

As you know, the Deputy Secretary of Defense, Cyrus Vance, on July 13, 1965, issued a Department of Defense Directive No. 5210.48, which regulates the conduct of polygraph examinations and the selection, training and supervision of Department of Defense polygraph examiners. This is the first comprehensive directive of the Department of Defense regulating the use of the polygraph.

In brief, the directive sets forth circumstances under which the use of the polygraph is authorized and prohibited; it is intended to assure that the use of the polygraph will be undertaken only with the prior consent of responsible officials under appropriate circumstances.

The directive permits the use of polygraph examinations in criminal investigations provided a determination has been made by a responsible official that—one designated pursuant to paragraph VII-B of the directive—that the investigation has been as thorough as circumstances permit, that the subject has been interviewed, and the development of additional information by means of a polygraph examination is essential and timely to the further conduct of the investigation.

Use of the polygraph in criminal cases is limited to those where the alleged crime is an offense punishable under the United States Code or the Uniform Code of Military Justice by death or confinement for a term of 1 year or more. Also, there must be reasonable cause to believe that the person to be examined has knowledge of or was involved in the matter under investigation.

The directive permits the conduct of polygraph examinations as part of a counterintelligence investigation provided a determination has been made by a responsible official that the investigation by other means has been as thorough as circumstances permit; that the subject has been interviewed and further productive investigative effort is not likely without a polygraph examination; and that information furnished by the individual cannot be checked through the use of other investigative methods. The investigation must be one to determine whether to grant, deny, or withdraw a security clearance higher than "confidential" or to determine whether initial or continued membership in the Armed Forces is clearly consistent with the interests of national security.

In both criminal and counterintelligence polygraph examinations, the person to be examined must be advised in advance that he has the opportunity to obtain and consult counsel of his own choice prior to the polygraph examination; advised of his rights in accordance with the provisions of either the "self-incrimination clause" of the fifth amendment to the Constitution, or article 31 of the Uniform Code of Military Justice, whichever is appropriate; and that the examination will be conducted only with his prior written consent and that no adverse action will be taken against him because of refusal to consent to take a polygraph examination.

Further, consistent with Deputy Secretary of Defense memorandum dated April 27, 1964, the person to be examined must be advised whether the area in which the examination is to be conducted contains a two-way mirror or other device by which the examinee can be observed without his knowledge; and whether the examination will be monitored in whole or in part by any means.

The directive permits the conduct of a polygraph examination when the individual under investigation voluntarily seeks a polygraph ex-