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February 24, 1978

Statement by Mr. W. Donald Stewart

on

The Security Clearance Program  
and Its Relation to Possible  
Unauthorized Disclosures of Classified Defense Information

for

The Senate Select Committee on Intelligence

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The Security Clearance Program  
and Its Relation to  
Possible Unauthorized Disclosures of  
Classified Defense Information

Unauthorized Disclosures of Classified Defense Information

This statement is being voluntarily furnished by W. Donald Stewart to the Senate Select Committee on Intelligence specifically for the attention of the Subcommittee on Secrecy and Disclosure.

Qualifications of Author

I served as an FBI Agent from July 1951 until August 1965, the last nine years as an Espionage Supervisor at FBI Headquarters, and from August 13, 1965 until December 1972 as Chief Investigator for the Office of the Secretary of Defense with the primary responsibility of investigating Unauthorized Disclosure cases. Because the Directorate for Inspection Services (DINS), commonly known then as the Secretary of Defense's Inspector General group, was phased out for economy purposes, I was appointed Inspector General of the newly formed (October 1972) Defense Investigative Service where I remained until I retired on June 30, 1975. During my tenure in DINS I handled 222 Unauthorized Disclosure investigations and numerous major criminal and counterintelligence investigations in accordance with the provisions of Department of Defense Directive 5210.50 entitled "Investigation of and Disciplinary Action Connected with Unauthorized Disclosures of Classified Defense Information" dated April 29, 1966, which made DINS the focal point of all such violations, and with the provisions of Department of Defense Instruction 5200.22 entitled "Reporting of Security and Criminal Violations" (to DINS) dated September 12, 1966.

In April 1969 I prepared a pamphlet entitled "Analysis of Unauthorized Disclosure Investigations." This consisted of a review of 125 investigations conducted between March 1965 and March 1969. I described the whole program - Background, Authority, Source of Unauthorized Disclosures, Mechanics of Handling, Program Improvement, Positive Results, Personality Characteristics of Individuals Responsible for Unauthorized Disclosures, the Question of Prosecution, and Observations.

Since I retired I have written a book entitled "Leaks" (not yet published) and founded Stewart Security Services.

Purpose

The purpose of this paper is twofold. One purpose is to show how haphazard the Security Clearance Program operates, and secondly to show that weaknesses in our Security Clearance Program could be responsible for unauthorized disclosures of classified information through the improper conferring on of a security clearance on an undeserving person

or through the failure to remove a person's security clearance when the person becomes a security risk for one of several reasons.

Specifically, this paper reflects who has access, legally and illegally, to classified Defense data; examples of weaknesses in our Security Clearance Program permitting undesirables to obtain a security clearance; variations in the investigative criteria for a Top Secret clearance; how security clearances are adjudicated, along with an idea for a Central Adjudication Branch for economy, security and privacy purposes, and finally the introduction of the use of the polygraph for pre-employment checks and for background checks. The polygraph could minimize invasion of an individual's privacy, expedite his date of employment and clearance, and save the U.S. Government a large amount of money in various ways.

Hopefully, the Committee will recognize the need to bring the entire Security Clearance Program into proper focus with appropriate standardization and safeguards to all persons concerned.

#### The Meaning of a Security Clearance

What does a security clearance mean? Actually it means that a designated authority has sanctioned a person's access to view classified defense material at a level of Confidential, Secret, or Top Secret. Actually there are also what are called "Exotic" clearances or "Special" clearances which are over and above Top Secret.

#### Who Has Access to Classified Data

##### (A) The Press

The press does not, in fact, legally get a security clearance; however, they are often given "Backgrounders," which are familiarization lectures in order to prepare them to write a story. These generally contain classified defense information. There is a stipulation that the data imparted is "Off the Record." In 1969, there was a case where a Vice Admiral compromised our 10-year lead over the Soviets on Anti-Submarine Warfare. Reportedly the press was not told the "backgrounder" was "off the record" and 14 papers ran the story. But, then again, what authority exists by anyone to confer a clearance on any member of the press through a "backgrounder," "off the record." When members of the press are taken into the Defense Department's Office of Public Affairs, a Top Secret background investigation is conducted before the clearance is conferred.

(B) The Congress

Members of Congress are awarded a Top Secret clearance by virtue of the fact they are elected to Congress, so said the late Mendel L. Rivers, on February 1, 1965, when as Chairman of the House Armed Services Committee, he addressed his Committee and, in particular, the new members. Interestingly enough, Representative Robert Leggett was then a new member of the Committee and later came to the public's attention because of his indebtedness due to his association with a mistress and fathering illegitimate children. Not too long ago, Representative Frank Horton was jailed for drunken driving. And while Congressman Rivers headed his above Committee, he was known to imbibe heavily, very heavily, but in none of the above cases was there any thought of removing the Congressman's clearance. Yet, in any other Government Department, such conduct, as above, would cause the person to be cited as a "Possible Security Risk" and his access to classified defense data could, and probably would, be suspended.

As a matter of possible interest, a request by David Young, then the White House Plumber Chief, to Fred Buzhardt, then Defense Department General Counsel, caused me to conduct an investigation concerning leaks attributed to Congress. The results were incorporated in a report dated February 13, 1973, entitled: "Unauthorized Disclosures of Classified Defense Information Possibly Attributable to Members of Congress and/or their Staffs." This was requested by David Young at a time when the White House and Congress were pointing the finger at each other as to who the biggest leaker was. The report reflected the loose handling of classified data by Congressional people; the "bootlegging" of classified data to Congressmen; the lack of accountability of material sent from the Department of Defense to the Hill; and in one case the refusal of a staff member to execute a Personnel Security History form so a background investigation could be conducted of him.

(C) The Military

All enlisted personnel at the time of entry into the Armed Services are given a National Agency Check (NAC). This consists of the individual's name and birth date being run through the appropriate indices of the FBI, State Department, and CIA. Also, the person is fingerprinted; however, his fingerprints are not checked at the FBI, only the name from his fingerprint card is checked in the indices of the Identification Division of the FBI. So what happens if the individual gives a false name and birth date when he enters the service? Naturally, all such checks are worthless; however, the enlisted man receives a Secret clearance based on a clean NAC.

What proof of identification must he have to enter the service and later obtain his Secret clearance? He must produce a high school diploma and a birth certificate. Are they verified? Yes, the military recruiter causes checks to be made at the high school and the appropriate Bureau of Vital Statistics. What does that do? It merely informs the recruiter that John Jones graduated from Holy Mount High School - it does not tell the recruiter if John Jones is white or black, tall or short, blonde or redheaded. The Bureau of Vital Statistics merely informs that one male was born on such and such a date to William and Doris Jones, perhaps it might gratuitously give the baby's name as John. Can the required documentation be fabricated? Yes, I've had a couple of national news stories on this weakness in our security program, but to no avail. Additionally, no change has been made even in view of the fact that last summer it was discovered that 500 Panamanian aliens enlisted in the U.S. Marine Corps by utilizing fabricated documents. Can this be stopped? Yes, by requiring the enlisted to submit the names and addresses of three references who should be interviewed to verify the John Jones is the person he purports to be, and also to have the FBI do a search of his fingerprints from the fingerprint card he submits.

Do you have any examples of people entering the service illegally other than the above 500 Panamanians? Yes, about two years ago I had a national news story about Thomas Ragner Faernstrom who reenlisted fictitiously ten times during a 13-month period between November 1973 and January 1975, collecting approximately \$30,000 in bonus. Subsequent interviews with him revealed he had done this over a 10-year period and bilked the U.S. Government out of \$600,000. A check of his fingerprints would have uncovered him at any stage.

Last July a 28 year old North Carolina man was arrested and held 40 days as a deserter from the Army in spite of his protests that he never joined. Someone else joined using his identification which he had previously lost. An FBI fingerprint check would have probably nipped this fraudulent enlistment in the bud at the enlistment stage as the fraudulent enlistee most likely couldn't get in under his own identity.

In January 1975, a sailor in Seattle, Washington hi-jacked a Navy plane and was subsequently caught. Later it was developed that a year before he had been discharged from the Marine Corps as a mental case. An FBI fingerprint check would have surfaced him.

Actually on the subject of poor security I have acted in the capacity of a one-man vigilante committee before I retired and for 2-1/2 years since without success. I could cite example after example, but the purpose here is not to show how the vulnerability to our security exists from the fact that you are an accepted person. Since you live with people who have Top Secret clearances, they are likely

to impart data to you because you are a serviceman like them. Further, you have a legitimate right to be in the proximity of certain areas which contain Top Secret data and are likely to learn about them because you are accepted as another service person. Actually, one service person does not enter a room and say, prior to a conference, "Who's got Top Secret here? I want to 'shoot my mouth off'."

The 500 illegal Panamanian aliens who joined the U.S. Marine Corps undoubtedly got some exposure that probably the Marines wish they hadn't. Further, wouldn't it be ironic if our U.S. Marine Corps became engaged later in a battle in Panama and met stiff resistance and learned later the enemy was trained in our U.S. Marine Corps camps? Hopefully that won't happen.

(D) Civilian Employees

Civilian employees and Department of Defense contractor employees have access to classified information. Most are awarded a Secret clearance on a straight National Agency Check (NAC). If, however, any derogatory data develops, an investigation is undertaken to resolve the matter.

Civilian employees requiring a Top Secret investigation undergo a thorough background check involving verification of birth data, residences, employment, and interviews of references.

Variations in the Investigative Criteria  
for a Top Secret Clearance

The FBI, Defense Investigative Service (DIS), and the Civil Service Commission (CSC) each do background investigations for Top Secret clearances. Possibly State Department and the CIA also do their own. However, my point is that the criteria differ and to this end I'll speak of the variations in the FBI, DIS, and CSC criteria for a Top Secret clearance.

If there is any specific interest here, I have written a detailed paper dated February 25, 1975 entitled "Criteria for Security Clearances" where I go into greater depth. Briefly, the FBI is the only one of the three which is recognized as a police agency and thereby permitted to review all police agency criminal files in checking for a reference to the person being cleared for Top Secret. This being so, why do we worry about a person being a homosexual in connection with his getting a clearance since DIS and CSC are not likely to surface this data? As you may know, most homosexual subjects are often booked by a police department in the category of "Disorderly Conduct," given a small fine and released. For example, a former Special Assistant to former President Lyndon Johnson was arrested at a YMCA in Washington, DC, in about 1963, for his



participation in a homosexual affair. If this affair had happened in New York City, for example, and DIS or CSC had been conducting a background check based on the fact that Jenkins lived in New York once, neither having access to NYPD files could have uncovered this arrest, but, of course, the FBI, having such access, would have the data, would probably have caused him to be denied a clearance as a possible security risk. There are also other crimes which would not necessarily cause the person's fingerprints to be forwarded to FBI Headquarters and his arrest would go undetected during a fingerprint check of FBI files.

Let's look at the scope of an investigation. The FBI does neighborhoods for only the last five years unless derogatory data is developed. DIS and CSC go back for 10-15 years. The FBI verifies birth data from records and not Bureau of Vital Statistics' records as does DIS and CSC. FBI checks three listed references and no developed references are sought unless derogatory data is developed. If a listed reference is not available when the FBI knocks on his door, no effort is made to locate him again. DIS and CSC locate all listed references if possible.

The House Appropriations Committee hearings in April 1975 reflected that based on its review of DIS and CSC from May 1974 to November 1974, the following was noted. DIS charged \$390/investigation and CSC charged \$604. At that time FBI charged \$799. DIS cases averaged 19.8 leads/case whereas CSC averaged 30.7. DIS reports averaged four pages and CSC averaged 21 pages. FBI then operated under a 30-day deadline whereas DIS and CSC were taking in the neighborhood of 45-60 days. In regard to updating Top Secret clearances, FBI never updates those of its personnel; CIA updates its personnel every 3-5 years, and the Defense Department does a 5-year bring-up.

#### Adjudications

Who decides who gets the clearance after the background investigation is done? The Defense Investigative Service at one time serviced 1400 customers. That meant that each customer would get a full background investigation on its person and determine if he or she qualified for a clearance. I can't personally state that much additional investigation was often requested because the adjudicator wouldn't make a decision on the facts available. Yet, more than likely another adjudicator in the same agency could have - that's the difference between experience and lack of it.

Most important is the fact that the 1400 agencies had in their files much personal data on the person being cleared and this data, in my opinion, should not be in the files of the agency. The natural solution would be a Central Adjudication Branch within DoD,

for example, which would handle and retain all background investigative reports and simply inform the customer that based on the results of the background investigation the Department of Defense is awarding John Jones a Secret or Top Secret clearance. Much is saved in logistic costs in this manner because every agency doing its own adjudication must have its own classified file room complete with personnel. Also, many potential invasion of privacy suits could be avoided because personal background data would be much more restricted. No one at the agency has any need to know personal type data offered during the investigation about one of the employees being cleared. I personally have had complaints from employees about the discussion of such personal data such as age, past marriages, etc., contained in investigative reports on Personal History Questionnaires executed by the person being cleared.

#### The Polygraph for Security Screening

When the idea of using a polygraph is mentioned, instant resentment takes place. Immediately every one thinks in terms of its use being to convict someone; however, the polygraph is often used for exculpating purposes. Also, it is used for a veracity check such as was recently done during the interviews in Korea with Tongsun Park. Its use in connection with the Justice Department interviews of Park more or less set a precedent as far as the Government is concerned in that it places a great deal of belief in the ability of the polygraph to show deception which does not necessarily mean guilt.

Now, let's consider using the polygraph for general security screening. What I would propose is simply taking in hand the Personnel Security Questionnaire, FD 398, which all persons requiring a clearance must execute, and one by one reviewing each question with the applicant. For instance, is your name John Jones? Were you born April 10, 1928 at New York, New York? Have you ever been arrested? Did you reside at 1212 Vermont Avenue, Ventnor City, New Jersey from 1964-1972? etc. This is not an invasion of privacy since we are only reciting what the applicant has told us. We are not going to disqualify him if he shows deception on the above residence question and arrest question. We are going to instruct the field investigator to dig into these areas. We may very well be able to eliminate all other areas if no deception is noted.

What is the advantage of the polygraph in this type of screening? There are several. One is probably a quicker clearance for a pre-employment check enabling the person to report to work earlier. Often while the U.S. Government is checking out someone, the person becomes tired of waiting and gets other employment; hence, all the investigative effort is lost and if the person was to become a Government

employee, a new recruit must be found. Secondly, in a case that homosexuality may be developed during an investigation, a polygraph with the applicant would reflect deception and confronted with same the person might make a full disclosure. The alternative to his lack of cooperation on that subject or other subjects of possible personal embarrassment is to resolve the derogatory data in a full field investigation. Even if the person is determined not to have committed the suspected act, be what it may, the line of questioning pursued in neighborhoods where the person now lives and formerly lived, as well as present and past employment, leaves him with a stigma.

In the case of the military enlistee, the polygraph again being used to just verify what the enlistee has told us becomes an excellent screening device and may even serve to expedite his entrance into the service. On the other hand, at the recruiter level, the utilization of a polygraph at the recruiter level may also surface a potential fraudulent enlistee, thereby saving the U.S. Government a great deal of money by eliminating associated cost with processing and training a recruit. The polygraph could indicate that the potential recruit is or has been a drug user, is presently a fugitive from justice, or has served time for a crime which would disqualify him from military service, is not the person he purports to be, has certain physical limitations, etc. Again, only his questionnaire is being reviewed with him.

In a July 8, 1976 Los Angeles Times newspaper article entitled "At Least 1 in Every 250 Recruits Enlisted Fraudulently, Pentagon Figures Disclose" by Norman Kempster, 1,935 cases of fraudulent enlistments came to the attention of the military during a 15-month period ending March 31, 1976. What the article does not bring out is that these people for the most part surfaced themselves in order to get discharged. We have to admit that when economic conditions are not the best that the \$403/month pay, plus room and board and a clothing allowance for a Private in the military, can look awfully good.

Locally I can think of Army Private Angel, who killed two Montgomery County (Maryland) police officers after a bank robbery about two years ago as being one of the persons falling into the fraudulent enlistment group. He was not truthful in the papers he executed before entering the service. Whether it would or would not have altered the death of the two Montgomery County police officers, I cannot say. I can say that a pre-enlistment screening by polygraph would probably have excluded him and saved the Army a great deal of time and expense associated with his induction and training and embarrassment to its service. Angel was also a suspect in a murder prior to entering the service.

Another point, not only in favor of expediting the investigation of a civilian or military employee and saving related costs, is that many areas where a person may have formerly resided or was employed are now considered "high risk" areas and are not normally entered by Defense Investigative Service agents because of possible personal jeopardy. Therefore, to develop the fact a person lived there or worked there, other investigation must be launched to verify same. A similar but less dangerous type of a case is one where a person has listed a residence or employment, necessary to be verified being in that part of this country which is 400-500 miles from the nearest investigative office, making it necessary for an investigator to take a road trip to the location. A polygraph might well resolve our interests in this matter.

In closing, I believe our present Security Clearance Program and pre-employment check could be upgraded by use of the polygraph. At the same time in many cases there would be a substantial saving to the U.S. Government and a minimum of invasion of privacy to an applicant.

UNCLASSIFIED	CONFIDENTIAL	SECRET
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**EXECUTIVE SECRETARIAT**  
Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
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SUSPENSE \_\_\_\_\_  
Date

Remarks: To 3: In his memo of 22 February, the DCI sent along to you Mr. Stewart's earlier testimony before the SSCI. The attached is provided for your information and appropriate action in that context.

[Redacted]  
Executive Secretary  
28 Feb 78  
Date

STAT

Executive Registry

78-4468/1

o/c-78-0664/1  
SSCI

ROUTING AND TRANSMITTAL SLIP

1	TO	INITIALS	CIRCULATE
		DATE	COORDINATION
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		DATE	INFORMATION
3	C I A. Washington, D. C 20505	INITIALS	NOTE AND RETURN
		DATE	PER CON - VERSATION
4		INITIALS	SEE ME
		DATE	SIGNATURE

REMARKS

Dear Adm. Turner  
 Thank you for your letter of Feb 21 concerning receipt of my statement of Feb 3, 1978 to the Senate Select Committee on Intelligence.  
 Attached is another paper I have just prepared for the Committee, hoping it is of interest.

Do NOT use this form as a RECORD of approvals, concurrences,

STAT

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