Adjudicators need constant feedback (like weathermen).

J: Feedback isn't there because the cases of spying are so low.

*Should we be looking at anything differently? Is there anything we should be looking at that we're not? Is there anything that doesn't belong?*

D: Simple lists of likely disqualifiers—not unlike what is in the 2005 version of Guideline C—too easily become shortcuts to denial, laundry lists of things the presence of which is sufficient to make a negative decision. Let's hear more about grievance psychology. Some spies did what they did because of grievances.

I: Those who have committed espionage did so years after being cleared; it's not representative of failure in the personnel security process. This suggests that monitoring

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is far more important than clearance. To do so would get us away from the bad apple model. Guideline B, Foreign Influence could be reduced. Would there be any reason to care about Foreign Preference without Foreign Influence? I can see the rationale for para Guideline C, para 10(d)<sup>3</sup>—it's the affinity, the ordinal commitment—but not para 10(a)(1) through (7).

G: How is seeking political office in a foreign country not a conflict of interest?

I: It could be a conflict of interest but not necessarily express preference. I don't see Guideline C, para 10(a)'s list of concerns as sufficiently compelling to single these out as risk factors. There could be another 20 things that are equally compelling.

J: If there were foreign affiliation without preference this could be a case where you'd be presented with a conflict. What would the person do in that situation? Does anything in para 10(a)(1)-(7) make someone more prone to being a risk to national security if granted a clearance? To the extent that a passport means emotional attachment, yes. To the extent that it makes getting through customs easier, no.

C: If that is true, then they could fall under Foreign Influence. Maybe we should get rid of Foreign Preference and just stick with Foreign Influence. This is our opportunity to do so.

A: Why can't adjudicators be trained to think in clusters or categories and not on single issues?

D: I agree, but training regresses. It's a big task. Apart from training, the language used in the Guidelines has to create the clusters.

I: Maybe it's possible to restructure the items in the Guidelines to make them less complex. Adjudicators are faced with much cognitive complexity; condensing and removing the overlap could make the process simpler.

A: Different cognitive frames could help cue people to pay attention to certain things. If we see a cluster, we see the potential for a preference conflict. There is some overlap between Guidelines B and C, but they do point to a useful distinction.

J: Going back to grievance—a set of questions regarding reaction to unfair treatment on the job would be useful.

D: Grievance psychology could be substituted for some Foreign Preference items.

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<sup>3</sup> “[A]ny 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.”

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B: All this boils down to an issue of trust. How can we best measure trust? From this perspective dual allegiance is irrelevant. There are trust scales out there. With these scales you can control for impression management, that is, the tendency for people to put themselves in a positive light. Could self-deception/social desirability scales be part of a trustworthy assessment? Try to do some sort of 360-degree survey of trust. This then moves away from the laundry list.

E: That would be possible to the extent that you can quantify the list. The key is determining how active a person is in U.S. civic life rather than involvement with another country. I vote in both elections. My activity in Spanish politics is predictive of my involvement in American politics. This could be part of a monitoring process. Then there's the issue of preference—why would having a business in another country indicate a preference for that country?

H: The Guideline C criteria are not particularly relevant for posing risk, given that there are so many exceptions. If several indicators together are not good, does throwing them together make a better measure? The only think I see as a risk is para 10(a)(2), the willingness to bear arms. I think this is most relevant. But then again they could have been conscripted.

C: The process itself results in distrust. A public health model sounds like making foreign associations into an illness. You'll scare away prospective employees.

K: But does not the current quasi-legal model make foreign associations sound like a crime?

B: We should not forget that fair treatment of employees drives behavior.

A: I disagree. The questions being asked are fair ones; people being considered for a clearance who would take umbrage at the questions are raising doubts about themselves by doing so. There should be an expectation on people who are in a national security environment. People who want to work in this environment should not be offended by this measure of security.

C: That's an old worldview, that the state is above everything. The new world is different. You don't want to scare people away.

B: It's not just about selection for the job, it's about job performance and trustworthiness in that job.

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*It appears we have a consensus (although not a goal today) that the criteria should not be treated in isolation and that the issues identified in the Foreign Preference Guideline shouldn't be seen alone as cause for disqualification/exclusion.*

J: They are just risk factors, with monitoring appropriate if any are present.

C: It may seem obvious that this should raise a flag, but when you're getting another passport you may have to renounce your citizenship and take a loyalty oath. In a loyalty oath, the words are spoken, but there isn't necessarily any meaning attached.

A: You wouldn't care if someone renounced U.S. citizenship to take a loyalty oath in another country?

C: No.

L: The State Department says when you do that, we don't care, absent any other activity. This is their policy. But if the security people do care, then such an action becomes problematic.

I: The State Department view is based in another rationale.

D: But what is the message that goes to the rest of government? If the State Department says it doesn't matter, why do we think it does from a security perspective?

F: Renunciation is in fact serious. The best direction is to train the adjudicators in a number of ways to learn about the clues they should be looking for. They should be trained in understanding their own limitations.

D: There is a need to focus the question underlying Guideline C, para 10(d) as a concept. How do we do that? Or should we?

C: There's no correlation between Guideline C, para 10(d) and grievance. It's a hoop to be jumped through, a vestige of the old world when oaths mattered. Such oath-taking used to mean something but today it doesn't.

D: If we have that problem, it is a Guideline problem. Getting EU citizenship for purposes of facilitating employment is one common occurrence today; it's an instrumental reason only. It says nothing about trustworthiness.

A: We mustn't assume everyone addresses these issues rationally. We need to think about attachment. We want the people who will give up instrumental attachments elsewhere as a consequence of the sentiments they hold for the United States. This concept of instrumentality represents one way of navigating the world. Most Americans are grounded in an American outlook (post 9/11). It behooves us to be careful with the concept of post-national identity, not to put too much faith in a new world where

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people leave behind their attachments for personal convenience. The person who is unwilling to give up instrumentality is making a statement.

C: Who should be preemptively disqualified? That goes too far for symbolism.

A: Any actions related to allegiance could also be a trigger.

D: We are moving more toward attachment than allegiance?

I: One alternative may be to say that concern is with allegiance to a country in conflict with the United States or that poses a heightened risk.

D: Guideline C is more neutral as to risk but concerns itself with any form of statement of preference for a particular country over the United States.

B: Guideline C, para 10(a) makes no sense without the examples, but the examples may be too narrow.

A: There is a need to retain categories that are distinctly behavioral. A national security clearance is one thing, getting an Irish passport for sentimental reasons is something else entirely.

B: Don't we want people who will perform their duties even in the face of conflict? In that case allegiance or attachment are irrelevant. Their real question is their trustworthiness. Do they have a grievance?

E: Attachment to another country doesn't mean conflict. Which attachment takes precedence depends on the situation. There's a danger in narrowing the pool and having only alike people, which leads to group think. Multiculturals have skills that others do not, they have a unique perspective. They could be better off because they don't take loyalty for granted. If you're going to have training, there should be multiculturals involved.

*What do you think of Guideline B? Is there any research into what else should be considered by the guidelines? Or is there some research showing that some things are irrelevant?*

H: We might be thinking of geography in a limited way in terms of risk. Something could take place within the community (ethnic relations) that could increase risk, creating a fertile ground for ideology to take root. For example, there are young Somali men disappearing in Minneapolis and joining Al Qaeda. In instances such as these, there may be something going on in a local environment that produces heightened risk.

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F: There are people whose self-concept is as a member of a group, and they tend to obey the rules of the group; there are others who see themselves as standing out from the group and are more likely to try to beat the system. It is useful to look at associated behaviors.

A: One could also suggest that there is risk with individuals who closely follow events in their home country. The piece about “closely follows events...” should go into Guideline C. Foreign Influence and Foreign Preference should be related – increased attractiveness and availability are clues.

F: With the internet one can do this easily and frequently.

B: You should capture the decision-making process and apply it consistently instead of asking adjudicators. The process could eventually be automated and therefore would be more reliable than an individual’s judgment over time.

*Any final observations?*

I: I end where I started. The Guidelines are processes that support concepts that are not very well defined. The terms used are proxies for ill-defined constructs. Foreign Preference and Foreign Influence should be merged and re-conceptualized to focus on potential conflict to U.S. interests. What are the constructs and why do we care?

A: Maybe you should commission two teams, one to write out the rationale for having each Guideline and the other to assess why it should be dropped. This would lead to two separate perspectives which may be helpful to sort out the basis on proceeding. What are the means to measure the concepts behind the guidelines?

C: Do that with a clean slate. It should be started from scratch and not from the existing guidelines. They used to have meaning historically but may no longer apply.

D: The real question is whether or not we trust someone and how do we catch those who we should not trust. We all seem to agree that allegiance is misnamed. Also we seem to agree that Foreign Preference ought to be seen in light of trust, not a rote list of facts such as possession of a foreign passport..

B: I agree we need to gather evidence that indicators of trust are actually indicators of trust (validate), go beyond theorizing. But we should focus on trustworthiness.

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## CLUSTER II: GUIDELINES I, D (PSYCHOSEXUAL ASPECTS), G, AND H

April 26 and 27, 2010

9:00 am—3:30 pm; 9:00 am—noon

Washington Dulles Airport Marriott Hotel

### Participants:

[REDACTED], Educational and Clinical Psychology, [REDACTED] &  
Associates, P.C.

[REDACTED] Industrial and Organizational Psychology, HRBackOffice

[REDACTED] Psychiatry, University of Iowa, Carver College of Medicine

[REDACTED] Clinical Psychology, Johns Hopkins School of Medicine, Mood  
Disorders Center

[REDACTED], Clinical Psychology, Boston University, Center for Anxiety and Related  
Disorders

(b)(3)  
(b)(6) [REDACTED], Clinical Psychology, National Center for Posttraumatic Stress Disorder,  
Behavioral Sciences Division

[REDACTED] Biological Psychology, Clinical Psychology, Harvard Medical School,  
Beth Israel Deaconess Medical Center

[REDACTED] Counseling and Consulting Psychology, Harvard Medical School,  
McLean Hospital

[REDACTED] Defense Office of Hearings and Appeals

### Others:

[REDACTED], SAIC, facilitator

[REDACTED] SPAWAR representative

[REDACTED], ODNI

[REDACTED] ODNI

[REDACTED] ManTech International

[REDACTED] ManTech International, recorder

[REDACTED], ODNI

[REDACTED] George Mason University

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## First Day

### I. Discussion of Psychological Conditions (Guideline I)

KJ: Patients may not always respond to treatment, or may fail to adhere to treatment, and there are risks of recurrence, but these possibilities are monitorable, they need not be exclusionary. We don't want to discriminate against people who may be able to provide a unique perspective.

MO: The nexus to security clearance considerations appears when there are failures of judgment. The word missing is "delusional," which captures the capacity to lose one's judgment; it is also necessary to think about a sense of grandiosity, the feeling that one's judgment is so good, so superior, that one is outside the rules.

DB: Regarding para. 29<sup>4</sup> there are obvious psychological conditions that could raise concern that are not listed (e.g., bipolar, schizophrenia). There are also DSM disorders which are minor and of no concern (e.g., generalized anxiety disorder), not calling any specifics out. Some terms included apply to personality disorders (e.g., emotional instability), but the question remains how to distinguish between someone with a condition who is a threat and someone with the same condition who is not a threat. The Guidelines are out of date. Several disorders are not treated by medication, and even with medication can still have symptoms. For example, para. 29(e) makes the absence of a *current* problem a mitigator, but this overlooks the reality of recurrent and chronic conditions. A person with such a condition might be symptom free-today, but would be unlikely not to have symptoms later on, which is why you need a monitoring program.

KJ: The Guidelines appear to assume that all disorders are homogenous, but they're not, they're very different. Being compliant and the consequences of failing to comply vary with the disorder.

KA: There is more than just compliance or non-compliance; there needs to be an awareness that compliance can be manipulated. Different personality disorders also present different risks. It is important to break down the disorder to find out who is a candidate for treatment.

MO: The Guidelines should talk about symptoms independent of diagnoses. Diagnosis is too sophisticated for the process and skill level of the adjudicators.

BS: I agree with de-emphasizing diagnosis for those reasons; besides it is often beside the point. Behavior and issues of judgment are more important. It would seem unlikely that diagnosable schizophrenics are applying for a security clearance. I have more concern about someone with ADHD who will leave a document lying around than about someone with a treated personality disorder in the schizoid spectrum. Psychological conditions can and do relate to judgment, the most common of which include delusions, but cognitive problems (i.e., attention, cognitive judgment/problem solving) also speak to poor judgment. Using a diagnosis label as a criterion

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<sup>4</sup> This and all subsequent para. references are to "Adjudicative Guidelines for Determining Eligibility for Access to Classified Information," December 29, 2005.

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for granting a clearance can be counterproductive, because there are many successful people with personality disorders.

KJ: I agree, but a lot of diagnoses give information about an individual and may be predictive of the course of the disorder.

BS: Agreed, I'm not saying that diagnosis should be thrown out, sometimes it's crucial, sometimes it's misleading. I am saying it's important to consider other factors.

*Is the listing of symptoms/traits in para. 28(a) sufficiently comprehensive?*

PB: It's not complete enough if focusing on behaviors, and all of these areas are difficult to measure. My research is on psychopathy and all of us have some characteristic behaviors. I have listed several behaviors that describe a psychopath, including pathological lying, cunning/manipulation, failure to accept responsibility for one's own actions, impulsivity, irresponsibility, grandiose sense of self-worth, poor behavior control, glibness/superficial charm, lack of remorse/guilt, lack of realistic long-term goals, and promiscuous sexual behavior. It would be possible to have discrete examples like a checkbox.

MO: I like that suggestion, it seems more useful for employee screening. It's difficult for mental health professionals to go from diagnosis to security risk, rather like behavioral descriptive level linked to behavioral security risk.

DB: I'm not entirely comfortable staying away from diagnosis; as written, the Guideline covers most disorders. Each of us has a cherished list of symptoms and if we keep adding, it may become unworkable. These are just examples.

MO: I don't know if emotional instability should be on a list; I'm not sure how that translates into security risk. It may lead to many false positives.

KA: Some listing can be useful for establishing risk. [REDACTED] list is useful for identifying trust issues in my area (sexual disorders).

MZ: We should begin with a diagnosis as well as behavior; diagnosis for its own sake is not so important but problematic symptoms are, and these things flow naturally from diagnosis. We can create a list of problematic symptoms in lieu of listing every trait.

KJ: I think we need to do both, but I'm thinking more about the course of the illness and what may come up in the future, thinking more of people who are asymptomatic at the time of investigation. With mood disorders there is a lot of science about how they can develop.

MO: There is a difference between paras. 28(a) and (b); (a) asks for a list of behaviors, while in (b) expert opinion is called for.

DB: Adding a list of diagnoses that could specifically pose security threat to para. 28(b) might be helpful.

KJ: Also add mitigating factors. For example, bipolar disorder is treatable; there is no reason automatically to make it disqualifying.

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DB: At the same time, identifying people who require greater scrutiny would be useful.

BS: There needs to be a recognition that behaviors can be linked.

DS: There is always the potential for misdiagnosis; diagnoses should not be relied on solely, rather symptoms should always be examined.

MZ: Certain disorders have symptoms or traits that put a person at a greater risk, and there are people without a diagnosis that can do some really bad things, Bernie Madoff for example.

MO: What is not captured in the Guideline is any consideration of “course.” How a patient is currently doing and how he or she will do over time are different questions. Para. 28(a) appears to be the best place to address behaviors and para. 28(b) to address diagnoses.

MZ: Lacking information on course, at the least it’s necessary to have the latest information in order to understand a person’s chances of doing well or poorly. With some disorders recurrence and remission are much lower than with others.

PB: I have a question about working in controlled spaces. Are there certain disorders that are going well in treatment and then when a person is put in this type of space, they get worse? In the business world, this is talked about as the fit between job and person.

KJ: Like sleep deprivation to create a manic state in bipolar, there’s a lot of research about it and ways to avoid it.

GH: “Controlled spaces” is a generic term meaning the places where classified information is handled. They may be very obvious and unexceptional, like the Pentagon, or, on the other extreme, carefully hidden, covert facilities only small numbers of people are supposed to know exist. In the latter, part of your job not to disclose where you work and what you do. This secretive nature, and the need to obfuscate, can be disturbing to some people.

JC: What about stressors that are not job-related but may increase risk? How can we detect these underlying vulnerabilities that may be missed in the initial screening?

KA: This is where diagnosis is important. Under stress, certain diagnoses will have certain prognoses.

MO: Control is significant when considering the course. Also potential future behavior.

DB: “No indication” in para. 29 is really getting into course; the problem is that these Guidelines are for lay interviewers rather than clinicians and so need lay language; if you get over-specific or over-detailed, it becomes unworkable.

*Can we expand behavioral examples in para. 28(a)?*

PR-H: “Emotionally unstable” covers a lot of ground and may not get at what people are interested in. Are there other phrases?

KJ: “Volatile” is possible, although it has a different connotation.

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DB: The list in the para. is not bad. Perhaps suicidal behaviors should be added?

KA: How about a “persistent and recurring pattern”?

PR-H: Is there a better word for “grandiosity?” It tends to align with many of our biggest problems.

KJ: Probably “manic,” inherent to mania, not personality disorders.

MO: We can get better words than these, some are so non-specific, like “dysfunctional,” and don’t get at security risk. This is where “delusional” is important, a sense of being grand when there is no substance to it. “Delusional” is key—there has to be training in what this word means. What do these words mean in relation to trust and reliability.

PB: What kind of guidance do investigators have?

GH: There is an investigator’s handbook that has more specificity, but for any number of operational reasons the extent to which investigators pursue certain issues can vary.

PR-H: One problem we face in the adjudicative realm is the unintended consequence of the very important and positive policy statement that no negative inference is to be drawn from an individual seeking mental health treatment. This is very good policy, but personnel security adjudicators often complain that it also has the result of limiting what can be gathered to the point that very little valuable information is obtained. One example of this that was raised specifically in the adjudicators’ review of the Adjudicative Guidelines was the portion of SF 86 Question 21 in which marital counseling does not need to be reported unless it involved violence. Another example is that the release used for mental health treatment in the SF 86 limits the investigator to asking three questions. Adjudicators find this limiting, but there is strong policy behind these limitations. The question is, do these limitations make sense from your professional perspective as a practical place to draw the line?

KJ: Is there any kind of routine testing?

PR-H: Only in cases where people are going to be sent into areas where a problem is expected due to the situation.

MZ: Dishonest acts, exploitation, extortion, and the like are all things people can do inadvertently. The problematic people are those who do them volitionally.

BS: Given the importance of the task, I’m struck by the little routine consultation that is done. If we were talking about a physical problem, would we have people just out of college asking about tumors and hormones?

PR-H: Most often what happens is that a naïve report of bizarre behavior by a coworker is then checked by an appropriately qualified professional, although there is variation between agencies.

*Specific points regarding the text of Guideline I.*

Para. 28(a).

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- Remove “emotionally unstable” and “dysfunctional.”
- Include some terms from [REDACTED] list
- Avoid “delusional” and “psychotic.” Some additional examples could be “manipulative,” “impulsive,” “irresponsible,” “chronic lying” or “deceitful.” I don’t believe it necessary to establish a pattern.
- Include “exploitative” or “extortionate.”

Para. 28(b)

- Include a suggestion to get two mental health professional opinions, if feasible.
- Include something reflecting “course” and future risk, possible monitoring system.
- Add list of diagnoses.
- Be general. Disorders that tend to have relapses, where there’s concern for a problematic course, won’t be picked up by any list of traits included in para. 28(a).

Para. 28(c)

- Change “advice” to “plan.”
- Change “emotional, mental or personality condition” to “psychiatric condition.”
- Remove the example of failure to take prescribed medications and replace with it with “failure to follow treatment plan or treatment recommendation.”

MO: Many patients don’t take their medication, but the consequences of failing to do so depend on the condition and medication. Prozac is different than Lithium.

- Add language to capture “persistent and recurring” illness.

Paras. 29(a), (b), and (c)

- No changes.

Para. 29(d)

- Remove “emotional instability” and replace it with “psychiatric impairment.”

Para. 29(e)

- Add language addressing “course.”

DB: It is possible to have a psychological condition and function fine in the workplace and just need monitoring. Monitoring should not be tied to some artificial time limit but should be open-ended.

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## II. Discussion of Sexual Behavior (Guideline D)

KA: Current limitations on investigation mean that at least some relevant information is being intentionally excluded. For example, by making counseling not reportable, some sexual behavior issues of concern can be overlooked.

PR-H: The rules do narrow the net of what is called forth voluntarily. However, collecting all marriage counseling information would bring in too much marginally relevant data and could discourage people from pursuing counseling.

MZ: The inability to stop may be indicative of a personality disorder. Instead of “personality disorder,” para. 13(b) should use “psychiatric disorder.”

DB: Perhaps the Guideline should emphasize the inability to stop as a behavior: something on the order of “loss of control” or “inability to stop regardless of adverse consequences.” For para. 13(b), the sentence should end after “unable to stop.”

KA: I agree the sentence should include something like “loss of control despite consequences.” As it exists, it’s too vague.

KJ: What’s the course of this inability to stop?

KA: With cybersex, we have a new behavior that we wouldn’t have seen previously. The cybersex phenomenon is a security concern because it’s changing the landscape, changing the way we think about sexual addiction. Because of it, people are becoming addicted very quickly and taking risks such as participating in sex vacations and using prostitutes. It is a new phenomenon that is changing counseling practices and raises real concerns for personnel

*How should the language be modified to account for trends?*

KA: Change the language in 13(b) in a way that explicitly addresses cybersex addiction.

MO: What would be the security risk as a result of increased tolerance to high risk behavior?

KA: At a minimum it would be an increased vulnerability to exploitation. New behavior is being incorporated into the sexual realm and things that are not normal are being normalized. Then difficulties arise when the person goes out into the world where these behaviors are not considered normal. I am stunned at the rapid escalation and inability to predict who gets hooked, although there are markers. There’s a new concept: addiction interaction disorder—mix or mediate like a cocktail. Thus keeping addictions separate may not clue you into the risk. The security concern may be from a combination of addictions.

DB: What would you say the course is? Take for example a middle-aged man who develops a full-scale problem and seeks your advice. How would his situation be classified according to the current Guideline?

KA: Normally it requires 2-3 years before it’s possible to conclude there’s been a lack of recurrence, with a year as the absolute minimum. Those who go through multiple dimensions of

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treatment and come to terms with issues are most successful. The whole lifestyle needs to change.

KJ: Does treatment work?

KA: In many instances, yes

DS: Who defines loss of control? Is it the person's perception or someone else's perception?

KA: Both can be true. It is a persistent pattern of behavior in the face of adverse consequences.

PB: What happens with adolescent indiscretions that are captured someplace on the Internet and so follow a person around forever after?

MZ: Can you ask people if there is anything about them on the Internet they would be embarrassed about?

PR-H: We don't currently do web scrubs, so it wouldn't be captured.

MO: The whole sexual behavior Guideline originated because of concerns with homosexuality, does it deserve to be its own category?

KA: Yes, with the evidence of cybersex.

DB: Yes, because the issues are distinct and problematic. What about gambling?

PR-H: That's currently addressed, but in the Financial Considerations Guideline.

KA: Sexual shame is unique to sex disorders, which is another reason to keep their behavior separate. People go to great lengths to hide and may be willing to make bargains and deals to keep it secret. It needs to be kept separate.

MO: Shame has to do with something being hidden. What other disorders are like that, that they raise such a level of shame? How do you assess that?

PR-H: The current distinction is between sexual behavior that is criminal and that which is indicative of an underlying psychological condition. That means that sexual behaviors could be divided between two Guidelines, Criminal Conduct and Psychological Conditions. I hear people saying it should stay on its own.

KA: People can misuse a substance to manage mood, and they have a different profile from that of a drug or alcohol addict. The same is true of people who use sex as part of another disorder, but there are also people for whom the sex addiction is primary. If you put it in another category, you will lose focus.

MZ: All sexual behavior should be in its own category, criminal or not, including stalking, prostitution, pornography, sexual abuse.

PR-H: Ross Perot had a notion that anyone who would cheat on their spouse is also likely to cheat on their employer. This attitude in part underlies Guideline D.

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PB: There appear to be three categories: sexual shame, criminal activity, and psychiatric disorders.

DB: Other disorders could lead to embarrassment. Take, for example, transvestitism: it's not criminal but could be exploited and therefore be a security risk.

KA: A quarter of the workforce is involved in cybersex activity on the job to one degree or another. You can't fire everyone; the phenomena is going to grow, it's dynamic, and it will be critical to define these terms.

GH: The personnel security program draws a line between accessing pornography at work and at home, taking the former to be a problem and the latter not. What concerns, if any, should we have about a recreational user of pornography at home? When does it become a problem or addiction?

DB: A big problem is that no one will volunteer this type of information, it would have to be developed from an informant. Given current standards in society, does anyone care that someone is casually viewing porn? If not, is it a basis for coercion?

DS: What about the ability to stop?

KA: The inability to stop despite consequences is a useful criterion.

KA: A pattern of increased behavior to reach the same or previous level of mood alteration is problematic. All addicts will report that what they did before no longer gets them high. A tolerance that requires an increase in activity to shift mood.

DB: Evidence of any increased activity and increased risky behavior is also problematic.

KA: We almost always see an increase in emotional regression.

BS: All of that will be hard to discover. Addicts lack the ability to be alarmed by their behavior until it's over, Their behavior is so compartmentalized that they fail to recognize how far outside the norm they are in that one area of their lives.

KA: In para. 14(a), I'm interested in the notion of an event's occurring before or during adolescence as a mitigator. In such a case, does this mean that the person has been a victim? The earlier an event occurs the more serious it's likely to be.

MO: Para. 14(b) seems to address the real issue of 14(a); 14(a) would appear redundant.

MZ: But there are events that are recent, such as spring break for college students, that take place under unusual circumstances. Time and age are not the same.

KA: There should be reference to treatment, parallel with the language in Guideline I. Sexual disorders are treatable and should be handled in the same way as was done in paras. 29(a) and (b).

PB: Whose perspective is relevant regarding coercion, the individual's or the adjudicator's?

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MZ: There is also situational shame. You may not be ashamed of the behavior but still not want others to know about it because of the potential for coercion and its resulting consequences.

KA: The absence of shame may in fact be suggestive of another disorder.

*Specific points regarding the text of Guideline D.*

Para. 12

- Remove “personality or emotional disorder”

Para. 13(a)

- No change.

Para. 13(b)

- End after “unable to stop.”
- Weave in language regarding loss of control despite negative consequences.

DB: Add examples?

KA: “A pattern of increased risk to achieve mood alteration.”

Para. 13(c)

- Include “past or present” sexual behavior.

Para. 13(d)

- Remove “of a public nature.”

Paras. 14(a) and (b)

- Include mitigators regarding treatment, parallel with the language of Guideline I; borrow language from paras. 29(a) and (b)

Paras. 14(c) and (d)

- No change.

### **III. Discussion of Alcohol Consumption (Guideline G)**

KJ: Para. 23(c) doesn’t make sense: “has no history of previous treatment and relapse”?

PB: Is the fact that someone is a first-timer relevant as a mitigating condition?

GH: The language is attempting to say that there is no history of treatment with subsequent relapse. The first-timer has yet to establish a pattern of trouble-sobriety-relapse.

DB: Rewrite as “the individual is a current employee, has no previous history of treatment and relapse, and is currently making satisfactory relapse.”

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KA: The previous treatment is a risk factor for relapse, so first time is less risky.

AA: Is this really a mitigator?

KA: By itself, it does not imply increased risk.

PB: According to this, you could have been a lifelong alcohol abuser but as long as you haven't gone into treatment, then you're ok; however, if you tried and failed and want to try again, you won't get cleared.

MO: First-time treatment is different than multiple treatments. A significant population is culled out with the first treatment.

PR-H: A current employee may be viewed more as a matter of risk management. The investment in the employee leads to a different attitude than in the case of a potential employee.

MO: What about people headed toward trouble—a pervasive pattern of coping with stress through alcohol intoxication? People who use substances to cope with stress usually face trouble sooner or later. Paras. 28(a) and (b) list critical items that are easier to check. On the other hand, para. (c) is broad and difficult to measure, but there is a clear link to impaired judgment.

KJ: Alcohol disorders frequently coexist with others.

MO: How about speaking of the use of alcohol when medically contraindicated?

KA: I would stay away from that phrase, some people take a drink for stress and it's okay and for others it's not.

PR-H: What do you think about the reference to licensed clinical social workers in para. 22(e)?

All agreed that term is outdated and meaningless.

PR-H: Para. 22(e) recognizes that someone coming in for help may not be talking to a doctor. It was written because para. 22(d) of necessity excludes addiction counselors. Short of a diagnosis by someone who is qualified, is there value to this type of evaluation?

JK: Given co-morbidity, solely to look at this makes no sense.

PR-H: We want it to be a recognized treatment program.

MO: Would that person be a duly qualified medical professional?

DB: Do we need 22(e) at all? Does it add anything?

PR-H: Is there value for diagnosis by an alcohol addiction counselor?

DB: The Guideline could say "evaluation or diagnosis by a duly qualified medical professional."

KJ: I remain skeptical of evaluations.

MZ: There are other types of professional, remove "medical."

PR-H: It's a way of making a difference between a diagnosis and an evaluation by a lesser qualified professional, a way to cast a wider net.

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JK: What does the literature say?

JC: The issue of co-morbidity is significant.

PR-H: Is there a lower order of evaluation that could be used to trigger a disqualification?

AA: In neither the sex nor the psychological Guidelines is there a need for diagnosis. Is there something unique here about alcohol-related conditions that require a diagnosis?

MO: I can't see what para. 22(e) captures that isn't captured in the ones above it.

All agree para. 22(e) should be eliminated.

PB: Before para. 22(c) becomes relevant, do situations covered in 22(a) or (b) have to have occurred? If you don't do what's covered in 22(a) or (b) but get a diagnosis because you drink too much, is that a security risk?

DS: There are examples of this—no known negative consequences but drinking too much.

MO: At some point high blood alcohol will bring risks of poor judgment.

DB: Once there's a problem, there is always the risk of relapse. Why not say "recommended treatment" in para. 22(g)? None of the other Guidelines talk about following "court ordered" treatment.

MO: A person requiring treatment becomes a concern for the same reason that the treatment is required.

All agree with retaining 22(g).

PB: It would be helpful to add "jeopardize welfare/safety of others" to para. 22(b).

DB: Para. 22(d) should read "medical or mental health professional."

BS: With regard to mitigation, other Guidelines take into account time and age, this Guideline only takes time into account.

MO: There is a criminal component to age here, in the form of underage drinking.

PB: Para. 23(b) is interesting because acknowledgment is the first step in AA, but only the first step.

MO: Insight and the absence of relapse are both necessary to be mitigating.

KJ: Acknowledgement is important even with psychological conditions.

KJ: Why the level of specificity in para. 23(d)? AA doesn't work for a lot of people.

PR-H: Should reference to AA be dropped?

KJ/KA: Not necessarily, but it shouldn't be thought of as the only choice. Keep options open.

DB: Eliminate "inpatient and outpatient treatment" and change to "treatment program."

MO: I would recommend deleting everything after "treatment recommendations."

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PR-H: Does that make sense to everyone to stop after “treatment recommendations”?

All agree.

#### **IV. Discussion of Drug Involvement (Guideline H)**

PR-H: For consistency, should we remove para. 25(e), which speaks of licensed clinical social workers?

All agree.

DS: Para. 25(g) calls out illegal drug use while holding a security clearance, but there appears to be no reference to misuse of legal drugs.

GH: The “Concern” para. (24) speaks to “use of an illegal drug or misuse of a prescription drug.” Both are intended, but the language is not explicit.

MO: I can now see why the drug and the alcohol Guidelines are separate. Both look at problematic use, but the legal issues with drug misuse mean that it’s not necessary to look for a threshold of concern.

PR-H: Regardless of the law, does that make sense?

KA: Employees are told ahead of time, so they are either disregarding an explicit condition of holding a clearance or have an addiction.

MO: Paras. 25(a) and (b) look at law rather than pathology. Does it matter to look at use versus the law? What about marijuana?

KA: Long-term use of pot has shown significant damage.

DB: Cleared people are told from the outset not to use drugs illegally, so if they do, then it’s a violation or disregard of the rules; this raises a red flag.

GH: We can change the policy if it doesn’t make sense. Does it make sense?

DS: I think the policy makes sense. I wouldn’t want someone in a cleared position using illegal drugs.

KA: There is a loss of control.

*Assuming drugs were legal, is there a toxicity aspect to specifically marijuana not to be lost sight of?*

MO: We could apply paras. 28(a), (b), and (c) from the Alcohol Consumption Guideline to marijuana if it becomes legal. There are other agents, though, where a single use can unleash a drive for the substance; it comes back to being against the law.

MZ: The focus appears to be on illegality rather than misuse. The Guideline seems to be a legal policy; the wording is odd—“illegal drug use” versus “use of illegal drugs”

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PR-H: This heavy emphasis on the illegality aspect of drugs, a violation model rather than a substance model—is that practical?

MZ: One implication is that you're associating with bad people if getting street drugs rather than getting drugs from your doctor.

DB: The misuse of prescription drugs is becoming an epidemic; I would support a change in the language of paras. 25(g) and (h) to include prescription drugs.

MO: Would Rush Limbaugh get a security clearance?

DS: His case would fall under para. 26(c).

MO: It's difficult to determine if use "deviates from approved medical direction."

PB: I agree. There's a need to show intent on part of the patient; para. 24(b) includes "misuse of legal drugs." That should be sufficient.

MO: Separate illegal drugs from abuse of legal drugs in the Concern (para. 24). The list of mitigators in para. 26(b) is weak.

PR-H: It's meant as nothing more than a list of examples of how one can demonstrate their intent not to use.

MO: Abstinence is good to include, but pull in language from para. 23(d).

AA: There is no "demonstrated intent not to use" as a mitigator in the alcohol Guideline, but there is here. Does that make sense?

DB: There is a potentially meaningful distinction because you can buy alcohol legally at a store.

MZ: I see this as a simple acknowledgement of intent.

MO: The language in para. 23(b) seems to be a more comprehensive than 26(b).

KA: The examples in para. 26(b) are good. As written it has meaning and is somewhat predictive of abstinence, but I also like a combination of paras. 23 and 26.

*Should there remain two distinct Guidelines or do you see value in combining the two?*

MO: I like the parallels but see value in keeping them distinct.

BS: I like having the split, even though it's an artificial split because alcohol is a drug. However, not just law but the fact that the culture governing use is so different. From a practical point of view, it seems useful to keep them separate when evaluating potential security risk.

(b)(6) AA: [REDACTED] and [REDACTED] won't be here tomorrow; do you have any final comments?

KA: "Addiction interaction" is an important concern not being addressed by the Guidelines that should be.

MO: There needs to be greater recognition in the Guidelines of the value of delusionality as a critical behavior: "Any pervasive pattern of lying, manipulation, lack of remorse, coercion,

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irresponsibility, impulsivity, or failure to accept responsibility for own action.” Compulsive gambling should be spelled out.

PR-H: How would you work compulsive gambling into the Guidelines? Guideline I? It does appear in the Financial Considerations Guideline, but is buried there.

KA: Maybe we need a Guideline on process addictions, by which I mean behavioral addictions, with subcategories called out; if we had a behavioral addictions Guideline, both gambling and sex addiction could fall under there.

## **Second Day**

### **V. Behavioral Addictions/Compulsive Gambling**

BC: I’m interested in your thoughts about something brought up yesterday, this idea of creating a Guideline for behavioral addictions—gambling, sexual behavior, and so on.

DB: It’s not a good idea at this point. To do so is a big task since most of the behavioral addictions are not described in the DSM. You would have to decide what is important on your own without guidance from the DSM. I would save this task for a future discussion. But I do think pathological gambling needs to be better highlighted in the Guidelines.

BS: I like the idea of combining the addictions from an academic perspective. In fact, you could conceptually cover all psychological disorders with a single Guideline, but keeping separate Guidelines for types of behavior has value for practical purposes.

BC: Where do these behaviors fit in the current Guidelines?

DB: It varies, some fit under psychological, some under sexual, and some under financial. Gambling in particular fits well under the financial Guideline.

DS: I would agree. Gambling is a huge problem especially among veterans. It worries me that something is lost by defining it solely as a financial problem; doing so overlooks the psychology of compulsive gambling. I think it should be its own Guideline because there are more than just finances involved.

AO: I’d also add that you may want to move gambling to another place because the financial Guidelines are now under Congressional scrutiny. There is some thinking that disqualifying someone from a security clearance for financial reasons may be too onerous in tough economic times. So, if the concern for gambling is worth preserving, it may be useful to move it out of the financial section to another part of the Guidelines.

MZ: Yes, and there are other disorders that may have financial implications.

DB: I think the reference should be kept under Guideline F, but add some other conditions; I’m unsure where to highlight pathological gambling under these other Guidelines.

DS: It could be put under Psychological Conditions, or give it its own Guideline.

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MZ: Psychologists have identified lots of disorders that may not be relevant to the clearance process. Conversely, people may have attributes that are considerable security risks but these don't add up to a disorder. The focus on behavior is important. There is a need to spell out high-risk areas better. People can have personality traits that don't add up to a diagnosis or psychological condition and still be a risk.

BS: The issue is to capture function, not diagnosis; add information under Guideline F to link to mental health.

DB: There are a variety of conditions listed under Guideline F. It would be possible to provide more detail there about gambling and not create a specific new Guideline for it.

DB: A behavioral addictions Guideline, based on the current Guideline D, could be created and include things like sex addiction, compulsive gambling, internet addiction, compulsive shopping and spending; as for compulsive sexual behavior, whether it's included in the DSM is beside the point; it exists, there's literature on it, and people have these problems.

MZ: Start with personality traits, then add actual psychological disorders that remit and relapse, then behavioral problems (i.e., sex and gambling), and then substance abuse disorders like alcohol and drugs; list everything that could be a problem. Some initial problems will be screened out and others will develop over time.

PB: I lean toward gambling being its own Guideline. Drugs and alcohol both have vulnerabilities, but while all are risky, gambling is by definition the taking of risk—that's what it is when all is said and done. I would not want a person who is so driven by risk to be handling state secrets. It deserves special attention.

DB: As a group, pathological gamblers score high on impulsivity, and there's overlap with other behavioral addictions. They also often lie which is bad for security risk. Either add a separate Guideline for it or change Guideline D to include behavioral conditions (internet addiction, compulsive gambling/shopping/spending, etc.). They all have similar traits that can be pointed out, associated with sociopathy.

DS: There is also loss of control, so wording similar to the sex Guideline would be appropriate.

PB: There is the financial vulnerability associated with gambling, but also impulsiveness may either lead one to sell secrets or may cause one to be distracted and inadvertently give them away. These different sets of concerns about the behavior may be a good reason to think about gambling under two Guidelines. The psychological considerations tied to impulsivity may be the most important.

BS: I don't quite see the uniqueness of gambling. All addicts are trying to control mood, all are deceitful. I see more similarities than differences between them, to include neurobiology. Conceptually, they should all go together if the intent is to describe psychopathology; however if the intent is to describe risk, highlight the ones already highlighted. I would keep them separate.

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I might feel different if it weren't already captured under Guideline F. Of course, that Guideline might need some work

DS: Why put gambling under finances and keep alcohol and drugs separate?

BS: The way that the main risk is expressed is through financial means, and the vulnerability it creates is through financial means. The intent is to capture the vulnerability, less so to conceptualize correctly through a psychological point of view.

MZ: I still think it should be separate; all of these could lead to financial problems.

## **VI. Co-morbidity**

BC: In previous discussions the idea of co-occurring addictive symptoms that by themselves do not meet the threshold for a disorder, but combined may meet the definition of a disorder. How should the Guidelines address this, if at all?

MZ: Certainly an individual may have co-occurring symptoms where each by itself is below the threshold for a disorder but combined they may have a significant cumulative effect. But mixing and matching would not be a good idea.

DB: I wouldn't worry about co-morbidity, leave that to the clinicians.

DS: I think it'd get picked up by focusing on behavior. For example, impulsivity can cut across behavioral domains.

## **VII. Whole Person Concept (Resilience/Hardiness)**

BC: The Guidelines state that security determinations are made on the basis of a "whole-person" concept that includes consideration of the bad and the good. Yet, as we have discussed, the Guidelines focus almost exclusively on negative attributes. Should the Guidelines dictate consideration of positive attributes?

DB: Aren't in fact the bad traits the ones you're trying to ferret out?

BS: Good traits are implicit, not the focus of what you're looking for.

DS: The absence of bad equals good.

BS: It's a fascinating idea, but it's still in its infancy in the research; at the end of the day, it's the absence of negative factors.

MZ: All you need to care about at the security level is the bad things; otherwise, you would have to care about things like education, and all the positive comments that people say.

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## CLUSTER III: GUIDELINES J, D (CRIMINAL ASPECTS), AND M

August 17, 2010

9:00 am—4:00 pm

Washington Dulles Airport Marriott Hotel

### Participants:

[REDACTED] Organizational Behavior, Louisiana Tech University

[REDACTED] Public Policy Analysis and Political Economy, University at Albany,  
SUNY

[REDACTED] Developmental Psychology, University of California-Irvine,  
Center for Evidence-Based Corrections

[REDACTED], The [REDACTED] Group, LLC

[REDACTED] Criminology and Criminal Justice, Defense Academy for Credibility  
Assessment

[REDACTED] Clinical Psychology, Consulting & Clinical Psychology, Ltd.

[REDACTED] Social Psychology, University of California-Irvine, Center for Evidence-  
Based Corrections

[REDACTED] Law Offices of [REDACTED], LLC

[REDACTED] Sociology, Lehman College, City University of New York

[REDACTED] Public Policy, Bridgewater State College

[REDACTED] Defense Office of Hearings and Appeals

### Others:

[REDACTED] SAIC, facilitator

[REDACTED] SPAWAR representative

[REDACTED], ODNI

[REDACTED] ManTech International

[REDACTED] ManTech International, recorder

[REDACTED] ODNI

[REDACTED], George Mason University

FH: My suggestion is to look at the assumption behind the guidelines—that cleared individuals are in some way better, more trustworthy than someone who is not cleared.

EC: You could do some research on the topic. Do people with clearances have lower rates of dismissal or fewer problems with submitting travel vouchers?

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SB: Most lifeguards have a certificate of some kind. Does this mean they are a better lifeguard?

ES: I have a question regarding social and family networks. The people who are hired and cleared have social networks that they don't abandon just because of their new status. It appears that neighborhood interviews aren't getting at this. Are social networking sites something we should address?

BC: The question is relevant, but there is currently no policy in place to look at social networking sites.

ES: I'm wondering about IT-based networks as well as the incarnations of social networks.

EC: The network aspect of crime is a good point to keep in mind. Much of the analysis of crime is very individual-oriented, but youth crime in particular is often social: adolescents commit crimes in groups. When looking at persistence of offending (in terms of frequency and variety) among a population of youth offenders, the only strong predictor was whether or not the father had a criminal history. Now you have to be careful because while this is true in the criminal population, it is not true of all people.

EW: There is a lot of academic work on networks and social capital. We don't want to view this deterministically, but there is risk.

PR-H: On a practical level, we speak to family members about the individual but not themselves because legally we cannot investigate them. I'm interested in hearing about the extent to which these things are useful. For example, we've wrestled with the question of the "criminal spouse."

RW: (refers to 31[f]<sup>5</sup>) Can you provide an example of clearances having been denied due to criminal sexual behavior, specifically where it was not prosecutable? I'm assuming this would be instances of rape, incest, etc.

PR-H: We do have cases where we learn of non-prosecuted serious crimes, admission of incest being one example. We are not bound to limit ourselves to serious crimes that are prosecuted.

RW: So we're talking about child molestation or rape...the majority are those cases?

PR-H: Yes.

AA: *To the extent that it is a matter of public record, is the criminal activity of a family member something to be considered?*

AO: If guidelines don't call for it, it is not done.

PR-H: We may accidentally pick up something because of similarity of names. The only time we deliberately investigate someone else is during the Spouse National Agency Check.

ES: Would you look at the family if I'm being investigated and I do something bad?

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<sup>5</sup> This and subsequent section references are to the section numbers in the handout of relevant portions of Guidelines D, G, H, and J used during the session. A copy of the handout is reproduced as the Attachment.

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PR-H: No.

ST: There is a broader issue to consider. In the social science literature, family size and affiliation with delinquent others are more important in terms of predicting risk.

SB: There is a distinction between risk prediction in a general population and risk prediction in a special population (for example, offenders). As an example, it is easier to predict who gets into Harvard than to predict who will succeed at Harvard. The larger context as it relates to risk is risk prediction. What error rates (false positives and negatives) are you willing to accept? It's very hard to predict events that are infrequent, that is low base rate events. These are important concepts: are we predicting low base rate events? In criminology, false positives and negatives are seen differently. If you think one false negative is extremely costly than you can justify anything.

GH: The fundamental question is: Why should we care whether a person is or is not a criminal? Currently, we think we should for three reasons. First of all, because we think past acts provide clues to future behavior. Secondly, there is a confidence-in-government issue that arises if a government employee is involved in a serious crime. Thirdly, there is the assumption of a correlation between crime and other types of workplace deviance.

SB: It's a risk prediction exercise—you can't do it until you know what you are trying to predict. What are the base rates and what is the level of comfort with error rates? There are all types of potential measurement problems that require a degree of calibration to be able to do a risk prediction or a risk reduction.

AO: The purpose is to prevent unauthorized disclosures.

PR-H: (refers to 30) One of the concepts we are reviewing is the statement of concern in the guidelines. So yes, we do need better measures in the guidelines.

BC: There isn't any data that speaks to false positives and negatives, and base rates are very small. However, if all else fails, we err on the side of national security. We can live with more false positives.

SB: Under that condition, anything could be justified because you said infinite versus nothing. Not bounding the upper end means anything can be justified.

PR-H: If we had no risk tolerance, then we could all go home. We've been moving towards a risk management approach and away from one that's risk averse.

SB: Risk management is a quantifiable realm, you can justify that. The conversation you have to have is about false positives and negatives. When you are managing risks you need to ask: Will the process always generate false positives and false negatives and what are the relative costs of each?

EW: By probability if there is a 5 percent chance of something being missed, then half the errors will be false positives. You don't want to lose people who will be fine, but you also don't want

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to admit people who could be a problem. It's a classical statistical problem. You have to make a decision about how much you are willing to tolerate.

MR: Looking at the people we represent in criminal cases—ones involving physical/sexual abuse—almost all are victims themselves. During the clearance process how do you determine if someone has him- or herself been a victim? There's the potential that a history of victimization may be a risk for later offending, although that's certainly not so for all crime.

EW: There is also the issue that the rate of unprosecuted crime varies with the job. Consider currently employed bank tellers who have been fired from former jobs for embezzlement, but whose crimes were unreported. Banks are often unwilling to prosecute.

FH: Statistically, it's better to have 17,000 leakers leaking one piece of information than to have one leaker leaking 17,000 pieces of information. I don't know if anything could have been done to identify the person suspected of being responsible for the leaks to WikiLeaks before during or after the clearance process. It raises a related issue about the source of information. What is the probability of someone being identified as a perpetrator? Is it 20 percent? Of that 20 percent, there's a small number who go to court and get convicted. There's a higher proportion of individuals who are offenders but who would be identified as non-offenders.

BC: If we were to start fresh to develop a screening tool, we would probably think about error rates. But that's not how the guidelines were developed; it's policy based on common sense. We would like to put some research legs underneath it.

SB: You could do more. You really do need to think about base rates if you are going to make progress at doing things better. Employers are doing the same thing wrong, they have no idea of what they are predicting. If we are talking about variables to predict risk, this is not how risk prediction is currently done. Ideally, to accurately predict risk you would want a situation where absolutely nothing is being done to reduce risk and then try to identify the variables that are associated with the risks. Currently, you have a situation where you are trying to identify the variables and estimate their impact when the process has already been modified to reflect the variables that have been historically identified. This is very far from a controlled experiment. You really need to be aware of this fact: trying to estimate the effect of variables in a contaminated environment is very difficult. You're in an environment where X is already known and being treated.

ES: I would feel more comfortable if there was a group designing a study to test these assumptions.

GH: The stated purpose of the personnel security process is to contribute to the protection of classified information by restricting from access those who would not protect it. Clearly, the predictive qualities of what is in the guidelines and the result actually achieved is not direct. However, the objective is less a predictive model than one that identifies whatever calls reliability and trustworthiness into question: questions about reliability and trustworthiness call into question the ability or willingness to protect classified information.

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RW: What limits are there? What can't you ask about?

PR-H: The SF86 lays out a series of questions, and the applicant signs a release that lays out the scope of the investigation. So the investigation is consent-driven.

RW: There are several activities in the sexual realm, particularly online, that could be criminal activities. You would need a limit on what the government can and should look at.

PR-H: We have done neighborhood checks and there is recognition that they are of limited value. The online community is perhaps becoming the new neighborhood. It is not included currently, but should it be? The consent form of the SF86 doesn't get into this so the online environment goes uninvestigated.

AO: Personnel security investigations are very specific, not like a deposition or a fishing expedition.

EC: It's a double-edged sword. The most important predictors are past behavior and age, but age is really a proxy for development. There are no developmental considerations in 31(a). You can have 16 year olds arrested for felony possession, but the likelihood of them going on to a career of dealing is very low. Many young people may commit a crime, but this does not mean that all of them go on to continue to commit crime.

PR-H: We should review the guideline language because the first mitigating condition speaks to age and time—so much time has elapsed since the crime or it has occurred under unusual circumstances. But what degree of recency matters for crime? How does that vary by the event or type of crime?

AA: *What is the role of age in criminality? How should it be reflected in the language?*

EC: The age of first offense is the best predictor of future offending. Most kids desist from crime. Keep in mind that 60 percent of all criminal behavior is committed by 5 percent of the population. Developmentally, kids are malleable, and involvement in crime decreases over time. Based on the false positives and negatives talk, anyone who committed a crime would be excluded, which is an overzealous result.

PR-H: And that is we want to avoid. The Bond Amendment replaced the Smith Amendment, which said DoD could not grant a clearance based on four conditions: one year in jail, mentally incompetent, current drug user, or a dishonorable discharge. An anecdote illustrates the consequence of such an approach. An applicant at the age of 16 in the 1960s attempted to break into a house with his friends. They were caught and the judge decided to put a scare into them and sentenced them to jail for two years. Then, 30 years later, the applicant was precluded by statute from getting a clearance without dispensation from the Secretary of Defense. We need to avoid such blunt tools for making judgments. It is this degree of nuance that an adjudicator can take into account.

EC: This is exactly what most juvenile crime is like, "stuff happens." Two important points: 1) kids commit crimes in groups and therefore get lumped together for the same offense, and 2) the

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charge depends on other things largely irrelevant to the actual act. Charging is very arbitrary based on context and the individuals involved. The problem with adolescents is holding them to the same strong standard.

SB: Relying on sentence versus the crime introduces policy discretion. Prison sentences depend on location—they vary from state to state—and not necessarily the crime; you are ten times more likely to get a year in prison in Texas than in Minnesota. It depends on whether you are less concerned about what actually happened and more about what happens to someone after they spend time in prison. Even employments can use arrest behavior, sometimes it is based on what you did and other times it's charged down.

PR-H: So, if we focus on sentences, it is at best unfair?

SB: Reliance on sentencing moves you farther from actual behavior and closer to policy choices that differ dramatically by location. It also means that you're including race factors that are correlated with the process. For example, if you look at racial disparity in drug sentences vs. arrest, 40 percent of variance is explained by race.

AO: Using the attorney profession as an analogy, most licensing boards would care less about a battery charge than fraud since fraud gets at trustworthiness.

RB: The issue goes beyond criminal and non-criminal. Sometimes the non-criminal could be more predictive of revealing secrets. Doing drugs may be a worse predictor of revealing a secret than cheating on an exam, but the latter is not a crime.

SB: Go back to age. Major predictors of initial offending are age and gender. Predictors of recidivism are age and criminal history, not the type of crime but the number of offenses and the time since the last one (with a rapid decline after 3-4 years), but even that is based on age and the interaction with other factors.

ST: Women are less likely to offend. Intensity and frequency are important.

AA: *Let's examine 32(a).*

EW: I think we need to think a bit about specific crimes vs. crime in general. Generically, a 40 year old committing his or her first crime looks like a non-offender after one year. At the same time, a 40 year old who's first crime is a serious white-collar offense has probably been offending for several years without being caught and so can't be considered in the same way. There should be a rethinking of modeling crime with attention paid to the baseline risk for specific crimes. The best indicator of risk is a history of offending. The longer you go without reoffending, the less likely that you will reoffend at all.

EC: Age is not development, but a proxy for it, used as a practical matter. A better predictor than age itself is impulse control—things like lacking a long-term perspective, the inability to resist peers, and impulsivity. We have psychological tools to assess all this. By law we may need to use age, but to understand the process we really need to look at psychological maturity.

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AA: *Are there other proxies like age, things we should be looking at that may raise flags?*

EC: Moral development and engagement are things we have been studying and can measure. There is evidence that they are related. Motivation is another factor but it is harder to measure. The underlying motivation for behavior is something we need to explore. But its determination often depends on retrospective evidence that is not likely to be accurate.

RW: From a policy perspective, is there an intent or a plan to look at applicants' online behavior?

PR-H: There is interest to see whether it would be meaningful to do so, but if it ever is introduced, it will be based on individual consent. So the question then becomes, what should we ask people to consent to?

RW: It's complicated. If part of what you want to know is who is susceptible to blackmail, then look at Facebook or financial transactions. It depends on how far you want to go. There's lots of information online about all of our lives and many of us could be put in a compromising position.

AA: *Could we make a recommendation to add language and specifically call out "online" information in the guidelines which would then affect the questions in the personnel security process?*

AO: The question of scope is derivative from the guidelines. An extreme model is the general interrogation process found in legal inquiry. We need to move along the continuum of relevance. We need to ask if a guideline can be developed that would pass civil liberty scrutiny and legal scrutiny and that would create a scope for relevant questions for investigation.

EW: Why not go from existing guidelines? A specific online guideline makes little sense.

AA: *Let's go back to age and frequency.*

SB: The language in 32(a) and (b) provides enough room so you're not boxed in. It seems relevant, but the real issue is how long to wait? This language is so broad and general that you could make an argument any way you liked, it's almost meaningless, but it does give you room to work. Age and criminal history are so significant that crime type is irrelevant in terms of general risk. Then, in this case the specific types mentioned in the guidelines seem to be of little difference. White-collar crime and sex crimes are two areas where there seem to be criminal specialization.

RW: If I give consent to examine my finances does that include my online finances?

PR-H: Only to the extent that it effects your credit rating.

RW: Young people's perceptions of privacy are very different. They have a different conception of privacy and are much more digital. Much of their adolescence is online and will be there for all to see forever or at least for the foreseeable future. Potentially vulnerable data for this generation is stored in many places.

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EC: The point is well taken. The things we did as kids on paper are seen very differently than what kids do online now. Consider the case of a 15 year old expelled from school for saying things about a teacher online. She was then was sued for defamation of character and lost \$500,000. These are all things that previous generations have done but because the activity was in another, less persistent media, they were not so vulnerable.

AO: There are certainly concerns with digital identity. Digital identity is relevant, but then we need to consider how it is relevant. Do applicants have a digital identity that they tried to remediate? If so, we may wonder what they are trying to hide. Further, does someone have a digital identity that is deceptive? This may be the most dangerous aspect.

SB: In the private sector, they often do background checks. They may discover something bad from 10 years ago, but now they have employed the person for 5 years. They may still fire him because of the past—despite having more relevant, more recent evidence about his quality as an employee. I would be concerned about any language that assigns primacy or master status to having once been a criminal. Current work performance is far more relevant than past criminal history. Criminal history records are terrible, they are often sparse and hard to read. Yet we still use them despite the fact that we have much more proximate, high quality data of other types. Richer information should play a bigger role.

SB: It is just as relevant to know someone is a good employee. Recidivism rates are really low if you have a job after one year. We don't know if it's causal, but if you hold a job for one year, there's a pretty good chance that you're going to be a good employee.

FH: The real issue is not whether they've had criminal behavior in their background, but whether or not the employee had a chance to reveal the information and didn't. Concealment is the real issue.

AA: *The guideline language is concerned with judgment, reliability and willingness to comply with regulations, as well as behavior in controlled environments. Section 31 under the conditions mentions "a single serious crime or multiple lesser offenses."*

MR: What is a "serious" crime? It depends on state and federal courts, and then states themselves vary. There is very little agreement about what is a serious crime.

GH: There has been a reluctance to get too specific in the guidelines. There has been instead a general notion about the guidelines that less is more. But the problem then is that one person's serious crime is another's college prank. There is nothing in the guidelines that tells the adjudicator where the line is.

MR: The problem I see is that investigators ask about a "serious crime" without further specification and the respondents say "no" because they simply and honestly don't consider what they did "serious." Then you find out later that they were arrested, etc., and they are accused of lying. What's "serious" to one person may not be to another.

FH: Does anyone know the extent to which adjudicators agree on the same information?

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GH: Inter-rater reliability across agencies is not a concept the government uses in the adjudicative process. Agency heads are given a great deal of authority to interpret the guidelines.

EW: Why is child/spousal abuse inserted into the alcohol guideline (31[g])? Does this mean an applicant cannot use alcohol as an excuse for the behavior or is alcohol abuse seen as particularly egregious?

PR-H: The language is pulled from other guidelines to bring incidents to light that are tied to a diagnosis of a problem with alcohol.

RB: Why does it say “away from work”?

PR-H: This is a modification that was made in response to people saying that their problems were not an issue because they did not occur at work.

FH: I’m assuming it’s not just the act of doing these behaviors but the concealing of the behavior?

PR-H: Yes, typically covering up the crime is often greater than the crime itself. Lying on the SF86 is also a crime.

SB: Regarding 31(a): seriousness of the crime is irrelevant for recidivism; multiple events are more predictive than a single event. Regarding 31(c): arrest is a better predictor than conviction. There are more arrests than convictions and thus they make for a better predictor. Often arrests are not used because of legal issues associated with using arrest data.

*AA: Do you think this means the language needs to be changed?*

SB: Well, blacks are more likely to be arrested and not convicted than whites, so there would be some legal problems. I am not advocating the use of this language but want to consider the issue of the better predictive power of arrest data. As an empirical issue—apart from the legal problems—it would make sense.

PR-H: We do get at the variety of forms of contact with the criminal justice system with item 31(c).

ES: With regard to “allegation,” how significant must the allegation be?

PR-H: Everyone is concerned with the term “allegation”— because it raises the very real question of what’s real and what’s not. But we have to start with the allegations the investigators discover. The nature of the allegation can be trivial or serious. This is why the due process part of the clearance procedure is so important. This allows for some sorting out of the true facts underlying an applicant’s record. The investigators from OPM will not make a copy of a police or court record but rather the investigators will summarize the record. These are often very brief summaries leaving out very important information that was in the source document. This wastes a lot of adjudicative time in the clearance process. As a result, the obtaining of the actual police report or court record may not happen until very late in the process. Separately, the concept of “allegations” conjures up the allegations of a resentful co-worker or a bitter ex-spouse.

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Sometimes these highly motivated individuals provide truthful disqualifying information. Other times they do not. We have to start with the allegations. Adjudication and due process have a goal of confirming whether an allegation from a spouse or co-worker is valid.

MR: Regarding 31(c): “admissions”—what if someone admits to a non-offense and the investigator runs with it and it takes time to resolve?

PR-H: It still has to be a crime.

MR: What if the individual thinks it was a crime but it wasn't?

PR-H: We have a guideline for poor judgment that it could fall into (Guideline E).

RW: Regarding 31(d): if you use parole or probation as a proxy, then you should include registered sex offenders.

EC: This would be a problem with teens. We have adolescents registered as sex offenders who aren't, such as an 18 year old who had sex with 16 year old and an 18 year old who mooned someone. There are certain types that warrant a restriction where others could just be risky. The criminal justice system has moved to a more punitive process. Will consideration vary with the offense?

PR-H: Yes, the crux here is the issue of whether or not the incident involved a violation of trust.

EW: It seems this could be covered by the mitigation language. Regarding 32(a): Should it say it was a juvenile offense?

EC: Excellent idea. Making a distinction between adolescent and adult would be helpful.

RF: If you only did something once, it could be an aberration of behavior. However, continuing criminal activity should be a red flag.

PR-H: At times we have used the phrase, “isolated offense,” but has been problematic.

EC: It gets to frequency and duration, both of which matter.

AA: *Should we then modify 32(a) to include reference to “juvenile”?*

PR-H: I suggest adding a separate bullet rather than adding more language to 32(a) which is already pretty long.

SB: I would argue against that because it depends on the state you're in. Make the word “adolescent” instead of “juvenile.”

EC: I would recommend using “developmental maturity,” whether the offense was committed as an adolescent or not.

[All agree]

AA: *Would this get at maturity?*

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EC: Unless you are willing to do a developmental assessment, you have to work with proxies like employment history.

AA: *Should 32 look at duration?*

EW: With regard to white collar crime, sentencing guidelines look at evidence of planning behind the crime, and finding it makes for a tougher sentence. Maybe some version of that could be added?

PR-H: It sounds like white-collar crime is an analog of espionage?

EW: Yes.

EC: I'm concerned with the language "so much time has elapsed." How much time and by whose judgment? In your approach the degree of consistency across government depends on agreement among the adjudicators regarding the meaning of "so much time." On the other hand, there are assessment tools that are quite consistent, and actuarial prediction seems to work much better than clinical assessments. If you really want to predict, then remove the person. This is what the statistical models behind the assessment do. There's a debate between clinical and actuarial assessments.

ST: We've talked quite a bit about inter-rater reliability. Many of these points also speak to recidivism. Unless you know if people are using the information consistently and without measurement error, then recidivism is not a helpful predictor. The guidelines need to answer for the adjudicator: What does it mean to be on parole or probation? What is a violation?

PR-H: In the guidelines the concept behind paying attention to people being on probation or parole is that it's evidence that the State does not trust them.

EW: Actually it's the opposite. They were judged to be a low enough risk to be let out.

RF: You also need to look at the degree and intensity of parole and probation supervision, especially with electronic monitoring. The type of supervision ties in with the issue of low or high risk.

SB: I disagree. If I have information about a crime, what does probation or parole matter? The only thing that may important is the violation of parole or probation. But with intense supervision you tend to get higher rates of probation or parole violation because compliance is so hard. I don't think these items belong here given what you have already included.

AA: *You're saying 31(d)-(e) are unneeded?*

SB: It's more significant that they didn't complete the rehabilitation program; that's related to 32(d).

EW: Instead of violation of probation or parole I would argue for paying attention to revocation, which might indicate something more serious. In New York City a larger proportion of people are under supervision, but does this mean they should not be janitors in national security spaces?

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MR: Violation is important because of toleration by judges for a certain amount of it. A pattern of violation is important even without revocation because it shows an attitude of the person.

FH: Why not distinguish between a violation of parole (which is more serious) and a probation violation? They are different and not equivalent. There might be more mitigating circumstances with probation than parole.

ES: I can think of cases of an isolated act that led to intense supervision, which then led to other acts, as the supervision called forth an underlying psychological condition. Is there some way for adjudicators to take underlying conditions into account?

PR-H: Traditionally we have been loath to combine psychological conditions with other guidelines.

ES: You can be a good anti-social personality-disordered person and have low level policy violations. Perhaps offenses on their own don't rise to a level of interest but taken collectively they do.

PR-H: Guideline E does this. It would be a way for an adjudicator to address such conditions. Once we get a diagnosis then we go with this.

RF: If you get past 31(a), then 31(d)-(e) are mute.

PR-H: No, we would consider the facts; cumulative conditions are difficult to mitigate.

ST: Personality assessment might get at criminal behavior better than these proxies.

EC: Psychologists develop scales to make these predictions. I'm interested to see what evaluation you would use to check these boxes. What questions are you asking, how are they being asked, and how is everything being synthesized? Policy and practice may not match.

EC: You also need to know what you want to predict. Using the wrong tool because you don't know what you want to predict can lead to poor judgment.

SB: I don't think 31(d)-(e) need to be here; because of the mitigator, they're unnecessary. You already call out in 31(a) that the person did something. 31(d) is relevant from a mitigation standpoint, not from a disqualifying standpoint—responding to corrections, taking responsibility for actions. You can simply say is there evidence of crime and then what are the mitigating factors.

AA: *We need to have the organizational perspective.*

RB: Think of the notion that the person who poses an insider threat presents the same personality characteristics as the perfect geek. Many geeks may react to monitoring in a negative way so that monitoring produces deviance. In such cases injustice or perceived injustice may lead to deviant behavior. At this point this is an organizational issue. What organizational factors might cause someone, once they have a job, to engage in such behaviors?

AA: *These are then organization features that are relevant to monitoring?*

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RB: There are also moderators—personality factors—which make people susceptible. For example a sensitive personality or extreme sensitivity to perceived injustice may lead some to react in a negative way.

AO: If you have someone who is clean at age 25 but then problems arise at age 42, you have an insider threat. The aim then is how to predict these mid-career risks.

ES: I'm not sure that if you looked back they would actually be pristine, but they were cleared because the guidelines weren't looking at the right places.

SB: Even if I can't predict risk at the time of clearance I could take a different management model where positions of increased importance and security are earned through behavior. You could then use the investigative resources to create a different system that depends on constant monitoring. Such a system would not put so much weight on predicting at the time of selection. Instead it would look for detection during the career and this may be a much more productive approach. You can't predict Hanssen.

AO: No, but you can detect Hanssen.

RF: There were lots of ones we detected—those who never took vacation or sick leave. They looked like the model employee. Everything on the surface looked great!

ES: When it comes to the insider threat issue there are many correlates: psychological disorders, personal and professional stress, chronological risk pattern. What to do? Wait until you see concerning behavior and then investigate. It is not easy to predict.

RB: Do all hackers go on to become insider risks?

ES: We don't know the answer to that.

RB: I wonder what is it about the environment that makes a hacker go bad? Is it a primarily a matter of personality traits or certain organizational features? Could it be the supervisor?

RB: I would say that you need security training of employees, to make them aware of protocols and consequences.

AA: *How about the issue of 31(d)-(e)?*

PR-H: Much of the investigative process is driven by the guidelines. If you take out 31(d) & (e), then the investigation becomes superficial.

SB: I'm not saying they should be taken out, just moved to mitigating conditions.

MR: These are not meant to be disqualifiers, just flags.

SB: You can look into probation and parole and rehabilitation if there's a hit on 31(a).

PR-H: There is a process value to having them there and there may be inconsistency in the process without them.

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EW: 31(d) is redundant with 31(a), but 31(e) is important. Understanding success or failure in probation and parole is important. It's reasonable to find out if a person is having problems with supervision.

RF: I would not give a security clearance to anyone currently on probation or parole.

MR: First-time DUI often results in probation or parole. Should one night's bad judgment affect an entire career?

RF: When looking at an offense, how important is the potential for embarrassment to the agency?

PR-H: There was a recent newspaper article where this—individuals with a clearance getting in legal trouble—was the issue. The PR spin is not unimportant.

AA: *Let's move on to the criminal activity the guidelines mention specificity—that is, 31(f)-(k).*

RW: There is still some debate about whether sex offenders are criminal specialists. There is more and more evidence that they are, in fact, generalists. But the majority opinion, and this includes my view, think they are specialists. As for the discussion today I am particularly interested in looking at unprosecuted crime, particularly rape or child molestation. If a person admits to this type of crime, but has not been prosecuted, how are they treated? Are they denied a security clearance?

AA: *Should they be?*

RW: As usual, it depends.

AO: A record of this type may not be critical for security but may well call into question an applicant's suitability.

PR-H: In addition to everything else it may be, we consider sexual crime from the perspective of trust. If a sexual crime involved a violation of trust we have treated it more seriously.

GH: We have put crimes against the U.S., e.g., espionage and terrorism, into a separate guideline because they get at the heart of what is involved in making a national security decision. We want to make clear, through the structure of the guidelines, that they're not just another crime. So, are there things about sexual crime, computer crime, or alcohol-related crime that warrant separate treatment from a national security perspective?

RW: Sex crimes are unique in that they tend to be committed in private settings. Usually there are no witnesses so the crime is harder to verify. This may be a reason to treat sex crimes separately. I think you do need a policy around online sexual crime, partially due to the anonymity of the environment. Questionable online sexual behavior is varied: some of what goes on online may be criminal, borderline criminal or just bad judgment. In the last ten years there has been a big push to go after online sexual solicitation, where in the minds of many the victim is a child. On the other hand, some will say there is no victim; no one has been touched. Still others may say that it is better that these individuals are going online to fulfill sexual

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fantasies. It would be worse if they sought to fulfill their fantasies offline. It's a new crime, a gray area.

AO: An alter ego online may still be vulnerability even without a victim, not just for police but for foreign intelligence, the secretiveness of the behavior may make the individual vulnerable to potential exploitation.

RW: This also brings up the question of pornography use, including online pornography use. It may be legal but could demonstrate poor judgment, particularly if it is excessive or if there are manifestations in life.

RF: Is there a danger to being distracted from work duties or to reducing the person's ability to safeguard information?

RW: Not necessarily.

RW: That seems reasonable to call out this topic separately, because of its private nature. It can be a potential problem if there's concern about an individual's sexual behavior because by nature it is private. There may be problems getting evidence, witnesses, verification of the crime.

PR-H: Is there a difference between someone being engaged in porn at work and at home?

RW: It's a judgment question. It could be bad judgment. I don't know of anything in particular that is different.

EW: It's not just judgment, it could be an indicator of love of risk or excitement.

RW: There is another issue. Because the Internet has opened up, sexual mores have opened up. There's been an explosion of amateur porn/self-produced porn. Digitally, it now exists in multiple places forever. Is this behavior a crime? Probably not. Is it evidence of bad judgment? Yes. Is it a source of vulnerability?

ES: I see two areas of interest here: 1) Computer crime is a pretty good analog for espionage. When we look at espionage acts they often have computer aspects. 2) There is also a sociodynamic perspective to consider. These areas that we have been looking at are related to an ability of the individual to compartmentalize, live separate lives. We see this in the case of long-term affairs, or long time addictions. This I would see as a risk factor for espionage.

ES: The line between white-collar and computer crime is blurry because hackers are self-educated and don't fit into the white-collar occupational group.

EW: But there's no agreed on definition of "white collar." Some define it by the characteristics of the offender (e.g., college degree), but others by the characteristics of the crime (e.g., embezzlement).

AO: Is it accurate to say that white-collar crimes are always committed by people in positions of trust?

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EW: Again, this is hard to define. For example, bank tellers are not college-educated, but they do have positions of trust and may exploit those. Deception and cover-up are often part of the problem with white-collar crime.

ES: You can also attempt to narrow it down to certain computer crimes. There's a huge variation within computer crimes, for example in the number of people involved.

EW: Distinctions can be helpful. A common distinction is copying, downloading, taking material home and then there's the actual hacking, etc. Someone doesn't need to be inside to do the attacks. In your case, you care about people taking the information rather than denial of service.

ES: Even minor crimes can suggest bad judgment or failure to follow rules. In such cases you may also be likely to find insider and outsider collaboration with the outsider providing technical expertise.

*AA: Is there value in calling out IT in a separate guideline?*

ES: Yes, so many are not reported, prosecuted, or convicted. About 70 percent of computer crime is unreported by companies. This in part is because of the impact on stock prices, which looks bad on the company. And it's hard to get federal authorities involved, so there is little value in reporting.

EW: White-collar crime and computer crime are both under-reported because of a fear of adverse publicity.

AO: On the federal side with espionage, often there is a tendency not to report how successful people have been. Information technology represents a particular vulnerability for the government. Is it so significant that it's just like espionage?

ES: It's a developmental issue—kids get into it and then get out. You would need an adolescent mitigator.

EC: We should keep in mind that getting out is a mitigator.

*AA: How about drugs and alcohol?*

ST: There's a correlation with drugs/alcohol and other criminal behavior. It's not uncommon to see this with other crimes: a value-added dimension if you would.. You should keep them separate.

EC: Involvement with alcohol or drugs differentiates between high and low risk offenders.

SB: There is also the fact that failure of rehabilitation is quite common. You can also look at a monthly analysis of illegal earnings. Research shows that \$100 of legal earnings decreases illegal behavior by \$7. Drug use is a big signal, it's part of the causal structure for crime. It leads to and is a signal for crime.

EW: Sometimes people used drugs/alcohol for "liquid courage."

*AA: Are there any other crimes that indicate increased risk and should be called out?*

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ES: I just need to feel certain that hacking is included among the computer crimes and should be kept separate.

EW: I would say a history of misappropriation of funds, misfiling, etc, may not be criminal but would still consider them to be risk factors. Other correlates would be cheating on exams, a history of pushing the line, being suspended by the SEC.

SB: What about people who are written up by employers or professional associations? Is that considered?

GH: Yes, if reported. It would be looked at as personal conduct.

PR-H: Parole and probation violations can be easily overlooked so they are called out as specific behaviors, but it is hard for us to anticipate all the types of professional sanctions. But these should get picked up through the national and local agency checks.

SB: Quasi-criminal behavior seems extremely relevant. You are not doing background checks on street criminals; you're looking at people with more education. So you have to look at places where people have problems: college disciplinary office or professional organizations. These areas would be more relevant. Lots of bad behavior happens on college campuses and if it's a private school, this often gets covered up.

EW: In white-collar crime studies a great deal of work has been and is being done to look at this type of behavior and it has been very insightful. This should be pursued.

RW: Look at research, in particular David Lisak's at the University of Massachusetts-Boston, concerning unreported sexual assault among college students

EW: Regarding 32(d): People often talk about remorse, and it's cited in 32(d), but I have a problem with it as a mitigator.

PR-H: The absence of remorse is significant even if its sincerity is hard to evaluate.

RF: I would say that taking responsibility may be even more appropriate to consider.

EC: There's a difference between predictive and retrospective. Early commission is common among repeat offenders. But, on the other hand, not all youth offenders go on to become adult offenders.

SB: If they started earlier, they are more likely to continue.

*AA: What do we do with someone who has done something wrong at age 12 and then there is no further crime? Should we not hold that against them? If they have stopped is this is a significant mitigator?*

EC: I would say that all of us if we were in the wrong place at the wrong time at some point and could all have been arrested. If offenses stop in adolescence, and there's been no further offending, you cannot hold that against them.

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## CLUSTER IV: GUIDELINE F (KIM INTERVIEW)

September 17, 2010

9:00 am—noon

Liberty II, Fairfax Room

### Participants:

██████████ Family Resource Management, University of Maryland

(b)(6)

██████████ Defense Office of Hearings and Appeals

██████████, ManTech International

██████████ ManTech International, recorder

██████████ SAIC

### ◆ Financial Difficulty (General Thoughts)

- I disagree that financial difficulty means irresponsibility. Instead, financial stress will cause other issues.
- Other factors can influence financial difficulty; patterns of financial stress have different results; there are many causes and mitigating factors.
  - Financial strains may come from specific behavioral issues (e.g., drugs, gambling, shopping), but also come from other places/other reasons (e.g., unemployment, victim of a scam/fraud, illness).
  - Linking financial stress/strain to a specific behavior or blaming someone's judgment can be difficult.
  - Some people are not financially savvy, they have low financial literacy, therefore they are likely to get into trouble and make bad decisions.
  - Research with bankruptcy and credit counselors has shown that the two main reasons for bankruptcy are life issues being out of control and poor management. The majority are life issues (e.g., health or unemployment).
  - In counseling, living beyond one's means was a main reason, but hard to tell that that means they're irresponsible
- Financial affects work performance because people spend more time resolving financial issues at work; they may be at work physically but their mind is not there; there's also mental health concerns.
- Most people who get into serious financial trouble do so because of circumstances beyond their control rather than any irresponsibility or lack of trustworthiness.
  - However, getting into financial trouble itself could be a *flag* of other issues.

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## ◆ Financial Literacy

- The lack of financial literacy is a big problem throughout U.S.
  - High school seniors cannot pass financial literacy tests.
  - Some states are mandating personal finance courses be taught in school, but not all students are taking them.
- People don't talk about finances or seek help in time; they wait until it's bad and then too often the only option is bankruptcy.
  - A security clearance is linked to job security; therefore, cleared people may be less likely to seek help for fear they will lose jobs.
- There should be financial education/awareness programs to increase financial literacy in the workplace; EAPs are small and counselors are not necessarily financial experts.

## ◆ Credit Scores

- I advise against using credit card scores at all.
  - The credit system discriminates against people with low scores (e.g., young people have less time to build up credit therefore have lower scores) for reasons of its own; a low score means high interest rates resulting in a higher chance of defaulting.
  - The credit score is low for someone who pays off debt in full each month, so you're penalized for living within your means.
    - That's one reason why the credit score is a poor thing to look at when determining if someone is responsible for a job with national security.
- The government is making a different kind of risk decision than is a bank.
  - Banks use credit scores and payment history; paying off loans too fast is not in the best interest of the bank or lender. They want to maximize the amount of interest a person pays; they love it when people make only the minimum payment and keep high balances. It's only when people don't pay anything at all that they start to worry.

## ◆ Credit Report

- Credit reports show debt, but not the full picture (no asset information is included).
- About half of people have some errors in the credit reports, although many are minor. The credit bureaus get their information from the creditors not the person.
- It is, however, a cost effective source to get information quickly so it's a good starting point.
  - People need to understand the need to check their credit reports to correct errors.

## ◆ Taxes

- Owing or not filing taxes is important. There is greater significance with this type of debt than with others because you cannot wipe it away and you have an obligation to file.
  - It also leads to legal action with the IRS.

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- The personnel security system should check tax reports as well as credit reports.
- Encourage someone to address federal/state tax debt first, it's different than owing money to private company.
  
- ◆ Hierarchy of Debt
  - Payment patterns are often irrational; people feel obligated to pay off some debts before others.
  - Psychological factors are involved—some people cannot calculate consequences or impact, or they ignore them.
  
- ◆ Credit Counseling
  - Success of credit counseling is similar to filing Chapter 13 or 7 bankruptcy.
    - The counselor creates a management plan, distributes money to creditors (3-5 years); the success/completion rate after 5 yrs is low, usually a crisis emerges and people end up filing for bankruptcy or disappearing. There is a high drop-out rate.
  - People don't necessarily follow budget counseling advice.
  - Spotting scam counselors vs the legitimate ones
    - FTC has guidelines about debt settlement issues.
    - U.S. Trustees Office has a list of approved agencies.
  
- ◆ Adjudicative Guideline – Disqualifiers/Mitigators
  - The concept of unexplained affluence with the tie to illegal activity makes sense.
  - “Frivolous and irresponsible” are too subjective.
  - Add mitigating language to take into account predatory lending—solid middle class people are becoming victims of fraud more and more.

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## CLUSTER IV: GUIDELINE F (PERRY INTERVIEW)

September 17, 2010  
noon—3:00 pm  
Liberty II, Fairfax Room

### Participants:

(b)(6)

██████████ Marketing, George Washington University  
██████████ Defense Office of Hearings and Appeals  
██████████ ManTech International  
██████████ ManTech International, recorder

#### ◆ Financial Difficulty (General Thoughts)

- It's not politically correct to call people irresponsible, although some people are ruthlessly irresponsible, but the behavior is of concern.
  - Use something like “disregard for consequences” (19[a]).
- People haven't been able to sustain their bad behavior, but it existed before the crisis.
- Individuals may use a credit card for certain expenses and at the same time have a savings goal (per check or per month); they should pay off the debt, but that's not cognitively appealing to them. They don't mind paying interest and they are paying so there is no reason to think they are less responsible than someone without credit card debt.
- A hot topic today is to walk away from your house; professionals are advising people to do it in some cases. The only thing keeping people tied to their debt in many cases is a possible later reputational effect. I'm not sure if you should be questioning those people's capability.
- There's a difference between those who are ruthless and those who are doing the rational thing under the circumstances.

#### ◆ Credit Scores

- Do not use! What happens when it's wrong, which number do you use?
- According to work done by the Federal Reserve, credit ratings showed differences between different minority groups (possible discrimination).

#### ◆ Financial Education/Awareness

- There's a lot of denial.
- People with bad credit think their credit is better than it is and vice versa.

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- Simply telling people to be aware of their credit score would alleviate some of the problem, but it's not enough; there's an incentive to managing your credit rating when you're trying to get a loan. Also we don't want people obsessing over the credit rating because the algorithm can change. It would be better to devote that time to becoming financially stable instead.
  - Employee-sponsored programs work well, better than giving people pamphlets to take home; most are in denial and don't think they have a problem.
  - There is controversy about financial literacy training programs and their effectiveness – there's no evidence to support them currently.
  - Credit counseling is reactive, occurs on the back-end, and is expensive.
    - Perhaps making a few hours of credit counseling available to folks when you see flags would be helpful.
- ◆ Locus of Control
- Locus of Control is an individual difference variable, related to demographic characteristics, with some predictive power. In its simplest terms, a person's locus of control can be either internal or external.
  - People with more financial resources and higher levels of education have internal loci of control; this is complicated because internals are more likely to seek more education, etc.
  - Externals are more likely to have credit problems even when things like finances, education, and other circumstances are controlled for.
  - It's an orientation, superficial, driven by personality and experiences
- ◆ Adjudicative Guidelines: Disqualifiers/Mitigators
- Disqualifiers (19)
    - 19(a): The problem is that large numbers of people will fall here. In 2007, a credit score of 620 meant that you have been 30 days late at least twice in the past 2 years; that means that 19(a) would cover a lot of people (high debt-to-income ratio) – half the population; in 2010, it would be even more.
      - Maybe include something about “in a timely fashion.”
      - Add “in absence of reasonable economic explanation”
    - 19(b): They're not paying but neither is anyone else. What was irresponsible in 2006 may not be so in 2010.
    - 19(c): This is very broad and could include things not on the credit report.
    - 19(e): Remove language about “debt-to-income ratio.” Lots of people have high debt-to-income ratios; if they can manage it, and many do, there is no reason to think that they will have problems later.
      - Debt-to-income ration is not predictive, but it is too specific for the kinds of decisions you have to make.

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- Debt-to-income ratio is controversial because it is linked to cultural issues and may in fact be discriminatory: some groups carry high debt-to-income ratios over time. It is not related to financial performance.
- There is so much evidence against this concept that underwriters backed off of using this.
- What you really care about is repayment history.
- 19(b) and (e): What about appearing to have control over one's finances, consistently meeting financial obligations although it might not be pretty?
  - Given the current environment and the way people manage obligations, some additional flexibility may be needed here.
- Key problems according to Fair Isaac (FICO)
  - Missing mortgage payment or loan
  - Being more than 180 days late
  - More than 30 days late twice in 2 years
- Mitigators (20)
  - 20(b): "Business downturn" – this sounds like it's referring to an individual business or a layoff. Consider taking into account the current economic times and the overall economic downturn.
  - 20(c): Add language "legitimate/credible sources."
    - Start with an agency affiliated with the National Foundation for Credit Counseling (NFCC) that is associated with the lender, "NFCC certified source."
    - "Accredited" – leave the accredited body up to people's judgment.
  - Add language, "demonstrated control over finances."

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## APPENDIX GUIDELINE J

*To facilitate discussion of all elements of the Guidelines dealing in one way or another, the focus group used the following text as reference. It consists of the whole of Guideline J with relevant portions of Guidelines D, G, H, and M, as well as references to the Bond Amendment, added (in blue italic) as appropriate.*

30. *The Concern.* 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.

31. *Conditions that could raise a security concern and may be disqualifying include:*

(a) a single serious crime or multiple lesser offenses;

*Bond Amendment: having served a sentence of more than one year is a statutory disqualification absent a meritorious waiver*

(b) discharge or dismissal from the Armed Forces under dishonorable conditions;

*Bond Amendment: makes this a statutory disqualification absent a meritorious waiver*

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

(d) individual is currently on parole or probation;

(e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program.

*(f) sexual behavior of a criminal nature, whether or not the individual has been prosecuted; (D)*

*(g) 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; (G)*

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*(h) any drug abuse (“drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.”); (H)*

*(i) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; (H)*

*(j) illegal or unauthorized entry into any information technology system or component thereof; (M)*

*(k) illegal or unauthorized modification, destruction, manipulation or denial of access to information, software, firmware, or hardware in an information technology system; (M)*

32. *Conditions that could mitigate security concerns include:*

(a) 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;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense;

(d) 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.

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