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An Analysis of Clearance Review Decisions by the Defense Office of Hearings and Appeals

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Released by
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14. ABSTRACT The Defense Office of Hearings and Appeals (DOHA) conducts industrial security clearance reviews for Defense contractor employees who appeal the denial or revocation of a security clearance. In December, 1999, <i>USA Today</i> published an article suggesting that DOHA granted security clearances in a manner inconsistent with applicable adjudicative guidelines. The purpose of this study was to assess whether the clearance review decisions reported by <i>USA Today</i> were representative of all DOHA decisions resulting in the granting of a clearance. Results indicated that approximately 72% of DOHA clearance reviews resulted in a security clearance denial/revocation. DOHA denied a security clearance in approximately 86% of cases with issues similar to those presented in the <i>USA Today</i> article. Thus, in cases similar to those chosen by <i>USA Today</i> , DOHA usually denied rather than granted a security clearance.													
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Preface

This report was produced at the request of J. William Leonard, Acting Deputy Assistant Secretary of Defense (Security and Information Operations). Mr. Leonard asked that the Defense Personnel Security Research Center (PERSEREC) provide data summarizing the clearance review decisions made by the Defense Office of Hearings and Appeals (DOHA). In particular, he wanted to know if the clearance review decisions recently reported by *USA Today* were representative of all DOHA clearance review decisions on similar types of cases. This report is purely descriptive and is not intended to judge the appropriateness of specific review decisions made by DOHA.

James A. Riedel
Director

Executive Summary

In December 1999, *USA Today* published an article suggesting that the Defense Office of Hearings and Appeals (DOHA) granted security clearances in a manner that was inconsistent with applicable adjudicative guidelines. The purpose of this study was to assess the validity of those claims by examining: (1) the number of security clearances granted and denied by DOHA and other Department of Defense (DoD) Appeal Boards; (2) the frequency at which each of the Executive Branch Adjudicative Guidelines were cited in clearance review decisions made by DOHA; and (3) the extent to which the DOHA review decisions identified in the *USA Today* article were representative of DOHA review decisions for other cases with similar issues.

The initial set of analyses addressed the number of clearances granted or denied by DOHA from 1996 to 2000. Similar analyses were conducted on clearance review decisions made by DoD Personnel Security Appeal Boards (PSABs) during the period 1996 to 1999. In those cases, with a personal appearance conducted by a DOHA Administrative Judge (AJ), we compared the decisions recommended by the AJs with the final PSAB decisions.

For Defense contractor employees, DOHA denied clearances in approximately 72% of the 920 cases it reviewed. In the 742 PSAB military and government cases where a personal appearance was held, DOHA AJs recommended denying a clearance 63% of the time. A separate analysis was conducted to assess the level of agreement between DOHA AJs and PSABs on the same cases. Results showed that the PSABs agreed with DOHA AJ recommendations about 80% of the time. Overall, the PSABs denied clearances in 75% of the cases compared to the 63% recommended denials by DOHA.

A second set of analyses focused on the adjudicative guidelines that were cited in Defense contractor cases that were granted or denied a clearance by DOHA. Most cases had more than one guideline cited, with an average of 1.8 guidelines per case. Criminal conduct was the most frequently cited guideline and appeared in 48% of the cases. Other frequently cited guidelines were personal conduct, drug involvement, alcohol consumption, and financial considerations.

A final set of analyses examined the cases highlighted in *USA Today*. Each of the 13 cases was reviewed to identify the types of significant security issues present. Based on this review, criteria were developed and used to classify these cases into the following eight categories: Falsification, Child Abuse/Neglect, Fraud/Embezzlement, Murder, Felony, Sexual Misconduct, and Security Violations. A keyword search of the DOHA database was conducted, and a total of 456 cases were classified into these eight categories. Next, we determined whether DOHA granted or denied a clearance in each case. Finally, analyses of the cases identified in the eight categories focused on whether or not the *USA Today* cases were representative of other DOHA cases in the same category.

With the exception of the murder category, where there were only three cases, 79% (Fraud/Embezzlement) to 93% (Falsification) of the cases within each category had the clearance denied or revoked. These percentages are quite a bit higher than the overall denial rate of approximately 72% for DOHA Defense contractor appeal cases. Overall, 86% of the 456 cases

categorized for these analyses resulted in clearance denials. Thus, in cases similar to those chosen by *USA Today*, DOHA usually denied rather than granted a security clearance.

Table of Contents

Introduction	1
Purpose.....	1
Background.....	1
Approach	4
Results	5
Conclusions	9
Appendix A: Adjudicative Guidelines for Determining Eligibility for Access to Classified Information	A-1
Appendix B: Criteria for Categorization of Cases	B-1

List of Tables

1. Categorization of Cases Presented in <i>USA Today</i>	4
2. Adjudicative Guidelines Found in Defense Contractor Cases Reviewed by DOHA Administrative Judges Results.....	7
3. Comparison of DOHA Clearance Decisions for Different Categories of Appeal Cases.....	8

List of Figures

1. Defense Contractor Cases Processed by the Defense Office of Hearings and Appeals (DOHA) 1996-2000.....	5
2. Comparison of DOHA Recommendations with PSAB Decisions (1996 – 1999).....	6

Introduction

Purpose

In December 1999, *USA Today*¹ published an article suggesting that the Defense Office of Hearings and Appeals (DOHA) granted security clearances in a manner inconsistent with applicable adjudicative guidelines. The purpose of this study was to assess the validity of those claims by examining:

- (1) The number of clearances granted and denied by DOHA and other Department of Defense (DoD) Appeal Boards. These data would indicate whether DOHA denial rates were unusually high or low when compared with other DoD Appeal Boards. Also, these data would show how often DOHA recommendations were consistent with Appeal Board decisions when both organizations reviewed the same cases.
- (2) The frequency at which each of the Executive Branch Adjudicative Guidelines were cited in clearance review decisions made by DOHA. These analyses would provide descriptive data on the types of cases that DOHA processes and would also clarify the types of issues found in cases that were denied versus those that were granted a security clearance.
- (3) The extent to which the review decisions identified in the *USA Today* article were representative of DOHA review decisions for other cases with similar issues.

Background

The *USA Today* argument that DOHA grants security clearances to individuals with significant security issues in their backgrounds was based on a review of DOHA clearance decisions. The review suggested that clearances were granted to Defense contractor employees who should have been disqualified under the guidelines. The article also suggested that DOHA is more lenient than the DoD Personnel Security Appeal Boards (PSABs), which make similar decisions for government civilian and military personnel.

Executive Order 12968, *Access to Classified Information*, August 1995, sets the standard for eligibility for access to classified information. The Access Eligibility Standard declares:

“Eligibility for access to classified information shall be granted only to employees who are United States citizens for whom an appropriate investigation has been completed and whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information.”

¹ Pound, E.T. (1999, December 29). How felons gain access to the nation's secrets and why the government says it's all right. *USA Today*, pp.1A, 6A.

The Access Eligibility Standard is met through the application of Adjudicative Guidelines and Investigative Standards approved by the President in 1997.

The Adjudication Guidelines provide procedures for assessing loyalty, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment. The adjudication process is the careful weighing of a number of variables, known as the "whole person concept," which includes consideration of the following factors:

- The nature, extent, and seriousness of the conduct;
- the circumstances surrounding the conduct to include knowledgeable participation;
- the frequency and recency of the conduct;
- the individual's age and maturity at the time of the conduct;
- the voluntariness of participation;
- the presence or absence of rehabilitation and other pertinent behavioral changes;
- the motivation for the conduct;
- the potential for pressure, coercion, exploitation, or duress; and
- the likelihood of continuation or recurrence.

In addition to these general factors, there are 13 areas in the guidelines that address aspects of an individual's background, which are to be evaluated in the context of the whole person. Appendix A provides the complete text of the Adjudicative Guidelines, including the reason each area is of concern to national security and the disqualifying and mitigating factors for each guideline. The specific areas are listed below:

- Allegiance to the United States
- Foreign Influence
- Foreign Preference
- Sexual Behavior
- Personal Conduct
- Financial Considerations
- Alcohol Consumption
- Drug Involvement
- Emotional, Mental, and Personality Disorders
- Criminal Conduct
- Security Violations
- Outside Activities
- Misuse of Information Technology Systems

The DoD performs more than 400,000 access eligibility actions per year, which include granting or continuing clearance eligibility for military personnel, civilian employees of the Department, and individuals in the private sector who are employed on DoD contracts. In 1998² DoD issued 308,495 Top Secret, Secret, and Confidential³ clearances and 90,184 access eligibility determinations for Sensitive Compartmented Information (SCI). If significant unmitigated adverse information is contained in a case, DoD does not grant or continue

² The most recent year that clearance data are available.

³ Top Secret, Secret, and Confidential clearances are collectively known as collateral clearance actions.

eligibility. In 1998, DoD made 17,833 unfavorable determinations. These actions included 890 denials and 1,818 revocations of collateral clearances as well as 224 denials and 197 revocations for SCI access. A total of 14,703 adjudications were not completed due to loss of jurisdiction because the individual was no longer under DoD personnel security authority.

Formal due process procedures are followed for cases requiring denial or revocation. The individual is issued a Statement of Reasons (SOR) and afforded an opportunity to reply in writing. If the reply does not mitigate the adverse information, then the case goes to the next appropriate level of due process.

If the individual is a military or a Defense civilian employee, appeal is directed to the Personnel Security Appeal Board (PSAB) of the employing agency. PSABs for the Army, Navy, Air Force, Defense Intelligence Agency and National Security Agency handle appeals for their respective agencies. The Washington Headquarters Services handles appeals for the Office of Secretary of Defense and all Defense Agencies. The Appeal Boards consist of three voting members of minimum grade O-5/GS-14. One member is a security professional with the agency; the other two members are in non-security occupations. At the applicant's option, the appeal process can involve either a written response to the PSAB or a personal appearance before a DOHA Administrative Judge (AJ). The AJ provides a written recommendation as to the individual's eligibility and the rationale for this recommendation which is forwarded along with the transcript of the personal appearance to the PSAB. The PSAB considers all information and makes a final determination.

Defense industry employees for whom it is not clearly consistent with national security to grant or continue the clearance receive an SOR detailing the reasons why DOHA intends to deny or revoke the clearance and outlining the steps that must be taken to respond to the decision. The applicant can elect to either respond in writing or request a hearing before an AJ. DOHA assigns contested cases to one of its Department Counsel who prepares the case. When there is no hearing, Department Counsel compiles and submits all relevant documentation to an AJ. When there is a hearing, both sides have the opportunity to present witnesses and cross-examine those offered in opposition. Based on the entire hearing record including transcript and all documents, the AJ issues a clearance decision and Department Counsel or the applicant may appeal this decision to the DOHA Appeal Board.

For DOHA, the appeal goes to a three-judge Appeal Board which determines if (1) the AJ's findings of fact are supported by evidence, (2) the AJ adhered to procedures required by E.O. 10865 and Directive 5220.6, or (3) the AJ's rulings or conclusions are arbitrary, capricious, or contrary to law. The Board reviews the case for legal or factual error but does not take new evidence. The Appeal Board then affirms or reverses the AJ's decision or remands the case back to the Judge for further consideration. Decisions remanded back to the AJ will result in another AJ decision, which again is subjected to the review process described above.

Over the past 4 years, approximately 295 Defense contractor cases per year were reviewed by the DOHA AJs, while the PSABs handled an average of 290 cases per year. During this same period, approximately 65% of the PSAB cases involved a personal appearance before a DOHA AJ.

Approach

The initial set of analyses in this study addressed the number of clearances granted and denied by DOHA. The Defense Personnel Security Research Center (PERSEREC) obtained a copy of the DOHA database⁴ containing 920 redacted cases adjudicated by DOHA AJs and the Appeal Board from November 1996 to February 2000. In all cases, DOHA issued an SOR indicating that it intended to deny or revoke a clearance. PERSEREC also obtained aggregated data for clearance review decisions made by DoD PSABs during the period 1996 to 1999. In those cases with a personal appearance conducted by a DOHA AJ, we compared the decisions recommended by the AJs with the final PSAB decisions.

A comparison was made of clearances granted with those denied to determine how frequently the various adjudicative guidelines were cited in the decisions. This comparison was made to assess whether certain adjudicative guidelines were cited more or less frequently for decisions to grant a clearance than for decisions to deny a clearance.

A final set of analyses focused on the cases presented in *USA Today*. Each of the 13 cases was reviewed to identify the types of significant security issues present in the case. Based on this review, the criteria listed in Appendix B were developed and used to classify these cases into eight issue categories. It should be noted that cases could be classified into more than one category because a case could have more than one issue. Table 1 shows the issue categories that were identified for each *USA Today* case.

Table 1
Categorization of Cases Presented in *USA Today*

<i>Issue Categories</i>	<i>DOHA Case Number (N=13)</i>													<i>Total</i>
	<i>94-0908</i>	<i>95-0415</i>	<i>95-0567</i>	<i>96-0362</i>	<i>96-0525</i>	<i>96-0649</i>	<i>96-0710</i>	<i>96-0758</i>	<i>97-0025</i>	<i>97-0399</i>	<i>97-0603</i>	<i>98-0247</i>	<i>98-0682</i>	
Child Abuse/Neglect					X			X					X	3
Falsification					X					X	X			3
Felony		X		X	X		X	X						5
Fraud/Embezzlement							X		X					2
Murder				X										1
Security Violations	X													1
Sexual Misconduct		X			X		X					X		4
Tax Evasion			X										X	2

Note. All cases had the clearance granted except for case No. 96-0525 where the clearance was denied by the appeal board. In addition, case No. 96-0649 could not be classified into any of the eight categories and was excluded from further analyses.

⁴ This database is available online at DefenseLink: <http://www.defenselink.mil/dodgc/doha/industrial/>

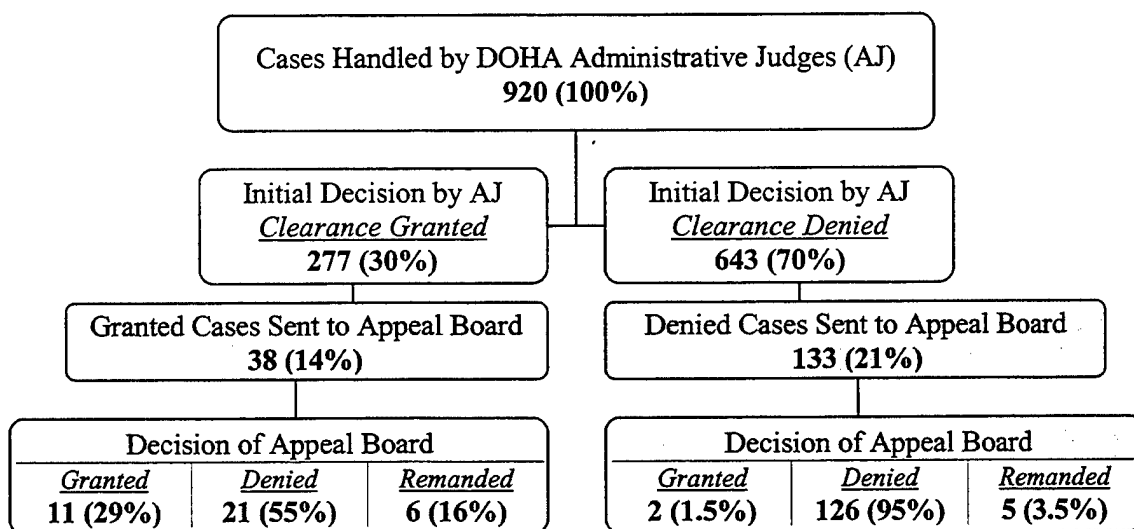
A keyword search of the DOHA database was conducted to identify all cases meeting the criteria outlined in Appendix B, and each case was read to verify that it met the criteria for inclusion in the category. A total of 456 cases were classified into the eight categories, so the total number of cases in all categories is greater than the number of cases in the analysis. A determination was then made whether DOHA granted or denied a clearance in each case.

Results

Results are reported in this section as a series of Figures and Tables (with accompanying text) in the following order:

1. Decisions made by AJs and DOHA Appeal Board on the 920 Defense contractor cases (Figure 1).
2. Recommendations made by AJs and decisions made by PSABs (Figure 2).
3. Adjudicative guidelines cited in the cases (Table 2).
4. Clearance decisions for different categories of cases (Table 3).

Figure 1 displays the decisions made by AJs and the DOHA Appeal Board for the 920 Defense contractor cases. In the initial AJ decisions, 643 cases (70%) were denied clearances. Of the 643 denied cases, 133 (21%) were appealed by the applicants and sent to the Appeal Board where only two were granted a clearance (1.5%). There were 277 cases (30%) where the clearance was granted by the AJs, and 38 (14%) of the cases were appealed by the government. For these 38 cases, the Appeal Board concurred with the AJs decision in 11 (29%) instances but denied clearance in 21 (55%) cases. Cases with an AJ denial were slightly more likely to be appealed (21%) than cases where the clearance was granted (14%). It is clear that the Appeal Board almost always concurred with the decision of the AJs where clearance was initially denied



Note. A very small number of the 920 cases are currently being appealed to the DOHA Appeal Board. For this reason, the number of appeal board cases could increase slightly as the appeals are completed.

Figure 1 Defense Contractor Cases Processed by the Defense Office of Hearings and Appeals (DOHA) 1996-2000.

but disagreed more frequently where the initial decision was to grant clearance. Overall, when both AJ and Appeal Board decisions are considered, DOHA denied clearances in approximately 72% of the cases.⁵

Figure 2 compares the personal appearance recommendations made by DOHA AJs for uniformed military and government employees, with the final appeal decisions made by the PSABs for the same individuals. As can be seen, the DOHA AJs recommended the denial of a security clearance in 63% of the 742 military and government cases it reviewed. This was lower than the DOHA denial rate of 70% for Defense contractor cases, as shown earlier in Figure 1. Results also showed that the PSABs agreed with DOHA AJ decisions about 80% of the time. Overall, the PSABs denied clearances in 75%⁶ of the cases compared to the 63% recommended denials by DOHA.

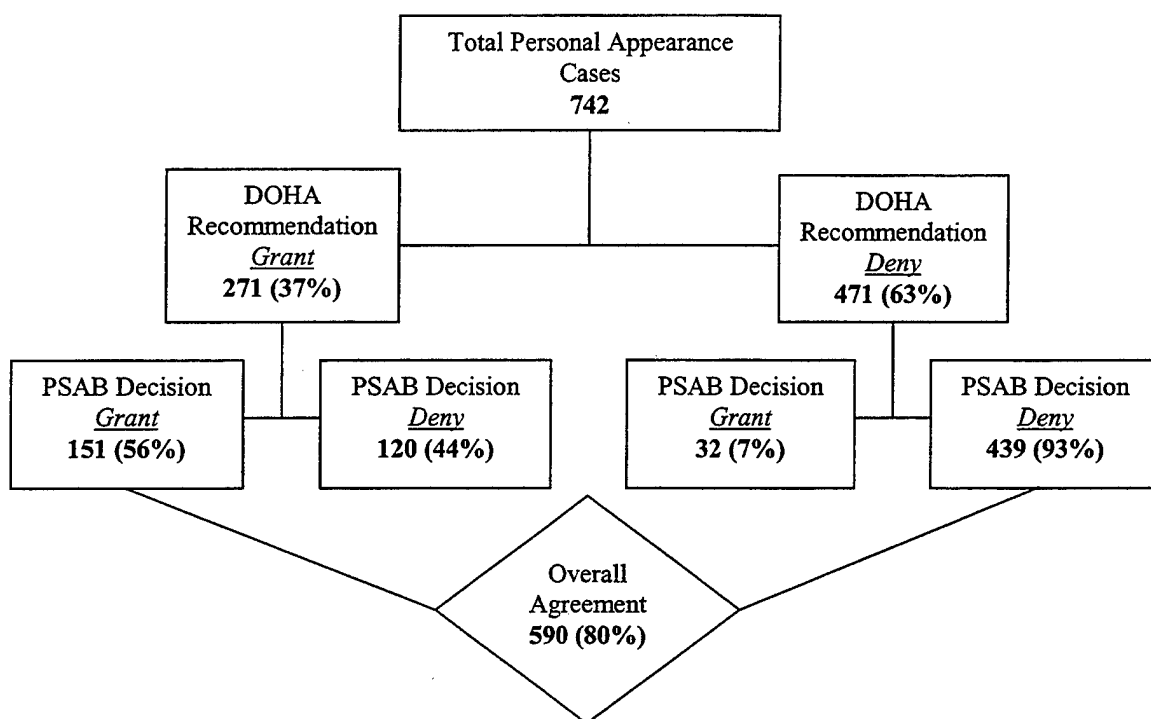


Figure 2 Comparison of DOHA Recommendations with PSAB Decisions (1996 – 1999).

Table 2 displays the percentages of adjudicative guidelines cited in the 920 Defense contractor cases reviewed by DOHA. There was an overall average of 1.8 guidelines per case. Criminal Conduct was the most frequent guideline appearing in 48% of the cases. Other guidelines cited often were Personal Conduct (38%), Drug Involvement (37%), Alcohol Consumption (23%), and Financial Considerations (21%). On the other hand, a number of guidelines were rarely cited: Allegiance, Emotional/Mental, Security Violations, Outside Activities, and Misuse of Information Technology Systems.

⁵ This percentage was computed by excluding remanded cases from analysis.

⁶ This percentage was computed by adding the PSAB denial decisions (120 + 439 = 559) and dividing this sum by the total number (742) of personal appearance cases.

Table 2 also compares how frequently the adjudicative guidelines were cited in Defense contractor cases that were initially denied or granted a security clearance.⁷ The five most frequently cited guidelines were present in both the overall DOHA and initial AJ denial cases. However, when AJs initially granted clearances, the most frequently cited guidelines were Criminal Conduct (32%), Drug Involvement (30%), Alcohol Consumption (20%), Financial Considerations (17%), and Personal Conduct (15%). Also, Foreign Influence (11%) and Foreign Preference (12%) appeared more frequently in the granted cases.

Table 2
Adjudicative Guidelines Found in Defense
Contractor Cases Reviewed by DOHA Administrative Judges

<i>Guideline</i>	<i>Cases with Guideline Present (N=920)</i>	<i>Initial AJ Decision</i>		<i>Initial AJ Decision Sent to Appeal Board</i>	
		<i>Denied (n=643)</i>	<i>Granted (n=277)</i>	<i>Denied (n=133)</i>	<i>Granted (n=38)</i>
	<i>%</i>	<i>%</i>	<i>%</i>	<i>%</i>	<i>%</i>
Allegiance to the United States					
Foreign Influence	4.0	2.0	11.0	2.0	16.0
Foreign Preference	5.0	2.0	12.0	3.0	16.0
Sexual Behavior	5.0	5.0	6.0	8.0	21.0
Personal Conduct	37.0	48.0	13.0	46.0	32.0
Financial Considerations	21.0	22.0	17.0	23.0	3.0
Alcohol Consumption	23.0	24.0	20.0	20.0	13.0
Drug Involvement	37.0	40.0	31.0	33.0	29.0
Emotional, Mental, and Personality Disorders	1.0	1.0			
Criminal Conduct	47.0	54.0	30.0	48.0	53.0
Security Violations	1.0	1.0	.4	1.0	3.0
Outside Activities					
Misuse of Information					
Technology Systems	1.0	1.0	.4	1.0	3.0

In addition, Table 2 shows how frequently the adjudicative guidelines were cited in Defense contractor cases where the AJ decisions were appealed to the DOHA Appeal Board. Relatively similar frequencies of adjudicative guidelines were found in the 133 cases where the AJs denial decisions were appealed by the applicant, when compared with the total 643 denial cases (i.e., Criminal Conduct, Personal Conduct, Drug Involvement, Financial Considerations, and Alcohol Consumption). On the other hand, the government's appeals of clearances granted by AJs often involved other guidelines. Government appeals were less likely than applicant appeals to involve Financial Considerations (3%) and more likely to include Sexual Behavior (21%), Foreign Influence (16%), and Foreign Preference (16%). However, the government

⁷ Cases with initially denied clearances averaged 2.0 guidelines per case. Cases with initially granted clearances averaged 1.4 guidelines per case. Cases sent to the DOHA Appeal Board averaged 1.8 guidelines per case in both denied and granted decisions.

appeals still frequently included Criminal Conduct (53%), Personal Conduct (32%), and Drug Involvement (29%).

Figures 1 and 2 as well as Table 2 provide background on the decisions made by AJs, the DOHA Appeal Board, and the adjudicative criteria that were considered. As discussed earlier, a more detailed analysis was conducted for eight issue categories that appeared within cases. These are shown in the first column of Table 3. Column 2 displays the number of cases discussed in the *USA Today* article that were classified into these categories, and Column 3 displays the number of all DOHA cases in the database that were classified according to the same categories.

The goal of the analysis presented in Table 3 was to determine whether decisions made in the cases highlighted by *USA Today* were representative of DOHA decisions made in similar cases. As can be seen in Table 3, with the exception of the murder category where there were only three cases, a minimum of 79% of the cases within a category had the clearance denied (Fraud/Embezzlement) to a high of 93% (Falsification). These percentages are quite a bit higher than the overall denial rate (including the Appeal Board results) of approximately 72% for all DOHA Defense contractor appeal cases. Overall, 86% of the 456 cases categorized for these analyses resulted in clearance denials.

Given that all but one of the *USA Today* cases had the clearance granted (i.e., a denial rate of 8%), it is clear that those cases were not representative of other cases in the same categories, where the denial rate was between 70% and 90%.

Table 3
Comparison of DOHA Clearance Decisions for Different Categories of Appeal Cases

<i>Issue Categories</i>	<i>USA Today</i> (<i>n</i> =12) ^a	<i>DOHA Cases</i> (<i>N</i> =456) ^b	<i>Clearance Granted</i>		<i>Clearance Denied</i>	
			(<i>n</i> =64)	%	(<i>n</i> =392)	%
Child Abuse/Neglect	3	37	6	16.2	31	83.8
Falsification	3	289	21	7.3	268	92.7
Felony	5	150	28	18.7	122	81.3
Fraud/Embezzlement	2	43	9	20.9	34	79.1
Murder	1	3	1	33.3	2	66.7
Security Violations	1	13	1	7.7	12	92.3
Sexual Misconduct	4	57	9	15.8	48	84.2
Tax Evasion	2	66	14	21.2	52	78.8

Note. A small number of the cases are still in the appeal process.

^a Some cases are counted in more than one category because a case may have issues in more than one category. Only the 12 cases that could be classified into a category were included in Column 2.

^b DOHA cases include the *USA Today* cases shown in the second column. Some cases are counted in more than one category because a case may have issues in more than one category.

Conclusions

The results of our analyses suggest the following. First, approximately 72% of DOHA clearance reviews resulted in a security clearance denial or revocation. Likewise, DoD PSABs denied or revoked clearances in approximately 75% of the cases it reviewed over a 4-year period. When PSABs and DOHA AJs both reviewed the same case, they agreed on the clearance decision about 80% of the time. Second, there was an overall average of 1.8 guidelines cited in each DOHA case. Criminal Conduct was the most frequently cited guideline, appearing in 48% of the cases followed by Personal Conduct (38%), and Drug Involvement (37%). Third, DOHA denied a security clearance in approximately 86% of cases with issues similar to those presented in the *USA Today* article. Thus, in cases similar to those chosen by *USA Today*, DOHA usually denied rather than granted a security clearance.

Appendix A

Adjudicative Guidelines for Determining Eligibility for Access to Classified Information

Appendix A: Adjudicative Guidelines

A. Introduction

The following adjudicative guidelines are established for all U.S. government civilian and military personnel, consultants, contractors, employees of contractors, licensees, certificate holders or grantees and their employees and other individuals who require access to classified information. They apply to persons being considered for initial or continued eligibility for access to classified information, to include sensitive compartmented information (SCI) and special access programs (SAPs) and are to be used by government departments and agencies in all final clearance determinations.

B. Adjudicative Process

1. The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The voluntariness of participation;
- f. The presence or absence of rehabilitation and other pertinent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation, or duress; and
- i. The likelihood of continuation or recurrence.

2. Each case must be judged on its own merits, and final determination remains the responsibility of the specific department or agency. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.

3. The ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an overall common sense determination based upon careful consideration of the following, each of which is to be evaluated in the context of the whole person, as explained further below:

- a. Guideline A: Allegiance to the United States
- b. Guideline B: Foreign influence
- c. Guideline C: Foreign preference

Appendix A: Adjudicative Guidelines (continued)

- d. Guideline D: Sexual behavior
- e. Guideline E: Personal conduct
- f. Guideline F: Financial considerations
- g. Guideline G: Alcohol consumption
- h. Guideline H: Drug involvement
- i. Guideline I: Emotional, mental, and personality disorders
- j. Guideline J: Criminal conduct
- k. Guideline K: Security violations
- l. Guideline L: Outside activities
- m. Guideline M: Misuse of information technology systems

4. Although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior. Notwithstanding the whole person concept, pursuit of further investigation may be terminated by an appropriate adjudicative agency in the face of reliable, significant, disqualifying, adverse information.

5. When information of security concern becomes known about an individual who is currently eligible for access to classified information, the adjudicator should consider whether the person:

- a. Voluntarily reported the information;
- b. Was truthful and complete in responding to questions;
- c. Sought assistance and followed professional guidance, where appropriate;
- d. Resolved or appears likely to favorably resolve the security concern;
- e. Has demonstrated positive changes in behavior and employment;
- f. Should have his or her access temporarily suspended pending final adjudication of the information.

6. If after evaluating information of security concern, the adjudicator decides that the information is not serious enough to warrant a recommendation of disapproval or revocation of the security clearance, it may be appropriate to recommend approval with a warning that future incidents of a similar nature may result in revocation of access.

Guideline A

Allegiance to the United States

The Concern. An individual must be of unquestioned allegiance to the United States. The willingness to safeguard classified information is in doubt if there is any reason to suspect an individual's allegiance to the United States.

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

- a. Involvement in any act of sabotage, espionage, treason, terrorism, sedition, or other act whose aim is to overthrow the Government of the United States or alter the form of government by unconstitutional means;

Appendix A: Adjudicative Guidelines (continued)

- b. Association or sympathy with persons who are attempting to commit, or who are committing, any of the above acts;
- c. Association or sympathy with persons or organizations that advocate the overthrow of the United States Government, or any state or subdivision, by force or violence or by other unconstitutional means;
- d. Involvement in activities which unlawfully advocate or practice the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any state.

Conditions that could mitigate security concerns include:

- a. The individual was unaware of the unlawful aims of the individual or organization and severed ties upon learning of these;
- b. The individual's involvement was only with the lawful or humanitarian aspects of such an organization;
- c. Involvement in the above activities occurred for only a short period of time and was attributable to curiosity or academic interest;
- d. The person has had no recent involvement or association with such activities.

Guideline B *Foreign Influence*

The Concern. A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

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

- a. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;
- b. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;
- c. Relatives, cohabitants, or associates who are connected with any foreign government;
- d. Failing to report, where required, associations with foreign nationals;
- e. Unauthorized association with a suspected or known collaborator or employee of a foreign intelligence service;
- f. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government;
- g. Indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, coercion or pressure;
- h. A substantial financial interest in a country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence.

Appendix A: Adjudicative Guidelines (continued)

Conditions that could mitigate security concerns include:

- a. A determination that the immediate family member(s) (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;
- b. Contacts with foreign citizens are the result of official U.S. Government business;
- c. Contact and correspondence with foreign citizens are casual and infrequent;
- d. The individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons or organizations from a foreign country;
- e. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

Guideline C

Foreign Preference

The Concern. When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

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

- a. The exercise of dual citizenship;
- b. Possession and/or use of a foreign passport;
- c. Military service or a willingness to bear arms for a foreign country;
- d. Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country;
- f. Residence in a foreign country to meet citizenship requirements;
- g. Using foreign citizenship to protect financial or business interests in another country;
- h. Seeking or holding political office in the foreign country;
- h. Voting in foreign elections; and
- i. Performing or attempting to perform duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

Conditions that could mitigate security concerns include:

- a. Dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- b. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship;
- c. Activity is sanctioned by the United States;
- d. Individual has expressed a willingness to renounce dual citizenship.

Appendix A: Adjudicative Guidelines (continued)

Guideline D *Sexual Behavior*

The Concern. Sexual behavior is a security concern if it involves a criminal offense, indicates a personality or emotional disorder, subjects the individual to coercion, exploitation, or duress, or reflects lack of judgment or discretion. (see footnote) Sexual orientation or preference may not be used as a basis for or a disqualifying factor in determining a person's eligibility for a security clearance.

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

- a. Sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- b. Compulsive or addictive sexual behavior when the person is unable to stop a pattern of self-destructive or high-risk behavior or which is symptomatic of a personality disorder;
- c. Sexual behavior that causes an individual to be vulnerable to coercion, exploitation or duress;
- d. Sexual behavior of a public nature and/or which reflects lack of discretion or judgment.

Conditions that could mitigate security concerns include:

- a. The behavior occurred during or prior to adolescence and there is no evidence of subsequent conduct of a similar nature;
- b. The behavior was not recent and there is no evidence of subsequent conduct of a similar nature;
- c. There is no other evidence of questionable judgment, irresponsibility, or emotional instability;
- d. The behavior no longer serves as a basis for coercion, exploitation, or duress.

Footnote: The adjudicator should also consider guidelines pertaining to criminal conduct (Guideline J); or emotional, mental, and personality disorders (Guideline I), in determining how to resolve the security concerns raised by sexual behavior.

Guideline E *Personal Conduct*

The Concern. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

- a. Refusal to undergo or cooperate with required security processing, including medical and psychological testing; or
- b. Refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination.

Conditions that could raise a security concern and may be disqualifying also include:

- a. Reliable, unfavorable information provided by associates, employers, coworkers,

Appendix A: Adjudicative Guidelines (continued)

neighbors, and other acquaintances;

b. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

c. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination;

d. Personal conduct or concealment of information that may increase an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail;

e. A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency.

f. Association with persons involved in criminal activity.

Conditions that could mitigate security concerns include:

a. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;

b. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;

c. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;

d. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided;

e. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress;

f. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information;

g. Association with persons involved in criminal activities has ceased.

Guideline F

Financial Considerations

The Concern. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

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

a. A history of not meeting financial obligations;

Appendix A: Adjudicative Guidelines (continued)

- b. Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- c. Inability or unwillingness to satisfy debts;
- d. Unexplained affluence;
- e. Financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern.

Conditions that could mitigate security concerns include:

- a. The behavior was not recent;
- b. It was an isolated incident;
- c. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);
- d. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;
- e. The affluence resulted from a legal source; and
- f. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Guideline G

Alcohol Consumption

The Concern. Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

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

- a. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use;
- b. Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job;
- c. Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;
- d. Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;
- e. Habitual or binge consumption of alcohol to the point of impaired judgment;
- f. Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

Conditions that could mitigate security concerns include:

- a. The alcohol related incidents do not indicate a pattern;
- b. The problem occurred a number of years ago and there is no indication of a recent problem;
- c. Positive changes in behavior supportive of sobriety;

Appendix A: Adjudicative Guidelines (continued)

d. Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Guideline H *Drug Involvement*

The Concern.

- a. Improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.
- b. Drugs are defined as mood and behavior altering substances and include:
 - (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and
 - (2) Inhalants and other similar substances.
- c. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

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

- a. Any drug abuse (see above definition);
- b. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution;
- c. Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;
- d. Evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program;
- e. Failure to successfully complete a drug treatment program prescribed by a credentialed medical professional. Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination.

Conditions that could mitigate security concerns include:

- a. The drug involvement was not recent;
- b. The drug involvement was an isolated or aberrational event;
- c. A demonstrated intent not to abuse any drugs in the future;
- d. Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional.

Appendix A: Adjudicative Guidelines (continued)

Guideline I

Emotional, Mental, and Personality Disorders

The Concern. Emotional, mental, and personality disorders can cause a significant deficit in an individual's psychological, social and occupational functioning. These disorders are of security concern because they may indicate a defect in judgment, reliability or stability. A credentialed mental health professional (e.g., clinical psychologist or psychiatrist), employed by, acceptable to, or approved by the government, should be utilized in evaluating potentially disqualifying and mitigating information fully and properly, and particularly for consultation with the individual's mental health care provider.

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

- a. An opinion by a credentialed mental health professional that the individual has a condition or treatment that may indicate a defect in judgment, reliability, or stability;
- b. Information that suggests that an individual has failed to follow appropriate medical advice relating to treatment of a condition, e.g. failure to take prescribed medication;
- c. A pattern of high-risk, irresponsible, aggressive, anti-social or emotionally unstable behavior;
- d. Information that suggests that the individual's current behavior indicates a defect in his or her judgment or reliability.

Conditions that could mitigate security concerns include:

- a. There is no indication of a current problem;
- b. Recent opinion by a credentialed mental health professional that an individual's previous emotional, mental, or personality disorder is cured, under control or in remission and has a low probability of recurrence or exacerbation;
- c. The past emotional instability was a temporary condition (e.g., one caused by a death, illness, or marital breakup), the situation has been resolved, and the individual is no longer emotionally unstable.

Guideline J

Criminal Conduct

The Concern. A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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

- a. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
- b. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

- a. The criminal behavior was not recent;
- b. The crime was an isolated incident;
- c. The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life;
- d. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur;

Appendix A: Adjudicative Guidelines (continued)

- e. Acquittal
- f. There is clear evidence of successful rehabilitation.

Guideline K ***Security Violations***

The Concern. Noncompliance with security regulations raises doubt about an individual's trustworthiness, willingness, and ability to safeguard classified information.

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

- a. Unauthorized disclosure of classified information;
- b. Violations that are deliberate or multiple or due to negligence.

Conditions that could mitigate security concerns include actions that:

- a. Were inadvertent;
- b. Were isolated or infrequent;
- c. Were due to improper or inadequate training;
- d. Demonstrate a positive attitude towards the discharge of security responsibilities.

Guideline L ***Outside Activities***

The Concern. Involvement in certain types of outside employment or activities is of security concern if it poses a conflict with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

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

Any service, whether compensated, volunteer, or employment with:

- a. A foreign country;
- b. Any foreign national;
- c. A representative of any foreign interest;
- d. Any foreign, domestic, or international organization or person engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs, or protected technology.

Conditions that could mitigate security concerns include:

- a. Evaluation of the outside employment or activity indicates that it does not pose a conflict with an individual's security responsibilities;
- b. The individual terminates the employment or discontinues the activity upon being notified that it is in conflict with his or her security responsibilities.

Guideline M ***Misuse of Information Technology Systems***

The Concern. Noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's trustworthiness, willingness, and ability to properly protect classified systems, networks, and

Appendix A: Adjudicative Guidelines (continued)

information. Information Technology Systems include all related equipment used for the communication, transmission, processing, manipulation, and storage of classified or sensitive information.

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

- a. Illegal or unauthorized entry into any information technology system;
- b. Illegal or unauthorized modification, destruction, manipulation, or denial of access to information residing on an information technology system;
- c. Removal (or use) of hardware, software or media from any information technology system without authorization, when specifically prohibited by rules, procedures, guidelines or regulations;
- d. Introduction of hardware, software or media into any information technology system without authorization, when specifically prohibited by rules, procedures, guidelines or regulations;

Conditions that could mitigate security concerns include:

- a. The misuse was not recent or significant;
- b. The conduct was unintentional or inadvertent;
- c. The introduction or removal of media was authorized;
- d. The misuse was an isolated event;
- e. The misuse was followed immediately by a prompt, good faith effort to correct the situation.

Appendix B
Criteria for Categorization of Cases

Appendix B: Criteria for Categorizing Cases

Cases identified by keywords were reviewed for inclusion in the eight categories listed below. Cases usually were included if the individual was charged and/or arrested (more than merely alleged) with an offense fitting the categories. However, the case narratives often do not state whether the individual was actually arrested, charged, convicted, and/or sentenced for the infraction(s) of security concern. Therefore, several incidents of security significance were identified as not being prosecuted in criminal court, but were regarded as increasing the applicants' susceptibility to improper influence, coercion, or blackmail. Those cases involving documented allegations or admittance were included on the basis of security significance.

Verification of case classification validity was completed at 100% for the applicants who were ultimately granted a security clearance and at 5% for the applicants who were eventually denied a security clearance.

Falsification

A. Inclusion Criteria

Included in the category of Falsification were incidents of the applicant's falsification of personal, criminal, employment, or other history during the process of their security investigation.

B. Exclusion Criteria

Excluded from the category of Falsification were cases in which Criterion E (personal conduct) was not addressed in the initial hearing.

C. Keyword Utilized

- Falsif (-ied, -ication)

Child Abuse/Neglect

A. Inclusion Criteria

Included in the category of Child Abuse/Neglect were incidents of infraction injurious to a minor. This encompasses cases of child neglect, child abuse, soliciting/obtaining child pornography, as well as misconduct (generally of a sexual nature) with a minor even if the wrongdoing was not prosecuted.

B. Exclusion Criteria

Excluded from the category of Child Abuse/Neglect were incidents of wrongful allegation where the accuser admitted to falsifying the report of negligent/abusive behavior.

C. Keywords Utilized

- | | |
|------------------------|-----------------------------|
| • Child Abuse | • Fondled |
| • Child Neglect | • Masturbat (-ion, -ed, -e) |
| • Molest (-ed, -ation) | • Sexual Assault |
| • Pedophil (-ia, -e) | • Kidnap (-ed, -ing) |

Appendix B: Criteria for Categorizing Cases (continued)

- Porno (-graphy, -graphic)

Fraud/Embezzlement

A. Inclusion Criteria

Included in the category of Fraud/Embezzlement were incidents of intentional and planned deceit. Varying in their degree of seriousness (check fraud to counterfeiting), these situations involved perversion of the truth by the applicant.

B. Exclusion Criteria

Excluded from the category of Fraud/Embezzlement were incidents involving the applicant's falsification of security questionnaire(s) and/or interview(s) (e.g., SF-86).

C. Keywords Utilized

- Forgery
- Falsified Time
- Counterfeiting
- Bribery
- Embezzle (-ment)

Murder

A. Inclusion Criteria

Included in the category of Murder were incidents where the applicant was charged with conspiring to or actually killing another.

B. Exclusion Criteria

Excluded from the category of Murder were cases involving the applicant's driving under the influence of alcohol that resulted in either vehicular homicide or involuntary manslaughter.

C. Keywords Utilized

- Murder
- Manslaughter
- Homicide

Felony

A. Inclusion Criteria

Included in the category of Felony were incidents of a felonious nature for which the applicant was, at minimum, charged. This is inclusive of cases where the keyword felon (-y, -ious) was a match and verified as applicable. Applicants categorized in the Murder category were included in felony only if they were charged with an additional felony.

B. Exclusion Criteria

Excluded from the category of Felony were incidents of criminal conduct that were not identified as felonies through the keyword search, even though the crimes were probably of a felonious nature. The case narratives are often inconsistent in their description of criminal conduct, and we did not assume the level of the crime. (For example, in many cases, the applicant's not filing a

Appendix B: Criteria for Categorizing Cases (continued)

state income tax return was indicated as a felony and was consequently included. However, in many other instances of the applicant's failure to file a state income tax return, no indication as to the nature of the crime was indicated, and was therefore excluded.)

C. Keywords Utilized

- Aggravated Assault
- Extortion
- Ransom
- Robbery
- Burglary
- Arson
- Deadly Weapon
- Felon (-y, -ious)

Security Violations

A. Inclusion Criteria

Included in the category of Security Violations were incidents involving the applicant's inappropriate handling of classified materials.

B. Exclusion Criteria

Excluded from the category of Security Violations were incidents involving the applicant's falsification of security questionnaires (e.g., SF-86).

C. Keyword Utilized

- Security Violation

Sexual Misconduct

A. Inclusion Criteria

Included in the category of Sexual Misconduct were incidents of a sexual nature that drew the attention of security as increasing the applicant's susceptibility to improper influence, coercion, or blackmail. Although not all cases included in this category involved sexual infractions of a criminal nature (e.g., boasting of frequent *menage-a-trois* arrangements or other socially unacceptable sexual behavior), many were charged criminally with sexual offenses (e.g., exhibitionism, voyeurism, and indecent exposure).

B. Exclusion Criteria

None applied.

C. Keywords Utilized

- Porno (-graphy, -graphic)
- Masturbat (-ion, -ed, -e)
- Rape
- Exhibitionism
- Lewdness
- Indecent Exposure
- Lascivious (-ness)

Appendix B: Criteria for Categorizing Cases (continued)

Tax Evasion

A. Inclusion Criteria

Included in the category of Tax Evasion were incidents of the applicant's failure to file state or federal income tax return(s), or their intent to defraud through submission of illusive tax documents. Additionally, applicants charged with the failure to pay local municipal taxes were included.

B. Exclusion Criteria

Excluded from the category of Tax Evasion were incidents where applicants inadvertently miscalculated their tax return and who promptly took action to correct their error.

C. Keywords Utilized

- Tax Return
- Tax Evasion
- Tax