

V. Criminal investigations

In a criminal investigation no polygraph examination shall be conducted unless the following requirements are met:

A. A determination shall be made (to be confirmed in writing) in accordance with subsection VII-B below, that:

1. The investigation by other means has been as thorough as circumstances permit, the subject has been interviewed, and consistent with the circumstances of the case, the development of additional information by means of a polygraph examination is essential and timely for the further conduct of the investigation;

2. 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;

3. There is reasonable cause to believe that the person to be examined has knowledge of, or was involved in, the matter under investigation.

B. The person to be examined has been advised:

1. That he has the opportunity to obtain and consult with counsel of his own choice prior to the polygraph examination.

2. Of his rights, in accordance with the provisions of either (a) the "self-incrimination clause" of the fifth amendment to the Constitution; or (b) article 31 of the Uniform Code of Military Justice, whichever is appropriate.

3. That the polygraph examination will be conducted only with his prior written consent and that no adverse action will be taken against him because of a refusal to consent to take a polygraph examination.

4. Whether the area in which the polygraph examination is to be conducted contains a two-way mirror or other device whereby the examinee can be observed without his knowledge; and whether the examination will be monitored in whole or in part by any means.

VI. Counterintelligence investigations; intelligence operations; cryptologic information

A. *Counterintelligence investigations.*—Polygraph examinations may be conducted as a part of a counterintelligence investigation of Department of Defense personnel or as a part of a personnel security investigation of Department of Defense personnel or of personnel outside the Department of Defense requiring access to classified defense information, provided the following requirements are met:

1. The determination has been made (to be confirmed in writing) in accordance with subsection VII-B, below, that:

(a) The investigation by other means has been as thorough as circumstances permit, the subject has been interviewed, and further productive investigative effort is not likely without a polygraph examination, and

(b) The purpose of the investigation is to determine whether (1) to grant, deny, or withdraw a security clearance higher than confidential, or (2) in accordance with references (b) and (d), initial or continued employment, or membership in the Armed Forces, is clearly consistent with the interests of the national security; and

(c) The information furnished by the individual cannot be checked through the use of other investigative methods.

2. The person to be examined has been advised:

(a) That he has the opportunity to obtain and consult with counsel of his own choice prior to the polygraph examination;

(b) Of his rights, in accordance with the provisions of either (1) the "self-incrimination clause" of the fifth amendment to the Constitution; or (2) article 31 of the Uniform Code of Military Justice, whichever is appropriate;

(c) That the polygraph examination will be conducted only with his prior written consent and no adverse action will be taken against him because of a refusal to consent to take a polygraph examination; and

(d) Whether the area in which the polygraph examination is to be conducted contains a two-way mirror or other device whereby the examinee can be observed without his knowledge; and whether the examination will be monitored in whole or in part by any means.

B. *Intelligence operations.*—A polygraph examination may be authorized in the case of an individual who is a principal in an intelligence activity with the specific approval of, or by regulation issued by the Head of the DOD component conducting the operation, where information cannot be checked through other investi-