

# SECURITY CLEARANCE TYRANNY

Let's review three data points on security clearances. They'll show that our system of security clearances are increasingly becoming an arbitrary system of control that does more to foster cowed national security employees than to foster actual national security.

We've already discussed one of these data points: James Clapper's decision to add an as-yet undefined question to Intelligence Community polygraphs probing unauthorized (but not authorized) disclosure of classified information.

First, those agencies within the IC that have mandatory lie detector tests will add an unspecified question about "unauthorized disclosure of classified information."

(1) mandating that a question related to unauthorized disclosure of classified information be added to the counterintelligence polygraph used by all intelligence agencies that administer the examination (CIA, DIA, DOE, FBI, NGA, NRO, and NSA).

Not only does this cover just some who might have access to classified information, leaving some agencies, contractors, Congressional employees, and White House employees, not to mention our international intelligence partners, in the clear. But it also brackets off the "authorized" disclosure of classified information.

It's a bad decision because it doesn't end the asymmetrical abuse of classified information and

it's a bad decision because polygraphs are unreliable.

But it's also unreliable because at least one of the IC agencies involved slated for this new question—the National Reconnaissance Office—has already been conducting fishing expeditions during polygraphs to find sensitive information.

The National Reconnaissance Office is so intent on extracting confessions of personal or illicit behavior that officials have admonished polygraphers who refused to go after them and rewarded those who did, sometimes with cash bonuses, a McClatchy investigation found.

The disclosures include a wide range of behavior and private thoughts such as drug use, child abuse, suicide attempts, depression and sexual deviancy. The agency, which oversees the nation's spy satellites, records the sessions that were required for security clearances and stores them in a database.

As McClatchy reports, the NRO pursued such confessions—which are outside the scope of what they're supposed to ask—even after they were warned to stop.

What's particularly troubling is that the NRO is not using this information—or not in the most obvious way, by prosecuting those who reveal past crimes. In one case, for example, the NRO did no more than report past child molestation after discovering it in a polygraph.

In one case, a contractor who was a former Escondido, Calif., substitute teacher admitted to molesting a third-grade student in 2005 during outside tutoring sessions paid for by the girl's immigrant parents. In a 2010 polygraph session, the man said that if he were asked, " 'Have you ever molested a 9-year-old?' I'd have to say yes."

The Escondido Police Department and school district where he'd been employed weren't notified of the incident. After being contacted by McClatchy, the school district called the Escondido Police Department to file a report. When National Reconnaissance Office polygraphers asked supervisors in a meeting last summer why people weren't being arrested on the spot after such confessions, they were told that the allegations were referred to the appropriate authorities, Phillips and Hinshaw said.

Call me crazy, but this sounds more like the collection of potential blackmail material than an effort to ensure NRO employees aren't spies.

And the DC District Court just further limited the already narrow means by which people can claim government employees abused the security clearance system. It involves a Civil Rights suit by a black Muslim convert who works for the FBI, Wilfred Rattigan. Two years after Rattigan got transferred to serve as FBI's Legat in Riyadh in 1999, he sued his supervisors for discrimination. In response, he argues, his supervisors submitted a bunch of security concerns to the Security Division, which were later deemed not serious (so he retained his clearance). Rattigan says his supervisors submitted those concerns as retaliation for his EEO complaint.

Rattigan originally won a \$300,000 judgment at the District level, but the government appealed the decision, saying the courts couldn't review security clearance decisions. Originally, the Circuit upheld the District decision, ruling that *Navy v. Egan* (the case the executive branch always uses to claim unlimited powers with regards to secrecy issues) only protected those actually making decisions on clearances, not employees who might report bogus concerns to retaliate against employees. But after reconsideration, the Circuit now says employees

can only sue for reporting knowingly false charges.

The three data points—particularly the NRO probing for confessions—all suggest the system of security clearances is increasingly becoming an area where the Executive Branch has fairly unlimited authority to retaliate against cleared employees regardless of any real underlying violation.

All in the guise that this system makes us safer!