

Mr. Chairman, I may have other questions, but I will yield the floor to you or the staff.

Mr. KING. Thank you. I have one or two questions myself.

Mr. Skallerup, you referred in your prepared statement to the use of the polygraph in connection with criminal cases, among other things. Are you talking about criminal cases before military courts or before civil courts in which the military might be brought in to assist in the prosecution of a case. In both cases you could be playing a role. I was wondering which you had reference to?

Mr. SKALLERUP. The bulk of criminal investigations conducted in the DOD are those involving military personnel. However, from time to time the investigative services may get into what they call a complaint type case—for example, a fraud case, something which could lead to criminal prosecution, which may involve civilian employees of the Department. But these are rather small in number compared to the general criminal run of cases.

Mr. KING. You are talking then essentially about military courts?

Mr. SKALLERUP. True.

Mr. KING. Involving military personnel?

Mr. SKALLERUP. Yes.

Mr. KING. Of course, military personnel can be involved in civilian courts also. The military can be brought in to help even in a civil case. There might be certain evidence which they would be called on to present. But you are talking essentially about proceedings in a military court; is that correct?

Mr. SKALLERUP. That is correct.

Mr. KING. Are the results of the polygraph test used as substantive evidence of guilt or innocence or are they used simply as a so-called fishing expedition to assist the prosecutor in preparing his case, or both?

Mr. SKALLERUP. I can't speak with any authority in that area. I can say that it is my understanding that the results of the polygraph examinations are not used as substantive evidence of guilt or innocence, that normally the government prosecutors, we will call them, would not introduce evidence which is related to the opinion of a polygraph examiner, whether the individual was practicing deception or not practicing deception. The prosecution would introduce evidence procured in the course of a polygraph examination for what use it might be by way of inference in establishing guilt. But the opinion as to the guilt or innocence of the party being prosecuted would not be introduced as evidence.

Mr. KING. Do I understand it, then, that the judge, or examining officer, or jury if there is a jury, would under no circumstances be made aware of the fact that the defendant had been subjected to a polygraph examination, and that that would not come in as substantive evidence during the course of the trial; is that correct?

Mr. SKALLERUP. I can't answer that. I just don't know whether there is a bar excluding the fact that the defendant undertook a polygraph examination.

Mr. KING. Of course, you run into some serious constitutional restrictions there, do you not, involving self-incrimination. Moreover, the polygraph test is voluntary. But on the other hand, I suppose a person could withdraw his consent after he had given it.

Mr. SKALLERUP. He could do this at any time and we have tried to provide safeguards to assure the voluntary nature and also to assure