

MINUTES

ASSEMBLY JUDICIARY COMMITTEE

April 6, 1977

8:00 a.m.

Members Present: Chairman Barengo
Vice Chairman Hayes
Mr. Price
Mr. Coulter
Mrs. Wagner
Mr. Sena
Mr. Ross
Mr. Polish
Mr. Banner

Chairman Barengo brought this meeting to order at 8:00 a.m., at which time he had all those in the audience who wished to testify before the committee, swear in.

Assembly Bill 519:

Assemblyman Price, District #17, having been sworn in testified on this bill as its sponsor. He stated it was drawn up as a result of numerous complaints in the state regarding juveniles who commit felonies and people never have the opportunity of knowing whether or not they are living next door to them. He feels that people favor the release of names of juveniles who have been convicted of crimes which would have been classified as felonies had they been committed by an adult. This bill would require the release of such names and that they be made available for publication and broadcast, for any juvenile who has committed these crimes twice.

Frank P. Carmen, Clark County Juvenile Court Services Director, being sworn in, stated that he is really not in opposition to the basic concept of the bill. As a citizen of Clark County, he stated that he also is concerned that a child molester might be living down the street from him. However, what he does oppose is the mandate that they are trying to set forth in this bill with the language of "shall". He stated that there is another change in the amendment to the bill which asks for not only the names to be released, but, also the charges. But, he did ask the committee to change the language from "shall" to "may" because if they are mandated, he said you are talking about alot of paper work and new procedures. There was considerable questioning and discussion following Mr. Carmen's testimony.

Assembly Bill 539:

Frankie Sue DelPapa, Esq., Reno, Nevada, having been sworn in, testified in favor of this bill. She stated that this would authorize the District Court to transfer trust supervision to out-of-state courts under certain circumstances. She offered to the committee an example of the way the present law is operating and the problems that can develop.

Assembly Bill 540:

Mr. Dave Frank of the Judicial Planning Unit, having been sworn in, testified on this bill. He stated that this is pursuant to question 8 on the November ballot which is now Section 21 of Article VI establishing

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the Commission on Judicial Discipline. Under that section, the Supreme Court has rather broad rule making power for rules over the conduct of investigations and hearings and in formulating a draft of those rules they reviewed the constitution and statutes and rules of over 40 other jurisdictions. They concluded that there were certain areas where legislation was either necessary or desirable to implement this commission and AB 540 represents those areas. He mentioned that Senate Bill 385 already encompasses this subject and that it has been amended. The committee decided not to proceed on this bill on this date, but rather, to wait for the senate bill.

Assembly Bill 518:

Assemblyman Price, District #17, having been sworn in, testified on this bill as its prime sponsor. He stated that this subject matter has been dealt with by most of the present legislators in prior sessions and pointed out a major difference in this piece of legislation and that is the revisions that attempt to bring about justice to the employees and prospective employees. Mr. Price stated that he is firmly opposed and does not feel that a prospective employee should be placed in the same category as a charged criminal and that they should not be forced to take a polygraph test which he feels is an invasion of privacy. He feels that the polygraph is an excellent tool to use in the investigation of a crime. There was several questions from the committee of Mr. Price following his testimony. Upon a question of Mrs. Wagner, Mr. Price advised the committee of examples of certain questions on a polygraph exam given to a prospective employee.

Mr. Fran Breen, representing the Nevada Banks Association, introduced Mr. James Whitaker, head of Personnel at First National Bank. He stated that the bankers' position on this bill is that they have no objection to that part of the bill that prohibits the use of a polygraph test as a condition of obtaining employment, however, they do oppose the portion which prohibits the use of the polygraph test as a condition of retaining employment.

Mr. James Whitaker, head of Personnel at First National Bank, proceeded to explain to the committee the procedure used at that bank with regard to polygraphs. Mr. Breen stated that, as far as he knew, none of the banks use the polygraph as a condition of obtaining employment. Mr. Whitaker concurred with that statement. He stated that they have used the polygraph test in cases of large cash shortages or embezzlement and that they do not use it very often. The procedure is strictly voluntary. They have never terminated anyone in their bank as a result of the use or the results of the polygraph itself. He stated that some employees who have showed up a cash shortage have actually asked if they could take a polygraph to prove their innocence. Mr. Whitaker feels that it is a valuable tool for the banks, as far as, a condition of retention of employees, particularly, in their industry where you are dealing with peoples' monies. The committee questioned Mr. Whitaker at length following his testimony.

Frank Johnson, Vice President of Hilton Hotels Corporation, testified on this bill. He stated that they do occasionally use lie detector equipment and most gaming establishments do as they handle large amounts of money and the state is involved as a 5½ % partner. He stated that it has been their experience that in a situation where an entire crew might be suspect

to a theft that more people have been cleared and able to continue working than have ever been injured by the polygraph testing. If this bill does go through, he said that he would appreciate some amendment indicating that these gaming employees in the laundry list are subject to polygraph examination, not just by the authorities, but, by the employer also.

Mr. Ed Bowers with the Gaming Industry Association of Nevada, testified on this bill stating that their main concern appears on line 16 and 18 from an industry standpoint. That is, under the provisions of this proposed bill, it is deemed appropriate and essential that the State Gaming Control Board and Nevada Gaming Commission be granted authority to administer polygraph examinations to applicants of gaming licenses, and it should be noted and on record that the gaming industry here in the state are as interested in maintaining the integrity and controls on the industry, as is the state agency that does police it. They believe that this is a tool that protects the innocent.

Mr. Robins Cahill, managing director of the Nevada Resorts Association, having been sworn in, testified on this bill. They represent some 25 members of strip hotels and casinos. He stated that he made an extensive survey two years ago when this bill originally came up and he doesn't believe conditions have changed (although he did verify this) and their places indicated that they seldom use the polygraph, but, they do not want to be excluded from the right to use it.

Ken Pulver, Captain with Reno Police Department, a member of the Private Investigators' Licensing Board and a past polygraph examiner, also active in personnel administration in his department, testified on this bill. He stated that the only reason an employer might want to use the polygraph test is to get a better employee. It is the quickest and, therefore, the most economical way to get a truthful employee. Typically, the examination encompasses the verification of those statements made on the application. He feels there is nothing wrong with this. He then mentioned the integrity and professionalism of most polygraph examiners and if there were an examiner who did not conduct himself in a reasonable manner, that the prospective applicant would still have recourse against that employer and the polygraph examiner. He doesn't feel that there is a need for a wholesale bill to regulate the entire industry and, in effect, prohibit the use of polygraph examinations. The industry, as a whole, is professional, regulated and well controlled and that it works to the advantage of the public as a whole. Following Captain Pulver's testimony, there was lengthy discussion and questioning by several members of the committee.

Mr. Al Wittenberg, representing Nevada Polygraph Association, having been sworn in testified against this bill and merely stated that their reason for opposition is because they think A.B. 527 answers many of the specific questions raised on both sides of this issue.

Assembly Bill 527:

Mr. Al Wittenberg, representing Nevada Polygraph Association, stated that this bill is designed to bring something comprehensive finally before the legislature in regard to the polygraph issues. He handed out to the committee Proposed Amendments to this bill which is attached hereto and marked as Exhibit "A".

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Mr. Walter F. Atwood, Executive Director for American Polygraph Association, having been sworn in, testified before the committee. Attached hereto and marked as Exhibit "B" is Mr. Atwood's statement. Attached also is a booklet entitled "The Polygraph Story" which Mr. Atwood distributed to this committee.

Mr. Richard L. Putnam, polygraph examiner with the Washoe County Sheriff's Office and a member of the American Association of Polygraph Examiners, testified before the committee, citing certain technical amendments that they wished to have if the committee passes this bill. Attached hereto and marked as Exhibit "C" is a copy of the American Polygraph Association Code of Ethics. At the conclusion of his testimony, he also exhibited a letter from Mills Lane, Chief Criminal Deputy District Attorney of Washoe County in support of this bill. Said letter is attached hereto and entered as Exhibit "D". Lengthy questioning and discussion followed his testimony.

Mr. Jon Mc Carthy, Las Vegas Metropolitan Police Department Commander, testified against this bill and also against AB 518. Aside from his usual job, he stated that he has been a polygraph examiner and has been one for seven years. He does support the notion that there should be some form of legislation to regulate the polygraph examiners in the state, both privately and publically employed.

Captain Ken Pulver of Reno Police Department spoke again on this subject indicating that the Reno Police Department is opposed to this legislation in its entirety. He stated that he questions whether or not the Washoe County Sheriff's Office supports this legislation. The State of Nevada Private Investigator's Licensing Board unanimously is against this legislation. He stated that he is a member of the Northern Nevada Chapter of the Polygraph Association and that he is against this bill.

Mike Dyer, Deputy Attorney General, having been sworn in testified before the committee, stating that he is here in two capacities, one being, the deputy assigned to the Private Investigators Licensing Board and is familiar with the problems and secondly, he is here on behalf of the Attorney General's Office. They are concerned with the question of why this is being placed in the Attorney General's office and not because the Attorney General's office doesn't desire the responsibility, but because of the very real problem of funding. He went on to detail for the committee the economic problems for the office if this were to be implemented.

There being no further business, this meeting was adjourned at 11:00 a.m.

Respectfully submitted,



Anne M. Peirce

PROPOSED AMENDMENTS A.B. 527

NEVADA POLYGRAPH ASSOCIATION

SEC 21, 2. page 3, line 42,43

of at least six weeks duration at a school accredited (by the American Polygraph Association) and approved by the board.

SEC 21, 2(a) page 3, line 46

During the two year period immediately preceding application, have successfully completed at least two hundred polygraph examinations,.....

SEC 25 page 4, line 50

3. After obtaining a minimum of two years experience and satisfying all of the requirements for licensing, a person who has previously been granted an intern license may be granted a temporary license upon application and payment of the temporary license fee specified in this chapter.

SEC 30 page 5, line 41

3. Provisions of subsection 1 and 2 do not apply to licensees who conduct examinations solely in the performance of official duties with agencies of state, county, or local government.

SEC 32, 1 page 5, line 47

Unless the examinee consents in writing (, except as provided in section 34 of this act).

SEC 34, 1(g) page 6, line 39

Of the (procedures and) questions to be used during the examination and discuss each of them with the examinee;

SEC 36, 3 page 7, line 17

The licensee may make a sound and/or visual recording of all phases of the examination.

SEC 40, 3 page 7, line 49, 50

charts, notes and sound and/or visual recordings, if any, obtained during the examination:

CONTINUED

EXHIBIT ¹⁴⁴² A

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PROPOSED AMENDMENTS A.B. 527
NEVADA POLYGRAPH ASSOCIATION

SEC 40, 3(a)

page 8, line 1

Shall be maintained by the licensee or designee for at least five years
after the examination is completed,.....



AMERICAN POLYGRAPH ASSOCIATION

STATEMENT OF WALTER F. ATWOOD, EXECUTIVE DIRECTOR
AMERICAN POLYGRAPH ASSOCIATION 6 APRIL 1977
BEFORE THE JUDICIARY COMMITTEE OF THE ASSEMBLY
STATE OF NEVADA AT CARSON CITY

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Mr Chairman, Distinguished Committee Members: I welcome the

opportunity to appear before you today to speak on behalf of AB 527 to license and regulate the qualifications, training and operations of polygraph examiners within the State of Nevada. The APA was formed to advance the highest standards of training, integrity and ethics in the polygraph field and as Executive Director and immediate past President I represent approximately 1500 members from Police, Private and Government sectors of the country.

SECRETARY

Wayne M. Boyesen
University of Minnesota
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Several years ago a subcommittee of the House of Representatives

Committee on Government Operations undertook a lengthy investigation of the use of polygraphs by the Federal Government. More recently a Senate Committee investigated alleged invasion of the privacy of federal employees and devoted some attention to the use of the polygraph. Among other findings, these committees strongly emphasized the need for strict controls over polygraph operations, for the highest ethical standards on part of polygraph examiners and for strict and uniform standards of selection and training for polygraph examiners. In response to the House Subcommittee investigations, the Department of Defense, perhaps the largest user of the polygraph in the Federal Establishment, issued directives covering the selection and training of polygraph examiners and imposing strict controls over the use of the polygraph in the Department of Defense. In my judgment, the State of Nevada can do no less.

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In 21 of the several States, licensing legislation, substantially similar to the regulation under consideration by this committee have been enacted. Although these statutes vary to some extent, they are alike in recognizing the need for the State to impose its regulatory authority to protect its citizens against potential harm from incompetent, untrained or unethical polygraph examiners. In some other states such as California and Idaho legislation has been enacted restricting the use of the polygraph examination as a condition of employment. It is my belief that such legislation was enacted because the States concerned had not taken adequate steps to assure competent and ethical polygraph operations in the States.

In one sense the anti-polygraph forces cannot be blamed for taking this stand but the APA considers it a short-sighted approach. While it does eliminate the potential harm which could be caused by an incompetent examiner, it also eliminates the almost incalculable good which can be accomplished by an expert examiner. The solution is distressingly like throwing out the baby with the bath water. Consider, for example, a typical polygraph case where a shortage is discovered at a bank or casino. Careful investigation discloses that any one of ten employees had the opportunity to take the money but all ten deny the theft. Obviously in such a situation the manager has on his hands nine truthful persons and one thief. In the absence of any resolution to the case all ten will be suspected of the theft during the remainder of their working careers. A trained polygraph examiner, with a relatively simple examination, can identify the thief and the nine innocent persons, with a degree of accuracy which far exceeds that of any other investigative or diagnostic technique. Unfortunately, the way the world operates today, the tenth person, the guilty person, receives all the publicity and even some unwarranted sympathy.



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The stationery of the APA carries the slogan, "Dedicated to Truth," and our basic statement of principles stresses that we shall exert our utmost effort to assist in clearing innocent persons wrongfully accused or suspected of misconduct. The APA considers, however, that the contribution of its members toward clearing nine persons of undeserved suspicion in such a case more than justifies the use of the polygraph.

Consider for a moment the crime problem, especially internal crime, which has reached appalling proportions in the United States today. A recent article in U.S. News & World Report states that the price tag on crime is nearly 100 Billion Dollars a year and soaring. One fourth of which is attributed to crimes against property and business. Other estimates indicate that three out of five business bankruptcies result from employee theft, and three out of four employees handling money or merchandise steal from their employers. Therefore, management must not be denied the use of the polygraph as a deterrent to reducing employee thefts and in the long-run it reduces the price of goods to the consumer.

Another area of concern in this country is in the protecting the real and imagined privacy of our citizens. I just cannot believe that rights of privacy include the right to lie about a prior criminal record, a history of theft from previous employers, an accident-prone history as a truck driver, or an addiction to Heroin or LSD. I do not believe employment constitutes a license to steal from the employer without molestation. In a recent newspaper article, it was reported that William H. Rehnquist, the U.S. Supreme Court's youngest associate justice, objected to the loose use of the term "privacy" to cover a variety of ills, such as the right to know what kind of information is kept about yourself, or the right to get a job despite a prior arrest that did not result in a conviction, or the right to control your own body. None of this involves privacy in the true sense, Rehnquist stated. Apparently, the Supreme



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Court is listening to its youngest member on this issue, and lower courts around the country now reject privacy claims that they would have entertained just a year ago.

I would like at this time to talk a little about the polygraph, how and why it works, and what it can do and cannot do. Here in America we live in a machine civilization. We have a sort of childlike faith in machines but we also have an underlying fear of machines because we cannot argue with them, convince them or force them to admit and correct mistakes. Anyone who has ever tried to get an error corrected by the computer which makes out his bill for department store purchases knows exactly what I mean.

People worry sometimes that a stray thought which disturbs them might create a false reaction on the charts. They fail to realize that the examiner will be concerned only if a reaction takes place repeatedly when a particular question is asked. He will ask for an explanation of such reactions and will then verify the explanation of such reactions on the test.

The standard polygraph instrument consists of three recording pens and their allied sensors. The first consists of a corrugated rubber tube which is placed around the chest and records respiration as the tube expands and contracts with normal breathing. Many polygraph instruments now have double pneumographs. The second consists of two electrodes which are generally placed on the fingertips (in some cases palm electrodes) and record the variations in skin resistance which are known as the "psychogalvanic skin reflex." The third section records the pulse rate and variations in mean blood pressure by means of a standard doctor's blood pressure cuff, which is wrapped around the wrist or arm of the person being examined. None of the attachments are painful.



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All three of the parameters which are recorded by the standard polygraph instrument have one thing in common--they are all affected strongly by an emotional response. At the end of the examination the charts will represent a graph of changes in the emotional level of the person being tested. The instrument is not recording truth or lies per se; it is recording emotional reactions. There is a sound psychophysiological premise behind this. Our autonomic nervous system comes down to us practically intact from prehistoric times. Even to this day our autonomic nervous system prepares our bodies for emergency action in a time of stress. Thus, respiration, pulse rate and blood pressure are changed to provide food and oxygen to the muscles, while non-essential body functions are slowed or halted. It is just these physiological changes which the polygraph instrument was designed to record.

Instead of a lie detector we have a sensitive instrument for recording emotional reactions. The polygraph charts tell the examiner which, if any, of the questions included on the test seriously disturb the person. Therefore, the test requires only two factors to be successful; that the matter under investigation be meaningful to the person, and that the consequences of the detection of deception be important. Given these two elements, the test becomes extremely accurate. If the matter under investigation is trivial, and if it is unimportant to the subject, whether or not his guilt is detected, no emotional response may be triggered, and the test may be inaccurate.

There is no machine, no interrogation technique, no drug or serum and no hypnotic technique which will infallibly reveal when a person is lying. It is true, however, that a skilled polygraph examiner can determine in most cases when a subject is willfully and deliberately lying to him about a matter of importance; it is also true that



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the examiner can ascertain when the subject is telling him the truth. This is indeed a noteworthy contribution, since one of the most difficult task in the world is that of establishing that you are innocent of deeds of which you stand accused.

One question to which there is no definitive answer as yet is, "How accurate is the polygraph"? The primary problem in establishing the reliability and validity of polygraph testing is that of locating a controlled population, where absolute ground truth is known. In early experiments conducted by psychologists, using a simulated crime as ground truth, the important element of the potential unpleasant consequence of detecting was missing. Even under these circumstances, an accuracy rate of over 70% was obtained. More recent experiments conducted by Dr Martin Orne at the University of Pennsylvania, where adequate attention was paid to the proper motivation of the subjects, resulted in an accuracy rate of well over 80% and this is despite the fact that relatively inexperienced research psychologists were used as examiners instead of trained polygraph experts. One fact does emerge from the research conducted thus far--the polygraph is as accurate if not more so than other psychophysiological measures such as electrocardiographs and electroencephalographs, upon which physicians and surgeons base literally life and death decisions.

The APA is in substantial agreement with the position taken by F. Lee Bailey, prominent defense counsel, at the 1968 seminar of the APA in Washington, D. C. He recommended that polygraph testing be utilized more fully in the system of American Jurisprudence, particularly in pre-trial situations, and the suspects be freed of suspicion and the necessity for trial on the basis of a successful polygraph examination. No one in the APA, on the other hand, has any desire to see the polygraph instrument replace the judge and jury in criminal cases. We see no reason, however, that a



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polygraph examiner should not testify as an expert witness with his testimony receiving the same degree of credence as that of any other witness. We believe the courts are slowly moving toward this position.

Many jurisdictions have taken the position that no adverse action shall be taken against any employee for refusing to take a polygraph examination, and no action shall be taken based solely upon the reactions on the polygraph charts without substantiating admissions or other evidence. The APA is in agreement with this position.

You must realize that the polygraph examiner must be highly skilled, a perceptive interviewer and possess a rare combination of talent, training and insight in order to be successful in the polygraph field.

It is for this reason that the APA has taken the lead in urging the passage of licensing legislation in the several states. As I stated earlier, polygraph examinations should not be given for trivial reasons. For the protection of the public in such important matters, it is essential that examinations be administered only by trained, expert and ethical examiners. Many years ago it was possible to be apprenticed to a lawyer or a pharmacist and to secure professional status in these fields without a qualifying examination. Today it is no longer true, and the increased use of the reliance on the polygraph demands that similar attention be placed toward protecting the public from untrained or unscrupulous persons who purport to be polygraph examiners. As in any other comparatively new field of knowledge, the polygraph field is beset with perhaps more than its share of crackpots and charlatans, claiming to be experts. They can buy a polygraph instrument, hang out a shingle, and be in a position to work untold harm upon the public, as well as to destroy the public confidence in the polygraph technique. The APA is firmly opposed to permitting such persons to operate.

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This Committee should be aware that the spread of licensing regulations will inevitably result in the gravitation of examiners who do not meet requirements of their own states into areas which do not license or supervise examiners. It would be indeed unfortunate if the absence of proper controls made this State a haven for incompetent persons who could not meet the qualifications for polygraph operations in other jurisdictions.

It is noteworthy that all responsible elements of our citizenry are united in the belief that there is a critical need for more effective law, order and justice in our American Society. I believe that law and order without justice is a grim mockery. Yet, any intelligent person must realize that an urban society cannot survive without law and order.

I believe that the concept of justice is irrevocably tied in with the concept of truth. When the truth is known, blame can be adjudged, fault can be assigned and proper penalties can be invoked. Law and its guardians, the police, the legal fraternity and the courts cannot secure the respect which they must have for the survival of our civilization until every citizen is assured that true impartiality, absolute truth, and justice tempered with mercy are not only guaranteed but automatically provided to each of our citizens, black or white, rich or poor, educated or ignorant, influential or powerless. Maybe we are overly optimistic, but we of the APA believe that the polygraph could play a major part in restoring this trust, since it is at all odds the best medium we have yet devised to cut through layers of suspicion, mistrust, fear, and deceit to get at the truth.

I should like to emphasize that the APA is not in possession of evidence at this time that any of the polygraph examiners currently practicing in the State of Nevada



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conspicuously fail to meet reasonable technical or ethical standards. On the other hand, there is some possibility that examiner incompetence might not be known because of the absence of supervision of polygraph operations.

It is to be expected that the Board will issue detailed rules regarding ethical standards under the authority granted by the regulation. Foremost among these requirements must be that the examiner's report and conclusion from analysis of the polygraph charts must be factual, impartial, objective and honest. The scope of the examination must be limited to the area at issue and under no circumstances should the examiner be swayed or subject to improper pressure by either the examinee or the client. Neither should the examiner's fee or findings be contingent in any way upon the recovery or restitution of money or merchandise to the client.

The final area of extreme importance in ethical polygraph operations involves the dissemination of reports and information derived from the interview. The APA believes that the interview should be held in strictest confidence and that no dissemination of information other than to the client or the examinee should take place except as might be required by due process of law.

In summation, I have attempted to point out that the polygraph, in the hands of a competent and ethical examiner, can make a valuable contribution in matters where truth is an area at issue. Conversely, great harm can be done by an untrained, incompetent or unethical examiner. Therefore, in my opinion, the State of Nevada would be taking a giant step forward by enacting AB 527.



THE POLYGRAPH STORY

Dedicated to Man's Right To Verify the Truth

THE POLYGRAPH STORY

Dedicated to Man's Right To Verify the Truth

J. KIRK BAREFOOT, *Editor*

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INTRODUCTION

On July 25, 1968 the Lexington, Massachusetts branch of the Arlington National Bank was held up by three men, one of whom fired a shot from his pistol. Later, suspects were rounded up and three tellers positively identified one man as a participant in the robbery. According to Lexington Police Captain James J. Lima, "based on circumstantial evidence and this positive identification, the suspect would have unquestionably been indicted, tried and convicted." The maximum penalty in Massachusetts for armed robbery is life imprisonment. . . .

A worker in Akron, Ohio lost his job after a plant guard accused him of stealing company property. The man's union, believing the case against him was too strong, refused to go to bat for him. . . .

A worker in a major mail-order warehouse in the Midwest was handed a piece of jewelry, belonging to the company, by a fellow employee. The transaction was observed. The fellow employee was searched on the way out at the end of the day; another piece of jewelry was found and she was dismissed. The first employee, on being checked the following morning, said she had returned the item, but signed a statement admitting she had "done wrong," on the basis of which she was fired. . . .

Often, it's the principle of the thing. Two Oklahoma men, long-time employees of the Bell System, were fired for shortages of less than \$3 in a coin telephone box. . . .

All four stories have the same happy endings: The accused persons were cleared on the basis of polygraph, or "lie-detector" examinations. Shortly after the Massachusetts man was released from custody, another suspect confessed. The man from Akron was cleared when the accusing guard's story developed discrepancies while his own polygraph test indicated he had no knowledge of the crime (the guard refused to take a test). The lady fired for accepting the stolen piece of jewelry went to her union and said she had signed the damaging statement because she was "scared." Union and management agreed to abide by the results of the polygraph exam; the exam showed the woman had not stolen, and she was reinstated. The case of the two telephone workers is still in arbitration, but their lawyer has every confidence they will be reinstated—thanks to polygraphic evidence that indicates they are completely innocent.

What isn't so happy is the fact that three of these four innocent persons might never have been cleared of suspicion—if certain misguided leaders of organized labor had their way. The first case was a police matter, and police departments the country over, rely on the polygraph as a dependable indicator of innocence or guilt. In the other three cases, no criminal prosecution was involved; but in each, jobs and

reputations were on the line, and in each it was the polygraph that established the truth. Given these cases—and thousands more like them—it seems strange that union leaders, who supposedly have their members' best interests at heart, have launched a campaign against the polygraph that all but equates it with the medieval torture chamber.

Losses resulting from theft from American business and industry total more than \$4 billion annually, according to expert estimates. Authorities agree that 60 to 75 percent of that total is chargeable to employee-related theft (as opposed to theft by such outsiders as burglars and shoplifters). The Small Business Administration estimates that theft is the principal cause of business failure in over 50 percent of bankruptcies. Both large corporations and small businesses are usually able to absorb theft losses only by raising prices, thus passing a large part of the loss on to the consumers—the American public.

America has experienced great shifts in population since World War II: Ours has become a mobile society. Job applicants no longer generally come from an employer's immediate community; thus the employer must screen prospective employees. Unfortunately, most employers are reluctant to release derogatory information about former employees out of fear of lawsuits. Consequently employers have come to put little faith in the traditional reference letters because they themselves refuse to be candid in responding when such questionnaires reach their own desks.

Most police departments and the FBI do not make their criminal files available to the private employer. Many companies have found that the so-called background investigation conducted by private agencies is often next to worthless and reveals little that is not already known to the employer. Such investigations are particularly susceptible to influence by malicious neighbors, vindictive past employers or disgruntled former fellow workers. Clearly, such a procedure is inadequate from the employer's view; equally important, it is fraught with the danger of injustice to the job applicant.

Some segments of organized labor have given little more than lip-service to the growing problem of employee dishonesty. Instead of undertaking educational programs, organized labor often makes public statements condemning dishonesty while many of its locals attempt to thwart employers' attempts to control thievery. They have attacked the use of closed-circuit television, undercover investigators and criminal record checks, and have directly interfered with internal investigations by employers, by advising employees of "their rights." In the face of such opposition, many employer investigations have been stopped cold. The union argument that these are matters for the police to handle is less than sincere:

Labor unions know all too well that most police departments have neither the manpower nor the specialized abilities to delve into the intricacies of a company's pilferage problem.

As a result of these hard realities, many employers have turned to the polygraph to screen job applicants and to aid in internal investigations. It is interesting that the use of this technique over the past twenty years has increased in direct proportion to the rise of employee theft. Organized labor's opposition to this trend has ranged from demands at the bargaining table to attempts to secure adverse legislation at both the state and federal level. So far, labor has had less than satisfactory success. A few companies that were not polygraph users have agreed to contract prohibitions, and in approximately fourteen states laws have been enacted against polygraph use, ranging from restrictive measures to outright prohibition of the technique for businessmen. Labor-sponsored attempts against the polygraph have been defeated or vetoed in approximately the same number of States.

Seventeen other states, however, have taken a more positive step by enacting legislation for licensing and control of polygraphists.

Labor's basic argument against the polygraph is that the technique is invalid, unreliable, and smacks of witchcraft. But the fact that polygraph usage continues to grow certainly suggests that it must be producing results for the business community.

Because some of labor's "expert witnesses" against the polygraph have reversed their opinions in recent years, labor now feels it must take a new tack—now it charges that use of the polygraph involves violations of the Fourth and Fifth Amendments to the Constitution: the protections against unlawful search and against self-incrimination.

In order to answer these and other charges, and to present a factual account of the use of the polygraph today, the American Polygraph Association, in cooperation with the National Committee for Employee Integrity, offers this report.

RIGHTS AND WRONGS

A. Constitutional Rights

Opponents of the polygraph claim the employee or job applicant should have Constitutional protection against self-incrimination; should be able to "take the Fifth Amendment" when a question as to his honesty arises. Of course, the question of the Fifth Amendment is moot in the employer-employee relationship. Unlike the accused criminal, who might otherwise be forced to testify and thus face imprisonment, the employee or job applicant may refuse to take a polygraph test. He is not in a court of law; he has a choice in the matter. *It is also significant that physiological tests similar to those made by the polygraph—for instance, blood tests, alcohol tests—have always stood the test against self-incrimination.*

Opponents further charge that the polygraph test violates the subject's right to privacy, including his right to conceal past criminal activities. Under the Common Law, the right to privacy protects the individual only against unwarranted intrusions by the state. An employee or prospective employee can be given a polygraph examination only with his knowledge and consent.

The First Amendment right of free speech is given a bizarre twist by anti-polygraph forces, who expand it to include the right *not* to speak. The Ninth Amendment is also trotted out: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." But this argument applies just as well to other rights, such as: the right of a citizen falsely accused of a crime to gain release or avoid prosecution through the truth-verifying polygraph examination; the right of a falsely accused employee to avail himself of a polygraph test to protect his job; the right of the businessman to protect his assets against internal thievery; the right of the polygraphist to earn a living in his chosen profession.

B. Personal Rights versus Public Rights

The right to privacy as guaranteed by our Constitution is indeed a sacred one and must be guarded and respected. But in a free society, no person's right is absolute; it must give way, to a degree, to the rights of others. The right of the public to protect its business places, its job security, its hard-earned wages, and its health, safety and welfare must be weighed against the right of the job applicant or employee to conceal undetected criminal behavior, dishonesty, and material misstatements of fact.

Reasonable people agree that the businessman has both the right *and the obligation* to inquire about the experience, skills, physical well-being, character and honesty of job applicants. He also has not only the right, but the obligation to utilize the most effective methods available for obtaining and verifying this information. Reasonable people will also agree that the honest working man has the right to the job security and pay increases that accompany business profits, as well as security against exposure on the job to the criminally inclined. Crime on the streets is bad enough; why expose good men and women to crime on the job?

Finally, everyone will agree that the consumer has the right to be protected against higher prices caused by the "theft tax" now estimated to cost the working public more than \$3 billion each year in the form of increased costs which must be passed on to the consumer.

The facts show that an examination conducted by a competent and ethical polygraphist is both a reasonable and an effective technique for protecting public rights. It should not be used for frivolous matters, and it should not be used for unethical probing into personal questions of sex, religion, or politics that have no bearing on the issue under examination. Violations of ethical considerations in the use of the polygraph should be prosecuted vigorously in the public interest. Legislation which would license and regulate the use of the polygraph, and would require such prosecution, would protect the rights of all the public. Labor has consistently opposed and obstructed efforts to protect the public rights and the personal rights of *all citizens* by this means. Instead of "personal rights," are these representatives of labor really not advocating "*the right to lie, cheat and steal without discovery?*"

Reasonable and honest people can supply their own answer without our help!

C. Labor's Various Attitudes

Officially and to the public, labor says: "We do not condone dishonesty and will cooperate whenever proven dishonesty is shown to exist." Commendably, a few union locals around the country will even assist in rooting out thieves, but these are the exception rather than the rule. The key word in the unions' official position is the word "proven." It is true that most locals will not fight against a case of "proven"

dishonesty; the problem is to prove it in the face of union obstruction. In many companies utilizing a pre-employment polygraph program, the unions have attempted to coerce the employer into dropping the program. In other companies using the same screening program, but during the probationary period, shop stewards have been known to tell new employees: "Don't steal anything until after your lie-detector test." Upon learning of an internal investigation in progress, most business agents will call a meeting of the employees to "give them their rights." This usually involves dispensing such pieces of advice as:

- "If you are called in for questioning, demand that your shop steward be with you."
- "Don't admit anything or sign any statements."
- "Don't agree to return any stolen company property you may have at home."
- "Don't sign anything."
- "Don't take a lie-detector test. If you volunteer for a lie test, you will be expelled from the union."

To discourage employees from cooperating with management during investigations, many union by-laws or oaths include prohibitions against testifying or informing on fellow members.

Many union publications, notably those of the Teamsters, Retail Clerks International and the ILWU, regularly carry news articles or editorials against employer-conducted investigation.* A favorite target of such articles is the company security officer, who is depicted as an expert on the "frame-up" and given

such choice names as "pig," "illegal gumshoe," "company gestapo," "lackey of the front office," "tool of the bosses." Such articles actually foster a climate for theft among employees. Nowhere in these publications do constructive articles appear—ones that attempt to encourage employee honesty.

D. Reliability of the Instrument

In their publication "The Lie-Detector, Guilty until Proven Innocent,"** the unions concede (see, for instance, page 20) that the polygraph can measure and record such various physiological phenomena as pulse rate, blood pressure level, respiration rate etc. *As the unions correctly point out, the instrument itself does not detect lies, it is merely a device that measures and records certain physical phenomena.*

The name "Lie-detector," popular with the news media but seldom used by modern-day polygraphists, is a misnomer. Because of sensational publicity arising out of its use in criminal cases, the public has a false picture of an instrument that flashes lights, rings bells or gives some other dramatic reaction when a lie is told. This impression could not be farther from the truth. The work of the polygraphist might be likened to that of the radiologist reading an x-ray picture or the cardiologist interpreting the tracings of an EKG. If there is such a thing as a "lie-detector" or "truth-verifier," it must be the polygraphist himself.

* See Appendix 4.

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THE POLYGRAPH TECHNIQUE

A. History and Development

The history of civilization is filled with attempts to detect lies and to verify the truth. Ancient methods of detection included the Ordeal of the Boiling Water, the Ordeal of the Red-Hot Stones, the Ordeal of the Sacred Ass and the Ordeal of the Red-Hot Iron. Often, methods which to modern eyes appear to be based on pure chance were employed. For instance, truth or the lack of it might be determined by the throw of a knife, or the pattern assumed by a handful of tossed pebbles. Though some ancient tests reflected a shrewd understanding of psychology or physiology, they were hardly reliable or scientific.

The earliest scientific approach was developed by the Italian criminologist Cesare Lombroso, who in 1895 conducted experiments in the detection of deception by attempting to record, with a device called "Lombroso's Glove," changes in the subject's blood pressure. Unfortunately, Lombroso's principal interest was in the area of criminal identification through physical characteristics; therefore, he never followed through on his experiments. Mosso, another Italian scientist, conducted further investigations of blood-volume changes during deception tests by using a crude device known as "Mosso's Cradle."

Around the beginning of World War I a third Italian, Vittorio Benussi, conducted experiments in lie detection with a device that measured and recorded the rate and depth of the subject's respiration. These experiments convinced Benussi that distinct changes in the respiratory pattern occur during attempts to deceive.

Italian scientists were not the only investigators who contributed to the theories that underlie present-day polygraph. A Russian, A.R. Luria, made significant contributions. Although he did not use an instrumental approach, many of his theories of the psychology of deception are embodied in polygraph procedure. Luria wrote in 1932:

The criminal is certainly far from being indifferent to his experiences; but, on the contrary, he puts himself in an active relation to this experience; its trauma, urging him into activity, conditions the dynamics of his behavior.

The acute state of the trauma, complicated by the necessity of concealing it, bound in by the fear of expressing itself, creates in the criminal a state of exceedingly acute affective tension; this tension is

very probably exaggerated because the subject is under the fear of disclosing his crime; the more serious the crime, the more marked the affect, and the greater the danger of disclosing it, the more this complex is suppressed, the greater the tension.

The suppression of the complexes is here truly insufferable, and the subject experiencing them is certainly not in a condition to remain passive during the course of this affect; he must orient himself in such a way that he discharge the tension and save himself from an external play of excitation, which upsets all of his behaviour and keeps him incessantly under the fear of detection.

The first American to become directly involved in the field of lie detection was Dr. William M. Marston, a psychologist. He was commissioned by the United States Government to devise a method for the interrogation of prisoners of war during World War I. Using a sphygmomanometer, the device physicians use to take the patient's blood pressure, Marston conducted experiments by taking intermittent readings of blood pressure during interrogation periods.

In 1921, inspired by the success of Marston's endeavors with prisoners of war, Chief August Vollmer of the Berkeley, California Police Department encouraged Dr. John A. Larson, a psychiatrist, to develop what became the forerunner of the modern-day polygraph. Although large and cumbersome, Larson's instrument made the first continuous, permanent record of the three phenomena; blood pressure, pulse, and respiration. This original polygraph was used for many years by the Berkeley Police Department and enabled Larson to identify correctly many hundreds of criminals, as well as thousands of innocent persons who had been suspected of crimes.

Because of the amazing record built up by Larson and his original polygraph, a young psychologist, Leonarde Keeler, became interested in the technique and developed his own apparatus. His instrument had the added feature of measuring changes in the skin's resistance to electricity, commonly known as "galvanic skin response." It is Keeler who is generally recognized as the true pioneer in the field of modern-day polygraphy. He not only refined the technique in its application to police work, but also pioneered its use in wartime and was responsible for its introduction into the field of business and industrial security. As we shall see, Keeler also aided the progress of polygraphy by teaching the technique to many others.

B. Validity and Reliability

In April 1963 a subcommittee of the House Government Operations Committee, under the chairmanship of John E. Moss (D., Calif.), undertook an investigation of polygraph use by the Federal Government. Two years later a report was adopted. The subcommittee concluded: *"There is no 'lie-detector,' neither mechanical nor human. People have been deceived by a myth that a metal box in the hands of an investigator can detect truth or falsehood."* These conclusions were accepted despite the fact that two of the subcommittee's own witnesses, recruited from the scientific community, Drs. Martin Orne and Joseph Kubis, had testified that they had achieved accuracy as high as 80 to 90 per-cent in their research. The subcommittee also disregarded (or was unaware of) a mass of additional laboratory investigations of the polygraph.

The views of then-Representative Robert P. Griffin, a member of the subcommittee and now United States Senator from Michigan, are interesting:

Although the subcommittee hearings have pointed up some questions concerning the use of the polygraph, and have revealed deficiencies in the qualifications of some polygraph operators, the record does not justify the general tenor of the report which tends to discredit the polygraph and its use.

The undersigned is aware, and credits qualified polygraph operators with an awareness, that a polygraph merely measures certain identifiable physical reactions such as respiration rate, blood pressure, pulse rate and galvanic skin response.

The usefulness of the polygraph depends upon the skill and training of the operator. The hearings did reveal a need for improvement in the training and qualifications of polygraph operators in some of the government agencies.

The polygraph should not be relied on exclusively. However, if it is used properly by a well-trained operator who recognizes its limitations, the polygraph can be a valuable aid.

The undersigned does not join in the sweeping recommendation that the polygraph should be prohibited "in all but the most serious national security and criminal cases." However, he does agree with most of the other recommendations, and particularly with the finding that there is need for more research to document the validity and reliability of polygraph examinations.

Also interesting is the subcommittee's recommendation, cited by Griffin, that the polygraph should be used "in the most serious national security and criminal cases"—an implicit recognition of the instru-

ment's effectiveness, and a puzzling denial of a valuable method of proving truthfulness to the average citizen.

To give some idea of the effectiveness of the polygraph technique, a few statistics will be necessary. High validity was reported by Lykken in two experiments in 1959 (1) and 1960 (2), in which accuracies of 89 percent and 94 percent were obtained. Marston, employing a mock crime, reported 94 percent correct judgments of the actor-subjects (3). The vast majority of other investigations have yielded similar figures: Ellson, 73 percent (4); Baesen *et al.*, 86 percent (5); Thackray and Orne, 86 percent (6); Kubis, 97 percent (7) and Ruckmick, 83 percent (8). Only in relatively rare instances has low accuracy been reported in the literature—for instance, by Landis and Wiley, who obtained only 50 percent correct judgments in a study they did in 1926 (9).

While the accuracy obtained in experimental situations is most impressive, it is not as high as that reported by polygraphists for real-life situations. Virtually all polygraph examiners quote validity statistics of about 90 percent. This is understandable, given the differences between laboratory and field research. A number of theories exist that explain why the polygraph is effective, of which the fear-of-punishment theory is perhaps the best. It is hypothesized that the greater the consequences of being detected, the greater is the fear of detection. The increased fear in turn triggers greater physiological changes, thereby creating a greater likelihood of detection. It is, therefore, not so much the lying or guilt feelings that alter the subject's physiological responses, but rather the fear of punishment. A volunteer subject in a laboratory experiment, in contrast to a criminal suspect, has very little punishment to fear; without the drastic fear and stress, the physiological changes associated with lying are reduced, resulting in lowered accuracy levels. This has been substantiated by Gustafson and Orne (10), who found that the more motivation there was to deceive, the more readily the deception was detected. Larson reported that once a confession had been obtained, the physiological changes in response to critical questions were not so great as before (11).

A number of other factors (reported by Abrams (12)) further reduce the validity of the polygraph in the laboratory, and explain the higher percentages of correct judgments reported by the in-the-field polygraphists. Virtually all polygraph experts agree that a well-trained and experienced examiner will make correct judgments in 90 to 95 percent of those cases in which he makes a definite decision. There will always be a number of subjects regarding whom no definite conclusion can be reached, for certain medical or emotional reasons.

In studying the statistics yielded by actual polygraph examinations, the researcher is handicapped by his inability to rigidly control the investigation. Many polygraph judgments simply cannot be verified. When verification is available, however, the accuracy level is quite high. Orlansky, in reviewing the results of government pre-employment security screening, found that correct judgments were made in 95 to 97 percent of the cases, while definite failure occurred in only 0.1 percent (13). Studying the results obtained by two large government agencies which had administered more than 100,000 examinations Chatham reported a proved margin of error of less than 1 percent (uninterpretable records did not exceed 2 percent) (14). (In 1932, Larson tested ninety college girls to determine which of them had been stealing in their dormitory. He correctly classified the 89 innocents and the one guilty girl, for a level of accuracy of 100 percent) (15). Inbau and Reid examined 4,280 criminal suspects and obtained accurate findings in 95 percent, errors in 1 percent and indefinite ratings in 4 percent of the cases (16). In observing law enforcement agencies, Levitt indicated that correct interpretations were made in 75 to 100 percent of the instances (17). Wolfle, in a report prepared for the Emergency Committee on Psychology of the National Research Council, stated that 80 percent of polygraph evaluations were accurate; 3 percent in error; and 17 percent indefinite (18). Studying the validity of the polygraph examinations administered over three years at the Chicago Scientific Crime Detection Laboratory, Trovillo found errors in only 2 percent of the cases (19).

From this partial list of research findings, it is evident that the polygraph can be a highly valid technique. But validity—that is, the degree to which the test measures what it purports to—is not in itself sufficient. There must be high *reliability*—the extent to which a test produces consistent or reproducible results—as well. For the polygraph to be reliable, two or more examiners should be able to obtain comparable results on the same case, or a number of examinations of the same individual should produce identical results.

While there has been less investigation of the reliability of the polygraph than of its validity, the results are nevertheless impressive. Kubis, comparing the judgments among different polygraph raters, found consistency between 72 and 87 percent (6). An average of 85 percent reliability among judges of polygraph records was reported by Bitterman and Marcuse (20). Abrams and Weinstein, in investigating the effectiveness of this technique with a broad range of retardates, found low validity but high reliability among four polygraphists (21). In another study of reliability, Van Buskirk and Marcuse found 94 percent agreement on polygraph charts between two judges (22). Kubis obtained an average of 79 percent agreement among raters some years ago (7), and the same degree of reliability was reported by Barland and Raskin in a

more recent investigation (23). An excellent experiment carried out by Horvath and Reid, employing verified polygraph charts from actual criminal cases, demonstrated high reliability (24). They found inexperienced examiners were accurate in an average of 79 percent of the cases, while experienced polygraphists were successful in 91.4 percent of the forty cases studied. This degree of agreement among the examiners was obtained without benefit of observing the examinations or having any background knowledge of the subjects.

Many students of the polygraph have urged that polygraph evidence be made admissible in the courts. According to Merker, “. . . as far back as 1952 there was general scientific recognition that the polygraph possesses efficiency and that reasonable certainty can follow from polygraph tests. . . . The time has come for the courts to admit polygraph tests into evidence on behalf of a defendant in a criminal case” (25). Hardman adds: “. . . a high percentage of the witnesses on the stand not only lie but escape detection by the traditional methods of examination No reason is seen why courts generally should not bestow approval. For within [certain] limits . . . the possibility of error inherent in the present-day use of lie detectors seems outweighed by the opposing possibility of closing the door to truth” (26).

Opponents of the polygraph are quick to point out that no polygraphist or polygraph agency is able to “prove” claims of 90 to 95 percent accuracy. The reader must recognize the difficulty of obtaining meaningful statistics in real-life situations. The principal problem is getting verification of the polygraph examination administered; this can only be done when a confession is obtained. In a case where there are ten suspects and nine of them are cleared by the polygraph and the tenth confesses, then an accuracy of 100 percent can be claimed for all ten. On the other hand, if only nine are tested and the tenth is not examined and cannot be proved guilty, then there is no way to verify the findings on the first nine; consequently they cannot be included in any statistical analysis. Moreover, if the tenth man were available for testing but made no admission of guilt, then all ten would have to be discarded for statistical purposes. *In actual practice, far more innocent persons than guilty persons are tested by the polygraphist, and in many cases the guilty person is never discovered. Thus there is no way to verify the findings on the innocent persons.*

The polygraph profession is aware that much of scientific data on the instrument has been obtained from empirical observation. But this is hardly a good reason to disregard the findings. While rigidly controlled experimentation is difficult to carry out in real-life situations, there is movement in that direction. Validity and reliability studies based not in the laboratory but in the field are in progress at the present time.

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THE POLYGRAPHER AND HIS TEST

A. The Profession

As we have seen, the polygraph technique had its beginnings in law enforcement in the Berkeley Police Department back in 1921. Since then, its use as an aid in official investigations has spread throughout the country, not only to large police departments but to medium-sized and small ones as well. Police officials agree that tremendous savings in manpower and money have resulted from the use of the polygraph technique to pinpoint criminal suspects and to clear innocent persons. The biggest beneficiary of the polygraph has probably been the average citizen. Most police departments, placing great faith in the technique, will not press forward with the prosecution of a suspect who, though a prime candidate because of circumstantial evidence, has been cleared by the polygraph. *It cannot be emphasized too strongly that thousands and thousands of Americans have been released from police custody and spared public prosecution because their innocence has been verified by the polygraph. Moreover, not a single case has been found in which an innocent person was convicted because of polygraph error.*

The Federal Government entered the polygraph field in the early 1940s when Frank A. Seckler, a Secret Service agent, was dispatched to Chicago to learn the technique from Leonarde Keeler. Seckler was the forerunner of more than a thousand federal employees who were to follow. Initially the training of government polygraphists consisted of two or three months' training under the personal direction of Keeler himself. Later the training was formalized when Keeler established what is still known as the Keeler Polygraph Institute in Chicago. In the 1950s a military polygraph school was set up at Fort Gordon; today it trains the vast majority of military and government examiners, and is rated one of the top polygraph institutions in the country by the American Polygraph Association.

The area of greatest growth in the polygraph profession during the 1960s was in the field of private and corporate testing. Most polygraphists in this category are employed either in one-man laboratories or in larger firms that may employ upwards of 35 staff examiners. A few large corporations have found it economical to employ their own in-house polygraph staffs, but such company examiners probably total no more than a hundred.

Some three thousand persons have been trained as polygraphists over the years; it is believed that there are about 1,500 in active practice today. Approximately one thousand are members of the American Polygraph Association. The majority of the rest belong to state associations, some of which are affiliated with the APA. The Association estimated that these 1,500 polygraphists will administer be-

tween 250,000 and 350,000 tests during 1975 (these figures include tests of all kinds, including those by law-enforcement agencies). Better than 60 percent of the persons tested will be found truthful and cleared of false accusations or unjust suspicions. *This means that more than 150,000 men and women have a very personal stake in preserving the polygraph technique this year alone, so that their reputations, jobs and the public safety and welfare, can be protected against those who favor the personal "rights" of the criminally inclined.*

Industries served by polygraphists are for the most part in the distribution, retailing and service categories. Among them are armored car services, airlines, retail and wholesale drug companies and drug manufacturers, department and other retail stores, the trucking industry, private guard services, restaurant chains, hotels, banks and brokerage houses, automobile rental firms, wholesale and retail liquor dealers, vending machine companies and finance companies—all businesses where large amounts of cash or valuable merchandise may present irresistible temptations. The majority of such companies would use pre-employment polygraph screening; some would use the polygraph technique only in investigating specific instances of theft; a few would use it in periodic screening of currently employed persons. Some firms use two of the above approaches; some, all three.

B. The Test

In private testing for commercial firms, examinations are given either "on location" or in the polygraphist's own private polygraph suite. On-site examinations are almost always administered in a private office or conference room. The setting should be private and generally free from all distracting influences. The normal background noises to which the employee may be accustomed, however, are not considered an unfavorable influence on the test.

When the examinations are administered at the polygraphist's own laboratory, however, extra measures are taken to insure that no distractions are present because here the examinee is in an unfamiliar environment and can more easily be distracted than on his home ground. Therefore, the person to be examined will usually encounter a scene something like this:

The polygraphist's waiting room is usually similar to the waiting room of any professional person such as a doctor, dentist, psychologist, etc. The decor of the waiting room is pleasant in nature and may or may not include some plant life, an aquarium, some background music, and reading material. The reading

material in some cases may be a mixture of current periodicals along with some reading pieces on the polygraph test itself.

Normally, the person will be greeted by a receptionist upon entering the suite of offices. This receptionist may or may not be in the immediate presence of the waiting room, depending upon the physical layout of the suite of offices. Contrary to charges made by polygraph antagonists, the duties of the secretary or receptionist do not include compiling data on the examinees who are waiting for the test. The end result of the examination procedure will be based on the results of the tests alone and the dialogue between the examiner and the examinee, not upon any impressions of a nonprofessional receptionist.

The examination room itself is more austere in nature than the waiting room. It is almost always devoid of pictures, paintings or undraped windows. It is usually sound-proof in nature and with adequate carpeting on the floor. Normally, the furniture in such a room consists of the examination desk in which the polygraph instrument is recessed, the polygraphist's chair, and the examination chair, which may be of special design. The examination chair may range from an upright chair with what appears to be oversized arm rests, to a modified reclining chair, depending upon the individual preference of the polygraphist. Occasionally, the examination room may also contain a school-room type chair with writing arm which is used by the polygraphist in conducting his face-to-face pre-test interview.

In some cases, the examination room will also contain a one-way mirror opening onto an adjoining observation room together with a sound system connected to the observation room. The purpose of the mirror and the sound is for the training of polygraph interns and is no different in purpose from similar setups found in psychological testing laboratories and medical schools. Where such an arrangement is present, the examinee is so advised in the written release which he is requested to sign. In the event that the examinee should find the mirror and the sound objectionable, the polygraphist can render them inoperative.

Upon entering the examination room, the examinee is usually introduced to and greeted by the polygraphist. Normally, he will be asked to sit in the examination chair and, depending upon the preference of the examiner, the examinee may be at that time immediately connected to the attachments of the instrument. These attachments, if connected immediately, are not activated during the pre-test interview. Other polygraphists prefer to conduct the pretest interview prior to placing the attachments on the subject.

The first attachment that the examinee should expect to encounter is the blood pressure cuff, which is identical to that used by the physician, and which is attached to either the upper arm, the forearm, or

in some cases the wrist. During the actual examination, this cuff is inflated to a median pressure between the subject's systolic and diastolic blood pressure levels. Some persons report a mild amount of discomfort during the period of inflation, none of which is actually painful.

The second attachment consists of one or two rubber tubes which are placed around the trunk of the body. If only one tube is used, it is placed over the area of greatest movement during the respiration cycle. In some cases, two rubber tubes are used simultaneously to cover the upper and lower chest areas. The tubing is not uncomfortable in any way and simply measures and records, through the instrument, the rate and pattern of respiration.

The third attachment is usually placed on either one or two fingers, or through a dual connection with the palm of the hand. This attachment measures the changes in electrical resistance of the skin. There is absolutely no feeling of discomfort with this attachment.

C. Techniques

It is not the purpose of this manuscript to serve as a definitive technical paper on the various types of tests used by Polygraphists. It should be sufficient to enumerate the different types of tests the average layman is apt to encounter. For a technical review, the reader is referred to the literature of the field and to brochures published by the various polygraph training schools.

Major types of techniques are:

1. The Reid Control-Question Technique
2. The Backster/Zone of Comparison Technique
3. The Arther Technique
4. The Keeler Technique
5. The Integrated Control-Question Technique
6. The Hanscom Technique

The above techniques are generally used in what is known as specific tests—that is, where a loss has occurred or a crime has been committed. They differ in relatively minor procedural areas but are basically alike in attention to the psycho-physiological essentials. It is important for the reader to realize that most of the above techniques contain built-in safeguards for the person taking the test. One example of such a safeguard would be the use of a "guilt complex" question which is designed to identify the very rare person who will respond as if guilty to any type of pertinent question.

The most important safeguard, however, and one common to most polygraph techniques, is the use of one or more control questions throughout the test. A control question is one designed to create the probability that the subject will lie, or at least be unsure of complete truthfulness of his answer. It should be

a question which is of no great significance and not particularly germane to the issue at hand. The examiner can utilize the response to a control question for comparison purposes to responses or lack of responses to relevant questions on the test. It is in this way that deception is detected. Even more important, truthfulness to relevant questions can be verified. Obviously, the use of such a question precludes an individual who is physiologically or psychologically incapable of responding from successfully passing the test procedure. In a case of this type, the verdict of the polygraphist would be "inconclusive." Such a result simply means that it is the same as if no test had been administered.

One of the oldest type of tests, but still probably the most reliable when administered under proper circumstances, is the so-called Peak of Tension test (P.O.T.). This is more commonly found in police testing and is used in conjunction with and as a follow-up to the earlier mentioned specific types of testing. The most commonly used P.O.T. test is based on a knowledge of the crime which can only be known by the perpetrator. As long as there is no widespread publicity about a crime, where intimate details as to the method of commission are known, it will be possible to devise a valid P.O.T. test. An example of the P.O.T. test would be where the questions dealt with the caliber of the gun that was used in the commission of a homicide. Supposedly, the caliber of the gun would be known only to the perpetrator, and therefore suitable questions could be framed using various gun calibers. The P.O.T. test is infrequently used in private testing as the types of situations handled by the private polygraphist, as a rule, do not lend themselves to this type of test.

D. The Control Test

In order to aid in getting the examinee accustomed to the instrument, and also to develop some insight as to the reaction pattern of the person being tested, many polygraphists administer a control test prior to a specific examination or even prior to a pre-employment test. The most typical control test likely to be encountered is the situation where the examinee has been requested to select a playing card or possibly a flinch card from five or seven presented to him. Normally, the cards are placed face down and only the subject knows which card was selected. The subject is then requested to answer "no" to all questions and an examination is then started. The examiner will run through each of the cards, asking the subject "Did you choose card number _____?" Obviously, if all of the answers are "no," one answer is a lie. Each subject has his own way of responding to deception while attached to the polygraph instrument, and in this way the polygraphist can get some idea beforehand in what manner the subject may respond if he resorts to deception. *The control test*

itself is never compared to a subsequent examination for the purpose of diagnosing deception. This can only be done when the questions from the control test are later utilized and interspersed with other relevant questions.

The bulk of the work of the private polygraphist is divided between the periodic test and the most widely used, the pre-employment test. In the periodic test, normally administered to employees, questions are limited to a narrow range of issues pertaining to the handling of merchandise or money of the employer and all questions are usually prefaced with "Since your last polygraph test, have you _____?" These tests are usually very narrow in scope as there is no need to verify broader areas already covered by the pre-employment test.

E. The Pre-Employment Test

The pre-employment test accounts for the vast majority of all tests administered in the country today. As such, it has probably become the most controversial of all the tests given, and is probably the chief target of organized labor's thrust against the polygraph profession.

Many people fail to realize that a valid polygraph examination cannot be administered without prior discussion between the examiner and the examinee of the issues to be covered. Of the typical hour-long pre-employment test, 40 to 45 minutes is spent in what is called the pre-test interview. It is during this interview that the examinee's background, medical history and present physical condition are reviewed, in relation to the questions to be asked. The examinee is always given an opportunity to explain any situations in his past which might require modification of the wording of the questions. For instance, a standard pre-employment type question might be "have you ever been convicted of a crime?" The subject might say that at the age of nineteen he had been arrested for petty shoplifting and pleaded guilty. If this be the case, then the original question could not possibly be used and would require a rewording. *The pre-test interview is absolutely essential, and a review of the questions to be utilized in the examination must be made, giving the examinee the opportunity to make explanations so that proper rewording can be accomplished.*

The actual polygraph examination consists of two or more tests. Each would typically consist of ten or twelve questions (in the case of wrist-type blood pressure cuff, as many as twenty questions might be asked.) Each test consumes about three to four minutes. Irrelevant questions are normally interspersed with relevant questions and also at one or two strategic points in the examination the control questions are asked. Irrelevant questions are intended to be completely neutral to the examinee—questions such as "is this the month of February?", "is

your first name John?", "is your last name Smith?", "are you wearing a tie?", "are you in New York City at the present time?", etc.

Relevant areas of inquiry in a pre-employment examination are selected by the client and usually fall within the following scope: deliberate falsification of application; deliberate falsification of medical history; illicit use of dangerous drugs or narcotics; thefts of cash from former employers; theft of merchandise from former employers; being discharged, or forced to resign from a previous job; significant trouble while in the military; serious unsolved criminal offenses; criminal complaints and convictions; and in the case of a recently hired employee working on a probationary status, thefts from the present employer since employment.

Because polygraph questions must be answered with a simple "yes" or "no", it is quite common that a person undergoing an examination will think of some situation which may or may not be directly relevant to the issue, but which is triggered in the thought process by a particular question. Such thought processes will usually reflect themselves in the polygraph tracing and can easily be discussed with the examiner at the conclusion of each run. Normally, at the end of the first run the polygraphist will give the examinee an opportunity to volunteer any information that may have come to mind during the actual run. If nothing is volunteered at that point, the polygraphist will proceed to administer the second run, after which the polygraphist will discuss in detail the polygram or chart with the subject and pointedly inquire as to anything that may have come into the subject's mind in relation to any particular question which produced a response. Any explanation on the part of the subject will simply require further rephrasing or rewording of the question, something along the lines of "other than what you have told me, have you _____?"

Should a subject resort to outright deception, the examiner will discuss it in a frank and candid manner and afford the subject the opportunity to explain the true facts in the area at issue. If an explanation is offered, then the examiner will run one further chart, commonly called a "clearing chart."

F. Propriety of Questions

Ethical standards in the polygraph field require

the examiner to be very strict in assuring the propriety of questions used. Most examiners will resist the rare attempt by an employer to check areas which are not relevant to the job sought by the applicant. Obviously, each examination is different because of the age and background of the subject, and the nature of the job for which he is applying.

A rule-of-thumb approach to the propriety of questions would follow approximately these lines:

1. A 35-year-old applicant for a supermarket manager's job would in all probability not be questioned about boyhood thefts or even thefts from employers at an early age, especially if the applicant has held positions which afforded him access to money and merchandise and where it can be determined that he has refrained from such thefts during the past ten years.
2. On the other hand, an 18-year-old applicant for a position involving the handling of merchandise or cash, could properly be questioned as to thefts committed within the past several years.
3. A 17-year-old girl applying for a position as a drugstore clerk would probably not be questioned regarding chronic and expensive use of alcohol but she might very well be asked about illicit drug use.
4. A 30-year old applicant for a job as an airline pilot would not be questioned regarding his being fired from prior jobs as a teenager but could very well be asked a question concerning chronic and excessive use of alcohol.

In summary then, it is evident that in order to be of real service to his client and the examinee, the polygraphist must use only questions which have some definite bearing on the applicant's fitness for the job. Unless a person is applying for a job so sensitive in nature as to raise the question of possible blackmail, there is no reason for the polygraphist to delve into such highly personal areas as sexual relations or sexual deviation. In the typical pre-employment situation involving commercial business firms, questions of this type are never asked during either the pre-test interview or the test itself.

THE POLYGRAPH, THE EMPLOYEE AND THE UNION

A. Employees' Rights and Safeguards

In the anti-polygraph publication of the AFL-CIO Maritime Trades Department, the unions have dredged up a handful of cases in which the polygraph examination is portrayed as an evil thing that seriously injures the employee. Although these are isolated cases, the implication is made that they are typical of everyday occurrences. *A careful reading of the cases selected, however, will show that if any abuse or misuse of the technique took place, it was generally not the fault of the profession, but simply a misjudgment on the part of the employer in applying the results of testing.* The Dos and Don'ts of the polygraphist's role in the employer-employee relationship have become well-established in the past ten years, and it is only the occasional company that strays from these guidelines. Organized labor's examples of abuse are few and far between, and are in many cases taken out of the context of their times and represented as current evils.

For instance, the Maritime Trades Department devotes six pages to the Zahn Drug Company case as a prime example of abuse of the polygraph. But the propaganda piece neglects to mention that the testing was done prior to 1963; that instrumentation other than the polygraph was used; that because of state licensing and control of polygraph testing, such a situation has not occurred in the State of Illinois since 1963. Moreover, the man identified as the "examiner" is not and has never been a polygraphist, and has not practiced since Illinois undertook to regulate the polygraph profession.

Contrary to the picture painted by labor, polygraphists are by no means indifferent to the rights of the examinees. Most polygraphists have themselves been on the other side of the instrument; consequently most believe in certain employee rights and try to influence their clients to use test results in the proper manner. The employee rights generally accepted by the profession are:

- The right to request and to receive a polygraph test.* Many thousands of employees over the years have found themselves under suspicion, and have requested tests on their own initiative. In Massachusetts, however, this right has been denied by the state legislature under pressure from organized labor: The anti-polygraph law in that state specifies that no employer shall "permit" a test to be given to an employee.
- The right to refuse to take an examination without fear of discharge.* This right should prevail unless, as a condition of employment, the subject has specifically agreed to undergo testing at any future time.
- The right to limit dissemination of test results.*
- The right, written into law in some states such as Illinois and Virginia, to a copy of the polygraphist's report.*

—*The right to know beforehand the area of inquiry and the exact proposed questions.* These matters are always covered in the pre-test interview, and are essential to the accuracy of the examination.

If misuse, abuse or malpractice occurs, the employee has a number of remedies available. These include:

—*State Labor Department.* In unemployment compensation hearings, most departments have taken the position that refusal to submit to a polygraph test is not to be construed as misconduct. Accordingly, most employers are reluctant to discharge an employee because of refusal to take the test, or because of its results.

—*Arbitration.* Labor arbitrators have been almost unanimous in excluding polygraph test results from evidence and in refusing to uphold the discharges of grievants for refusal to take the tests.

—*National Labor Relations Board.* Organized labor has long charged that polygraph testing is used as a weapon by employers against unions in their organizing campaigns. Of the several hundred thousand tests given each year, labor cannot produce more than a half-dozen cases in which the NLRB has found that the polygraph was used as an instrument of unfair labor practices. Indeed, the American Polygraph Association forbids its members to conduct examinations when there is reason to believe the examinations are part of an effort to hamper the lawful organizing activities of a union.

—*Civil Lawsuits.* Probably the most useful defensive tool for the employee is his right to file and prosecute a civil suit for damages. The unions, recognizing this possibility, cite the case of a young Chicago engineer who was awarded damages by a jury after having been dismissed, partly as a result of a polygraph examination. What the Maritime Trades Department conveniently forgets is that the verdict was made possible, in large part, by the results of another polygraph test and the testimony of the polygraphist who administered it.

—*State Licensing Boards.* In states which have enacted licensing legislation, any citizen may lodge a complaint with the licensing authority.

—*Grievance Committees.* Any employee can make a complaint to a state polygraph association or to the American Polygraph Association. The APA and the state groups maintain grievance committees, and welcome legitimate complaints.

Organized labor maintains that the existing machinery for the protection of the employee is inadequate, and that the polygraph must therefore be outlawed. If the machinery falls short of doing the job, then the solution is licensing, not wholesale abolition. Isolated cases of abuse and malpractice do exist—in the polygraph profession, just as in the medical and legal professions. Oddly, no one has yet called for the abolition of doctors and lawyers.

B. Unions Use the Polygraph

The national leadership of the AFL-CIO together with the Teamsters, Retail Clerks and Longshoremens have, as we have seen, led the attack on the polygraph as an aid to corporate and industrial security. It is interesting that notwithstanding directives handed down from the higher-ups, other unions and even locals of the above-mentioned unions have used the polygraph for a number of years, in resolving labor-management disputes and in investigating thefts within union headquarters. This reality has been embarrassing to national union leaders. When it was called to

their attention during legislative campaigns in the 1960s, the leaders denied that their locals had ever used the dread technique. Polygraphists were able to document numerous occurrences, and labor's answer is now: "We cannot be responsible for local unions which agree to or make use of the lie-detector."

A check of only *five* polygraph laboratories in the Midwest reveals that since 1960, local unions have had recourse to the polygraph technique no less than 32 times! Following are the unions (local numbers deleted to save embarrassment) that availed themselves of the polygraph technique.

<i>Case No.</i>	<i>Date</i>	<i>Location</i>	<i>Union</i>
6011	2-60	Chicago	Teamsters
6049	3-60	Louisville	Transit Co. Workers Union
6181	5-60	Chicago	Retail Liquor Salesmen's Union
6277	6-60	Chicago	Teamsters
7311	6-61	Chicago	Joint Board I.U.D.T.W.
7712	10-61	Chicago	United Steel Workers
8010	12-61	Cincinnati	Atomic Trades & Labor Council
8236	2-62	Chicago	Painters Local Union
9979	6-63	Chicago	United Optical Workers Union
11084	6-64	Chicago	District ____, Machinist Union
13264	9-65	Kenosha	U.A.W. Local ____, (Union Official)
13415	11-65	Chicago	Grain Miller Local ____, U.M.W.
13477	12-65	Chicago	D.U.O.C. Local ____.
14499	2-67	Muscatine	Teamsters
16261	10-68	Hammond	Local 2--; AFL-CIO
16266	10-68	Illinois	Teamsters' Local 7--.
16272	10-68	Muscatine	Teamsters' Local 3--.
17141	7-69	Chicago	I.B.E.W., Local 10--
18736	1-71	Illinois	I.B.E.W., Local 14--.
18758	1-72	Illinois	United Retail
19249	1971	Chicago	Teamsters' Local ____.
H. Inc.	2-71	Oklahoma	C.W.A. Local 60--.
H. Inc.	7-71	Oklahoma	C.W.A. Local 60--.
K.C.	2-71	Chicago	Teamsters' Local 74--.
Facts, Inc.	12-66	Houston	Teamsters' Local 9--.
P.D.	3-71	Wisconsin	U.A.W. Local ____.
M.B.	12-71	Louisville	Teamsters' local ____.
M.B.	10-69	Louisville	Amal. Meat Cutters & Butcher Workers
M.B.	2-69	Louisville	Teamsters Local ____.
M.B.	3-69	Louisville	United Steel Workers Local
M.B.	5-70	Louisville	United Steel Workers Local
M.B.	11-71	Louisville	International Assoc. of Machinists

Full details of these cases, including Xerox copies of union checks, are on file with the APA. The reports on two cases are reproduced here:

14499: Bandag Rubber Company, Muscatine, Iowa

"This is a case in which the Teamsters Union at first rejected Polygraph testing, but after being introduced

to it and understanding what it really was, demanded Polygraph service.

"The case involved employees of the Bandag Rubber Company of Muscatine, Iowa. This company retreads automobile tires. The Polygraph testing, which took place at the company, involved an employee or employees abuse of machinery.

"The first case took place in 1967. A person or

persons had placed two mill knife blades into the banbury area mill causing it to 'blow up' when it was started between 3 PM and 3:30 PM on January 10, 1967. The examiner was informed that about 3 AM on January 10th, the motor was shut down so that machinery and plant could be cleaned to 'run black,' and it was not started again until about 3 PM on the same date. It was during this period that the mill knife blades were placed in the motor. Any employee or employees on the three shifts had access to the motor and knives. One of the knives recovered from the motor during repairs had been sharpened by Gilbert Skidmore, and he apparently was the last person to have handled this knife.

"The company requested that employees take Polygraph examinations to uncover the person or persons responsible for causing the damage to the mill loader. These employees were all members of the Teamsters Union and universally rejected Polygraph examination. However, the company management decided that since this instance of machinery abuse could have seriously injured or killed someone, they would call in a Polygraph examiner to consult with the union members and management as to the Polygraph testing to be done.

"The examiner arrived on the company premises and conferred with the management and union stewards. At this conference, the union steward agreed that it was essential to detect the person responsible for the offense, if possible; but, he also felt that the Polygraph testing was an infringement of employees' rights. However, after this conference, the union steward agreed that all employees who wanted to take a Polygraph test would be allowed to do so, although no one would be required to take such a test. The steward demanded he be allowed to be present outside the testing room while the testing took place in order to advise any employee who wanted to take the test. The examiner and management agreed to the steward's demands and the testing commenced.

"Ten employees were tested and all of them were reported by the examiner as telling the truth in their denial of involvement in the offense. The eleventh employee who was tested was reported by the examiner as not truthful in his denial of the offense, and the examiner reported this to the union steward and the management. At that time, all parties concerned agreed the employee should be told he did not pass his test and be allowed to offer an explanation.

"The examiner then confronted the subject, and the subject admitted to the examiner that he had put two mill knife blades in the banbury area mill motor on January 10, 1967. He explained that about 3 PM on the date in question he took the two mill knives off the top of the motor and threw them into it, because he did not want to do his assigned job that day. He stated further that because he did not get along with his foreman he felt he had ample justification for what he had done. He agreed to repay the company for all necessary repairs.

"At the conclusion of this subject's confession, the union steward and management thanked the examiner and the examiner returned to Chicago."

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"Approximately one year later in 1968, the examiner received another call from the management of the Bandag Rubber Company. He was told they had recently discovered similar damage to another motor in the same area as that in 1967. Although the damage on this occasion was less than the 1967 damage, employees demanded they be allowed to take Polygraph examination in order to vindicate themselves of any blame in the damage, and to find the person or persons responsible. The employees were in fear of possible death or serious injury by these flying pieces of steel which were thrown into the motor.

"The examiner went to the Bandag Rubber Company and tested four employees. The fourth employee who was tested was reported 'not truthful' regarding his involvement in the machinery damage. Again, the management and union requested that the examiner confront the employee with the findings. When the subject was advised of his examination results, he admitted he was responsible for the damage in question, but he had done it by accident. He was trying to fix the machinery because it was always breaking down and the damage was the result of his trying to properly repair the machinery."

In summary then, it is obvious that regardless of the official AFL-CIO and Teamsters attitudes, local unions have found the polygraph technique not only useful but indispensable in some instances. Obviously, the union's use of the polygraph continues!

C. What about the Workers?

An especially eloquent statement of the workers' (as distinct from the unions') point of view was elicited when one polygraph firm asked examinees if they thought polygraph tests should be outlawed (the results, by the way: 72 percent said "no"; 17 percent, "yes"; 11 percent had "mixed feelings"). Said an examinee: "Unless it could be proven to me that these tests are no good I would say leave them be. I believe the companies are trying to weed out habitual thieves. A company I worked for before lost \$100,000 in a year because the union (Teamsters) said 'no' to polygraph exams."

It is not difficult to guess the feelings about the polygraph technique held by many other American working people. For instance . . .

—The employees of Zahn Drugs, a large drug wholesaler in the Chicago area, where a union contract was negotiated in which it is stated that "both sides recognize the dangers of drugs to society," and agree

to polygraph examinations within certain limits. . . .

—The union truck drivers and warehousemen in a Buffalo, New York warehouse where \$67,000 in inventory was lost over an eight-month period, all of whom were cleared by polygraph examination that also resulted in full confessions from the foreman and two accomplices. . . .

—The Massachusetts worker who, because of a past suspicion of dishonesty, was strongly suspected of stealing cash from his employer's office, but was completely cleared by a polygraph examination. . . .

—The veteran foreman at a Phoenix, Arizona auto parts company who was accused by a young employee of selling company merchandise and pocketing the money—and was cleared by a polygraph test, and a subsequent confession by the young employee during a pre-test interview. . . .

—The six office employees whose boss asked them to take polygraph tests to determine who was stealing large amounts of cash. At first, all refused; then one spoke up and said: "Why should we be patsies and have suspicion on our records for the rest of our lives?" The six took the test, and the most innocent-seeming employee confessed. . . .

When all is said and done, the polygraph is neither devil nor angel. It is simply another of man's tools; as such, it can be used wisely or misused. Scare propaganda to the contrary, it has in the overwhelming majority of cases been used wisely and well—more often, as we have shown, to clear the innocent than to detect the guilty. The American Polygraph Association, and all reputable polygraphists, support adequate safeguards of individual privacy, and reasonable state licensing and regulation to keep out the occasional bad

apple that would otherwise spoil the barrel. And surely all intelligent people endorse the right of the innocent to prove their innocence, the right of the employer to protect his business—and *his honest employees*—from the occasional dishonest worker, and the right of the consumer to be spared the extra expense that the businessman must pass along when employee dishonesty becomes a problem.

Why, then, the irrational, not to say hysterical opposition to the polygraph? Why the scare propaganda, the obstructionism and the high-pressure lobbying in the halls of Congress? No one suggests that the anti-polygraph forces *desire* employee theft, pilferage, and the consequent higher prices and general demoralization. Rather, the antis bring to mind a fellow named Ned Ludd. In the early nineteenth century the English textile industry, seized by the Industrial Revolution, began switching from hand-spinning and hand-weaving to machines each of which could do the work of several men. Ned, a young handworker thought to have been demented, saw in this development the end of his job and everyone else's—so he took to smashing the machinery. Others emulated him, and for a time it looked like touch and go for the textile industry. Soon, however, the Luddites subsided and the industry grew so that there were jobs for all; usually at higher wages than in the good old days of hand-work.

The anti-polygraph forces show the same irrational fear of the new and unfamiliar; the same willingness to believe only the worst; the same readiness to smash and destroy. They are bound to fail, just as the Luddites before them—if the polygraph profession gets a fair shake in the media and from our elected representatives. Truth, after all, has long proven hard to destroy.

APPENDIX I

State Regulation and the American Polygraph Association

A. The American Polygraph Association

The American Polygraph Association was formed in August of 1966 by a merger of three predecessor organizations—The Academy for Scientific Interrogation, The American Academy of Polygraph Examiners, and The National Board of Polygraph Examiners.

The APA came into being because of a desire of the profession to raise standards of education, training and instrumentation, and to advance the field through licensing and regulation. In order that the reader may have a better understanding of the APA and how it relates to the profession, sections of its Constitution, Ethics and Principles of Practice are reproduced herewith:

1. *Excerpts from Constitution:*

Article II: Objectives of the APA

The objectives of the American Polygraph Association shall be to advance the use of the polygraph as a profession as a means of promoting social welfare by the encouragement of the use of the polygraph in its broadest and most liberal manner; and promotion of research into instrumentation and techniques; by the improvement of the qualifications of polygraph examiners through high standards of professional ethics, conduct, education and achievement; to unify polygraph examiners throughout the world and rekindle their interest in the use of the polygraph and in the APA, by the increase and diffusion of polygraph technology through meetings, professional contacts, reports, papers, discussions and publications; thereby to advance scientific, professional and public acceptance of the contributions of polygraph techniques to the promotion of the public welfare and to keep the APA informed of member sentiment and urge the membership's active participation in civic and community affairs where the polygraph is concerned; and to publicize the name and prestige of the APA.

Article III: Membership and Voting Rights

There are five classes of membership: Member, Intern, Affiliate, Honorary, and Life.

Member:

To qualify for full privileges and standing as a member, the applicant must meet the following requirements.

- a. The applicant must have completed a course of formal instruction in polygraph instrumentation and techniques totaling at least 200 hours of classroom instruction at a school (civilian, military or governmental) that is fully recognized and accredited by the APA.
- b. The applicant must have administered at least 200 polygraph examinations within a three-year period following completion of formal instruction.
- c. The applicant must have demonstrated proficiency in the conduct of polygraph examinations to the satisfaction of the Membership Committee.
- d. The applicant must possess, as a minimum, a degree at the baccalaureate level from a college or university accredited by the Regional Accreditation Board.
- e. The applicant shall have satisfied his financial obligations to the APA, due and payable on or after January first, but no later than the date of the annual seminar of the APA.

Intern:

Applicants for Intern membership shall be admitted upon the approval of the Membership Committee during the period of their formal training or internship as polygraph examiners, provided:

- a. The applicant meets the educational requirement as cited in Article III, A-1-d.
- b. The Intern membership shall not be extended beyond three years from the date of acceptance to Intern membership, except where extenuating circumstances are approved by the Membership Committee.
- c. The Intern applicant has satisfied his annual financial obligations to the APA before the date of the annual APA seminar.
- d. Intern members in good standing shall be eligible to attend and participate in all activities of the APA open to the membership, but shall not represent themselves as being anything but Intern members of the APA.
- e. Intern members shall have no voting rights in matters before the APA, nor are Intern members eligible for election to office in the APA.

Affiliate:

Persons who possess a sincere interest in the polygraph field shall be eligible for membership as Affiliate members of the APA. Applicants for Affiliate membership may include representatives of polygraph instrument manufacturers, personnel in-

volved in the research of polygraph instrumentation and techniques, and any other persons who are approved by the Membership Committee as having a valid or professional interest in the polygraph field.

- a. Affiliate members in good standing must satisfy their financial obligations to the APA before the date of the annual APA seminar.
- b. Affiliate members in good standing shall be eligible to attend and participate in all activities of the APA open to the membership, but shall not represent themselves as being other than Affiliate members of the APA.
- c. Affiliate members shall have no voting rights in matters before the APA, nor are Affiliate members eligible for election to office in the APA.

Article VIII: Standing Committees

The following standing committees shall be appointed annually by the newly elected president.

Membership and Grievance Committee:

A Membership Committee, consisting of at least three members, two of whom do not hold elected office in the APA, shall be appointed annually. The Membership Committee shall be empowered to examine the qualifications of applicants for all types of membership in the APA. It shall perform such investigations as may be required in their discretion to determine the eligibility for membership of such applicants. Names of applicants for membership shall be circulated among the membership of the APA at least thirty days prior to nominating the applicants to the Board of Directors in order to permit the expression of approval or disapproval by the members. The Membership Committee shall present its nominations for admission of qualified applicants to the Board of Directors. The Membership Committee shall also consider charges against members and make their appropriate recommendations to the Board of Directors.

Committee on Standards and Ethics:

The president shall appoint annually a Committee on Standards and Ethics, including at least three members who do not hold elected office in the APA. This Committee shall undertake the accreditation of training facilities, polygraph schools and shall examine suggestions for improvement or standardization of polygraph techniques. In addition, this Committee shall devise a code of ethics of the merging organizations, as well as those embodied in licensing laws of the various state legislatures.

2. Code of Ethics

The members of the AMERICAN POLYGRAPH ASSOCIATION hold themselves bound, individually and collectively, to the following Code of Ethics:

- I. To maintain the highest standards of moral, ethical and professional conduct; to be governed by laws of equity and justice in the performance of all functions.
- II. To respect the inherent dignity of all mankind; to deal justly, fairly, and impartially with each individual, irrespective of social, political, racial, ethnic or religious considerations, economic status, or physical characteristics.
- III. To discharge professional duties and obligations with independence, dignity, and self-respect; to keep all decisions and reports scrupulously free from any personal financial, political, fraternal, social or other extraneous influences.
- IV. To refrain from false or misleading advertising; to accept no remuneration for services rendered unless such be fair and reasonable; to decline to represent knowingly both sides of an area at issue, except by express permission of those concerned, given after a full disclosure of the facts; to represent with undivided fidelity.
- V. To refrain from express or implied public criticism of any member of AMERICAN POLYGRAPH ASSOCIATION, except as may be required by due process of law, placing the welfare and advancement of the Association and the polygraph profession above personal desires and ambitions.
- VI. To recommend for membership in the AMERICAN POLYGRAPH ASSOCIATION only those persons who are believed to be fully qualified for the class of membership for which they are applying; who subscribe completely to the moral and ethical standards and Principles of Practice of the Association; and who will strive in every way to be a credit to the polygraph profession.
- VII. To support to the best of their ability the professional goals of the AMERICAN POLYGRAPH ASSOCIATION: to support scientific research in the polygraph field; to contribute to better community relations; through word and deed to elevate the status of the polygraph profession.

3. Standards and Principles of Practice

In order to achieve unity of purpose, to assure a clear concept of obligations to each other and the profession, and to provide for the continuing welfare and protection of the general public, all members of the AMERICAN POLYGRAPH ASSOCIATION have agreed to abide by the following Standards and Principles of Practice.

1. A member shall recognize the fact that his primary responsibility must be to the person who has volunteered for a polygraph examination, re-

ardless of the circumstances which created the need for the examination.

2. Recognizing that a polygraph examination cannot be conducted on a person against his will, no member will attempt to conduct an examination when he has reason to believe the examinee has been subjected to coercion or duress. Further, no member shall conduct any examination on a person without first advising the examinee of the rights enjoyed by every American citizen against self-incrimination and invasion of privacy.
3. No member shall conduct an examination on any person unless he uses an instrument which makes a permanent simultaneous recording on a moving chart of at least two physiological tracings: the pneumograph and the cardio-sphygmograph. This shall not preclude the recording of additional physiological phenomena on the same charts. The provisions of this paragraph shall be subject to such modification as may be required to comply with any state or federal licensing regulation.
4. No member shall conduct an examination on any person whom he believes to be physically or psychologically unfit for testing. In case of doubt as to the propriety of administering a test in any given situation, the member shall seek expert guidance from a competent medical or psychological authority prior to testing.
5. No member shall render a conclusive verbal or written decision or report based on chart analysis without having administered two or more polygraph tests.
6. No member shall terminate a polygraph examination without affording the examinee a reasonable opportunity to explain and to eliminate any reactions which are evident on the charts. Further, no member shall accept the explanation of the examinee for a chart response without verification.
7. No member shall, unless professionally qualified to do so, include in any written report any statement purporting to be a medical, legal, or psychiatric opinion or which would infringe upon areas under the cognizance of professionals in those fields. This shall not preclude the examiner from describing the appearance or behavior of the examinee, if this is pertinent to the examination, as long as the examiner refrains from offering any diagnosis which he is professionally unqualified to make.
8. A member shall not conduct an examination where he has reason to believe the examination is intended to circumvent or to defy the law.
9. A member shall not conduct an examination where he has reason to believe the examination is intended to interfere with or to prevent the lawful organizational activities of a labor union.
10. A member shall not solicit or accept irregular fees, gratuities, or gifts which may be intended to influence his opinion or decision. Further, no member shall set a fee for professional polygraph services

contingent upon the findings or results of such services; nor shall he increase any initial fee as a direct result of his findings during any polygraph examination.

11. A member shall not knowingly issue or permit his employees to issue a polygraph examination report which is misleading, biased, or falsified in any way. Each polygraph report shall be a factual, impartial and objective account of the pertinent information developed during the examination and the examiner's professional conclusion, based on analysis of the polygraph charts.
12. A member shall be guilty of gross negligence if it be proven that he did not in fact obtain data reported as factual in any polygraph report. Further, it shall be deemed highly unethical for any examiner to express verbally or in writing a test conclusion which is based solely upon subjective opinion of personal assumption. This does not preclude a professional judgment based on analysis of the polygraph charts, in the absence of substantive admissions by the examinee.
13. A member shall not publish nor cause to be published any false or misleading advertisements relating to the polygraph profession.
14. A member shall not offer testimony concerning the charts or conclusions presented by another member unless he is thoroughly familiar with the techniques and procedures used by the other member. This paragraph shall not prohibit a member from testifying concerning his independent examination of the same examinee.
15. Any person who is convicted of a felony or a crime involving moral turpitude shall be ineligible for any class of membership in the AMERICAN POLYGRAPH ASSOCIATION.
16. A member shall abide by decisions and recommendations officially adopted by the AMERICAN POLYGRAPH ASSOCIATION at any regularly scheduled meeting.

B. State Licensing

The American Polygraph Association is completely in favor of state licensing and regulation of the profession. Through its own efforts and those of various state associations, the APA has supported licensing attempts in most of the fifty states. To date, licensing bills or other regulatory laws have been passed in the following states:

Alabama	Michigan	OREGON
ARIZONA	Mississippi	Oklahoma
Arkansas	Nevada	Texas
Florida	New Mexico	Utah
Georgia	North Carolina	Vermont
Illinois	North Dakota	Virginia
Kentucky	SOUTH CAROLINA	

As an example of the type of strong and regulatory measure which is favored by the APA, a model licensing bill is present in Appendix 2.

APPENDIX 2

AN ACT

regulating persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation as lie detectors, polygraphs, deceptographs, and/or similar or related devices and instruments; creating as an administrative board, the Polygraph Examiners Board with licensing and/or regulatory powers over all such persons and instruments; providing for administrative proceedings and court review; establishing minimum instrumentation requirements and prohibiting the use of instruments or devices which do not meet minimum instrumentation requirements; providing for injunctions and penalties for violation of the provisions of this Act; providing a savings clause; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF _____

Short title

Section 1. This Act shall be known, and may be cited, as the Polygraph Examiners Act.

Purpose

Section 2. It is the purpose of this Act to regulate all persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation (as lie detectors, polygraphs, deceptographs, and/or similar or related devices and instruments without regard to the nomenclature applied thereto) and this Act shall be liberally construed to regulate all such persons and instruments. No person who purports to be able to detect deception or to verify truth or statements through instrumentation shall be held exempt from the provisions of this Act because of the terminology which he may use to refer to himself, to his instrument, or to his services.

Definitions

Section 3. In this Act, unless the context requires a different definition,

- (1) "board" means the Polygraph Examiners Board;
- (2) "secretary" means that member of the Polygraph Examiners Board selected by the board to act as secretary;
- (3) "internship" means the study of polygraph examinations and of the administration of polygraph examinations by a trainee under the personal supervision and control of a polygraph examiner in accordance with a course of study prescribed by the board at the commencement of such internship;

(4) "person" means any natural person, firm, association, copartnership, or corporation; and

(5) "polygraph examiner" means any person who purports to be able to detect deception or verify truth of statements through instrumentation or the use of a mechanical device.

Minimum instrumentation required

Section 4. Any instrument used to test or question individuals for the purpose of detecting deception or verifying truth of statements shall record visually, permanently, and simultaneously: (1) a subject's cardiovascular pattern and (2) a subject's respiratory pattern. Patterns of other physiological changes in addition to (1) and (2) may also be recorded. The use of any instrument or device to detect deception or to verify truth of statements which does not meet these minimum instrumentation requirements is hereby prohibited and the operation or use of such equipment shall be subject to penalties and may be enjoined in the manner hereinafter provided.

Creation of the board

Section 5. (a) There is hereby established a Polygraph Examiners Board consisting of six members who shall be citizens of the United States and residents of the state for at least two years prior to appointment, all of whom shall have been engaged for a period of five consecutive years as a polygraph examiner prior to appointment to the board, and at the time of appointment as an active polygraph examiner. No two board members may be employed by the same person or agency. At least two members must be qualified examiners of a governmental law enforcement agency and at least two members must be qualified polygraph examiners in the commercial field. The members shall be appointed by the Governor of the State of _____ with the advice and consent of the Senate for a term of six years. The terms of office of members appointed to the initial board are two for two years; two for four years; and two for six years. Any vacancy in an unexpired term shall be filled by appointment of the Governor with the advice and consent of the Senate for the unexpired term.

(b) The number of employees and the salaries of each, including travel and expense allowance of the members of the board shall be as fixed in the General Appropriation Bill.

(c) The board shall meet within 30 days after the effective date of this Act and elect a chairman, vice-chairman, and a secretary from among its members. At the meeting, the board shall specify dates spaced at three month intervals on which examinations for polygraph examiners' licenses will be held. A copy

of those dates shall forthwith be delivered to the secretary.

(d) The vote of a majority of the board members is sufficient for passage of any business or proposal which comes before the board.

Administration and expenses

Section 6. (a) The board shall issue regulations consistent with the provisions of this Act for the administration and enforcement of this Act and shall prescribe forms which shall be issued in connection therewith.

(b) An order or a certified copy thereof, over the board seal and purporting to be signed by the board members, shall be prima facie proof that the signatures are genuine signatures of the board members, and that the board members are fully qualified to act.

(c) All fees collected under the provisions of this Act shall be paid to the Treasurer of the State of _____. Funds necessary for the enforcement of this Act and the administration of its provisions shall be appropriated by the Legislature, but the funds so appropriated for a biennium shall not exceed the total amount of the fees which it is anticipated will be collected hereunder during such biennium.

(d) The fees collected during the first (biennium) (fiscal year) shall go to the administration of this Act.

Unauthorized practice

Section 7. It shall be unlawful for any person, including a city, county, or state employee, to administer polygraph or other examinations utilizing instrumentation for the purpose of detecting deception or verifying truth of statement or to attempt to hold himself out as a polygraph examiner or to refer to himself by any other title which would indicate or which is intended to indicate or calculated to mislead members of the public into believing that he is qualified to apply instrumentation to detect deception or to verify truth or statements without first securing a license as here in provided.

Examiner's license qualifications

Section 8. A person is qualified to receive a license as an examiner

- (a) who is at least 21 years of age; and
- (b) who is a citizen of the United States; and
- (c) who establishes that he is a person of honesty, truthfulness, integrity, and moral fitness; and
- (d) who has not been convicted of a felony or a misdemeanor involving moral turpitude; and

(e) who holds a baccalaureate degree from a college or university accredited by the American Association of Collegiate Registrars and Admissions Officers;
OPTIONAL who holds a baccalaureate degree from a college or university accredited by the American

Association of Collegiate Registrars and Admissions Officers, or in lieu thereof, is a graduate of an accredited high school and has five consecutive years of active investigative experience immediately preceding his application; and

(f) who is a graduate of a polygraph examiners course approved by the board and has satisfactorily completed not less than six months of internship training; and

OPTIONAL who is a graduate of a polygraph examiners course approved by the board and has satisfactorily completed not less than six months of internship training, provided that if the applicant is not a graduate of an approved polygraph examiners course, satisfactory completion of not less than 12 months of internship training may satisfy this subdivision; and

(g) who has passed an examination conducted by the board, or under its supervision, to determine his competency to obtain a license to practice as an examiner.

(h) Prior to the issuance of a license, the applicant must furnish to the board evidence of a surety bond or insurance policy. Said surety bond or insurance policy shall be in the sum of \$5,000.00 and shall be conditioned that the obligor therein will pay to the extent of the face amount of such surety bond or insurance policy all judgements which may be recovered against the licensee by reason or any wrongful or illegal acts committed by him in the course of his examinations. (Note: Annual rate for this type of bond is \$10.00 per \$1,000.00)

Acquisition of license by present examiners

Section 9. On the effective date of this Act, any person who is actually engaged in the occupation, business, or profession of a polygraph examiner and who is using for that purpose the instrumentation prescribed in Section 3, shall, upon application within 90 days after the effective date of this Act and payment of the required license fee, be issued a polygraph examiner's license which shall be effective no longer than one year from date of issuance, provided, however, that the board may require such applicant to submit satisfactory proof that he is so engaged. The applicant must also satisfy such requirements of Section 8 (a)-(d) and Section 8 (g) of this Act.

If Section 8 (f) is adopted, the last sentence of Section 9 shall read: "The applicant must also satisfy such requirements of Section 8 (a)-(d) and Section 8 (g)-(h) of this Act."

Applications for original license

Section 10. Applications for original licenses shall be made to the secretary of the board in writing under oath on forms prescribed by the board and shall be accompanied by the required fee, which is not refundable. Any such application shall require such information as in the judgment of the board will enable it to pass on the qualifications of the applicant for a license.

Non-resident applicants

Section 11. (a) Each non-resident applicant for an original license or a renewal license shall file with the board an irrevocable consent that actions against said applicant may be filed in any appropriate court of any county or municipality of this state in which the plaintiff resides or in which some part of the transaction occurred out of which the alleged cause of action arose and that process on any such action may be served on the applicant by leaving two copies thereof with the secretary. Such consent shall stipulate and agree that such service or process shall be taken and held to be valid and binding for all purposes. The secretary of the board shall send forthwith one copy of the process to the applicant at the address shown on the records of the board by registered or certified mail.

(b) Non-resident applicants must satisfy the requirements of Section 8 of this Act.

Applicant with out-of-state license

Section 12. An applicant who is a polygraph examiner licensed under the laws of another state or territory of the United States may be issued a license without examination by the board, in its discretion, upon payment of a fee of \$_____ and the production of satisfactory proof that

- (a) He is at least 21 years of age; and
- (b) he is a citizen of the United States; and
- (c) he is of good moral character; and
- (d) the requirements for the licensing of polygraph examiner in such particular state or territory of the United States were at the the date of the applicant's licensing therein substantially equivalent to the requirements now in force in this state; and
- (e) the applicant had lawfully engaged in the administration of polygraph examinations under the laws of such state or territory for at least two years prior to his application for license hereunder; and
- (f) such other state or territory grants similar reciprocity to license holders of this state; and
- (g) he has complied with Section 11 of this Act.

Internship license

Section 13. (a) Upon approval by the board, the secretary shall issue an internship license to a trainee provided he applies for such license and pays the required fee within 10 days prior to the commencement of his internship. The application shall contain such information as may be required by the board.

(b) An internship license shall be valid for the term of 12 months from the date of issue. Such license may be extended or renewed for any term not to exceed 6 months upon good cause shown to the board.

(c) A trainee shall not be entitled to hold an internship license after the expiration of the original 12 month period and 6 month extension, if such

extension is granted by the board, until 12 months after the date of expiration of the last internship license held by said trainee.

Examination and license fees

Section 14. (a) The fee to be paid by the applicant for an examination to determine his fitness to receive a polygraph examiner's license is \$_____, which is not to be credited as payment against the license fee.

(b) The fee to be paid for an original polygraph examiner's license is \$_____.

(c) The fee to be paid for the issuance of a duplicate polygraph examiner's license is \$_____.

(d) The fee to be paid for an internship license is \$_____.

(e) The fee to be paid for the polygraph examiner's renewal license is \$_____.

(f) The fee to be paid for the extension or renewal of an internship license is \$_____.

(g) The fee to be paid for a duplicate internship license is \$_____.

(h) The fees required by this Act may be paid by the governmental agency employing the examiner.

Display of license and signature thereon

Section 15. A license or duplicate license must be prominently displayed at the place of business of the polygraph examiner or at the place of internship. Each license shall be signed by the board members and shall be issued under the seal of the board.

Change of business address

Section 16. Notice in writing shall be given to the secretary by the licensed examiner of any change of principal business location within 30 days of the time he changes the location. A change of business location without notification to the secretary shall automatically suspend the license theretofore issued.

Termination and renewal of examiner's license

Section 17. Each polygraph examiner's license shall be issued for the term of one year and shall, unless suspended or revoked, be renewed annually as prescribed by the board. A polygraph examiner whose license has expired may at any time within two years after the expiration thereof obtain a renewal license without examination by making a renewal application therefore and satisfying Section 8 (b), (c), and (d). However, any polygraph examiner whose license expired while he was in the federal service on active duty with the armed forces of the United States, or the national guard called into service or training, or in training or education under the supervision of the United States preliminary to induction into the military service, may have his license renewed without

examination if within two years after termination of such service, training, or education except under condition other than honorable, he furnishes the board with an affidavit to the effect that he has been so engaged and that his service, training, or education has been so terminated. Section 8 (b), (c), and (d) of this Act must also be satisfied.

License required to maintain suit

Section 18. No action or counter claim shall be maintained by any person in any court in this state with respect to any agreement or service for which a license is required by this Act, or to recover the agreed price or any compensation under such agreement, or for such services for which a license is required by this Act without alleging and proving that such person had a valid license at the time of making such agreement or perform such services.

Refusal, suspension, revocation—grounds

Section 19. The board may refuse to issue or may suspend or revoke a license on any one or more of the following grounds:

(a) for failing to inform a subject to be examined as to the nature of the examination;

(b) for failing to inform a subject to be examined that his participation in the examination is voluntary;

(c) material misstatement in the application for original license or in the application for any renewal license under this Act;

(d) willful disregard or violation of this Act or of any regulation or rule issued pursuant thereto, including, but not limited to, willfully making a false report concerning an examination for polygraph examination purposes;

(e) if the holder of any license has been adjudged guilty by the commission of a felony or misdemeanor involving moral turpitude;

(f) making any willful misrepresentation or false promises or causing to be printed any false or misleading advertisement for the purpose of directly or indirectly obtaining business or trainees;

(g) having demonstrated unworthiness or incompetency to act as a polygraph examiner as defined by this Act;

(h) allowing one's license under this Act to be used by any unlicensed person in violation of the provisions of this Act;

(i) Willfully aiding or abetting another in the violation of this Act or any regulation or rule issued thereto;

(j) where the license holder has been adjudged an habitual drunkard or mentally incompetent as provided in the Probate Code;

(k) failing, within a reasonable time, to provide information requested by the secretary as the result of a formal complaint to the board which would indicate a

violation of the Act; or

(l) failing to inform the subject of the results of the examination if so requested.

Violation by one examiner or trainee not to affect employer

Section 20. Any unlawful act or violation of any of the provisions of this Act on the part of any polygraph examiner or trainee shall not be cause for revocation of the license of any other polygraph examiner for whom the offending examiner or trainee may have been employed, unless it shall appear to the satisfaction of the board that the polygraph examiner-employer has willfully or negligently aided or abetted the illegal actions or activities of the offending polygraph examiner or trainee.

Registration of examiners with county clerks

Section 21. Each polygraph examiner shall register with the county clerk in the county wherein he maintains a business address. The county clerk of each county shall maintain a list of all polygraph examiners registered in his county.

Board hearing

Section 22. (a) When there is cause to refuse an application or to suspend or revoke the license of any polygraph examiner, the board shall, not less than 30 days before refusal, suspension, or revocation action is taken, notify such person in writing, in person or by certified mail at the last address supplied to the board by such person, of such impending refusal, suspension, or revocation, the reasons therefor, and of his right to an administrative hearing for the purpose of determining whether or not the evidence is sufficient to warrant the refusal, suspension, or revocation action proposed to be taken by the board. If, within 20 days after the personal service of such notice or such notice has been deposited in the United States mail, such person has not made a written request to the board for this administrative hearing, the board is authorized to suspend or revoke the polygraph examiner's license of such person without a hearing. Upon receipt by the board of such written request of such person within the 20 day period as set out above, an opportunity for an administrative hearing shall be afforded as early as is practicable. In no case shall the hearing be held less than 10 days after written notification thereof, including a copy of the charges, shall have been given the person by personal service or by certified mail sent to the last address supplied to the board by the applicant or licensee. The administrative hearing in such cases shall be before the board.

(b) The board shall conduct the administrative hearings and it is authorized to administer oaths and issue subpoenas for the attendance of witnesses and

the production of relevant books, papers, documents, etc. On the basis of the evidence submitted at the hearing, the board shall take whatever action it deems necessary in refusing the application or suspending or revoking the license.

Judicial review

Section 23. Any person dissatisfied with the action of the board in refusing his application or suspending or revoking his license, or any other action of the board, may appeal the action of the board by filing a petition within 30 days thereafter in the district court in the county where the person resides or in the district court of (County)_____, (State)_____, and the court is vested with jurisdiction and it shall be the duty of the court to set the matter for hearing upon 10 days' written notice to the board and the attorney representing the board. The court in which the petition of appeal is filed shall determine whether or not a cancellation or suspension of a license shall be abated until the hearing shall have been consummated with final judgment thereon or whether any other action of the board should be suspended pending hearing, and enter its order accordingly, which shall be operative when served upon the board, and the court shall provide the attorney representing the board with a copy of the petition and order. The board shall be represented in such appeals by the district or county attorney of the county or the Attorney General, or any of their assistants. The board shall initially determine all fact, but the court upon appeal shall set aside the determination of the board if the board's determination (1) is not based upon substantial evidence upon the entire record; (2) is arbitrary or capricious; (3) is in violation of statutory requirements; or (4) was made without affording to licensee or applicant due process of law.

Surrender of license

Section 24. Upon the revocation or suspension of any license, the licensee shall forthwith surrender the license or licenses to the secretary; failure of a licensee to do so shall be violation of this Act and upon conviction, shall be subject to the penalties hereinafter set forth. At any time after the suspension or revocation of any license, the secretary shall restore it to the former licensee, upon the written recommendation of the board.

Proceedings through the attorney general

Section 25. If any person violates any provisions of this Act, the secretary shall, upon direction of a majority of the board, in the name of the State of _____, through the Attorney General of the

State of _____, apply in any district court of competent jurisdiction, for an order enjoining such violation or for an order enforcing compliance with this Act. Upon the filing of a verified petition in the court, the court or any judge thereof, if satisfied by affidavit or otherwise that the person has violated this Act, may issue a temporary injunction, without notice or bond, enjoining such continued violation and if it is established that the person has violated or is violating this Act, the court, or any judge thereof, may enter a decree perpetually enjoining the violation or enforcing compliance with this Act. In case of violation of any order or decree issued under the provisions of this Section, the court, or any judge thereof, may try and punish the offender for contempt of court. Proceeding under this Section shall be in addition to, and not in lieu of, all other remedies and penalties provided by this Act.

Penalties

Section 26. Any person who violates any provision of this Act or any person who falsely states or represents that he has been or is a polygraph examiner or trainee or that is qualified to apply instrumentation to the detection of deception or verification of truth of statements shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$100 nor more than \$1,000 or by imprisonment in the county jail for a term of not to exceed six months, or both.

Savings clause

Section 27. The provisions of this Act are severable. If any provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

Emergency clause

Section 28. The fact that this state has no law licensing and regulating the use of lie detection or polygraph examination techniques and instruments, and that untrained and unlicensed examiners, and examiners using inadequate techniques and equipment cause great harm to the general public, creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three separate days in each House be suspended, and this Rule is hereby suspended; and that this Act take effect and be in force from and after its passage, and it is so enacted.

APPENDIX 3

The Polygraph and the Courts

In 1923, an Appellate Court first entertained the possibility of the admissibility of evidence of a lie-detector test. This was in the case of *Frye vs. United States*. (1) In this case, the defendant unsuccessfully attempted to introduce into evidence the results of a "systolic blood pressure" examination. The opposition to the admission of lie-detector evidence was firmly established when the court declared:

"Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stages is difficult to define. Somewhere in this twilight zone the evidential force of the principle must be recognized, and while courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained *general acceptance in the particular field in which it belongs*.

"We think the systolic blood pressure deception test has not yet gained such standing and scientific recognition among physiological and psychological authorities as would justify the courts in admitting expert testimony deduced from the discovery, development, and experiments thus far made."

Although the legal reasoning upon which the *Frye* decision was based is unquestionably sound, it is nonetheless apparent that justice was thwarted in the process. The defendant, after serving three years of a life sentence, was exonerated by the confession of the actual killer, and released.

In the fifty years since the *Frye* decision, the polygraph has certainly become more reliable and it would appear that the requirement of "general acceptance in its particular field" has long since been satisfied. In spite of this, polygraph evidence was unable to penetrate into the realm of admissibility. Famed Criminal Attorney F. Lee Bailey wrote:

"The courts place a higher standard on the acceptance of polygraph evidence than on any other scientific evidence, e.g., fingerprints, handwriting analysis, ballistics, etc. The courts are seeking infallibility before granting judicial recognition to polygraph evidence." (2)

In 1953, Dean William Wicker of the University of Tennessee, College of Law wrote the following:

"If and when convincing evidence is produced that reasonably reliable scientific methods of exposing falsehoods either in or out of the courtroom are available, these methods should be promptly utilized by the legal profession.

Lawyers, judges and law professors know that there is today in our courtroom entirely too much intentional perjury and that it is usually difficult, and often impossible, for even an experienced trial lawyer to expose on cross-examination many of the

lies of false-swearing witnesses. The legal profession can no longer assume a complacent attitude concerning our present methods of exposing mendacity." (3)

In 1943, Dr. Lemoyne Snyder, medico-legal expert and member of the now-defunct Court of Last Resort, and author of *Homicide Investigation*, took this position:

"The next question is apt to be, 'Is the machine infallible?' That question is exactly like asking whether a clinical thermometer, stethoscope, X-ray machine or compound microscope is infallible. A trained scientist may be mistaken in what he sees or hears by any of these devices. Like the thermometer and stethoscope the polygraph is simply an instrument for noting or recording physiological processes and it is possible for the operator to be mistaken in his interpretation of the recording. Even in the best of clinics the interpretation is not 100 percent accurate, but that does not imply that the machine should not be used. The same can be said for the polygraph." (4)

The only exception in many jurisdictions to the general rule of inadmissibility is the admissibility of stipulated polygraph evidence. Both parties must sign the stipulation, which provides for the application of the test and the admission of the test results, regardless of the outcome. Such a stipulation should also specify the test conditions, the issue of general reliability, the right to cross-examine with respect to the qualifications of the examiner, and any other matters deemed relevant by the trial judge.

. . . if the trial judge is not convinced that the examiner is qualified or that the test was conducted under proper conditions he may refuse to accept the evidence.

That if such evidence is admitted the trial judge should instruct the jury that the examiner's testimony does not tend to prove or disprove any element of the crime with which a defendant is charged but at most tends only to indicate that at the time of the examination defendant was not telling the truth. (5)

- (1) 54 App. D.C. 46, 293F. at 1013 (1923)
- (2) Criminal Law Library F. Lee Bailey, Henry B. Rothblatt, *Investigation and Preparation of Criminal Cases*, Federal and State, Lawyers Co-operative, Bancroft-Whitney, Rochester, N.Y. 91970 Par. 379, page 299.
- (3) Wicker, Wm., *The Polygraphic Truth Test and the Law of Evidence*, 22 Tenn. L. Rev. 711 (1953).
- (4) 15 Rocky Mtn L. Rev. 162 (1943).
- (5) Id.

A degree of stability was gained in the case of *State vs. Valdez* (6), in which the Supreme Court of Arizona held that expert testimony relating to the polygraph and polygraph results was admissible upon stipulation by both parties. The court further stated that this evidence would be inadmissible in the absence of the stipulation. The court acknowledged that lie-detection technique had been improving steadily but that much more should be done before the results can be admitted generally. By so stating, the court left open the question of scientific reliability of lie-detector results.

In *The People vs. House* (7), the validity of the stipulation with regard to the admissibility of lie-detection results was upheld. The defendant, with his attorney's approval, had signed an agreement under which the results would be admissible on behalf of himself or the state. He was convicted of a sex offense but appealed on the grounds that the results were inadmissible regardless of the fact that he had signed a stipulation. In affirming the conviction, the court stated:

"It would be difficult to hold that defendant should now be permitted on this appeal to take advantage of any claim that such operator was not an expert and that as to the results of the test such evidence was inadmissible merely because it happened to indicate that he was not telling the truth. . . ." (8)

The polygraph, even with the strict rules of evidence against its use, has progressed to the point where many courts now use the results of polygraph examinations in their decisions. The most progressive group of jurists are the judges of the Municipal Courts of Chicago, who have for the most part regularly admitted and relied upon such results as evidence in criminal, quasi-criminal and civil cases for over thirty years. Preliminary hearing courts such as Felony Court and Boys' Court in Chicago regularly use polygraphy to assist the judge in determining whether the defendant should be bound over to Grand Jury or freed.

Judge Rodger Alton Pfaff of the Supreme Court of Los Angeles County has stated:

"An adequate polygraph in the hands of a competent examiner can be adequate aid in the administration of justice." (9)

Since March 1962, the Los Angeles Superior Court has been employing the polygraph in domestic relations cases, first in child custody cases and later in paternity cases, with excellent results to such an extent that now attorneys ask for the polygraph and not the judges in many cases. (10) In 1968, the Grand Jury of Anne Arundel County, Maryland recommended to the State's Attorney's Office that, in all offenses involving crimes against persons, the victim should be required to submit to a polygraph examination to confirm their complaint, and the state's attorney has placed into practice this recommendation which has had excellent results in depicting numerous false

complaints being made to the police.

The results of a lie-detector test were admitted over the objection of the prosecution in the case of Andrew Ferrando in a trial in Hennepin County District Court, Minnesota in October 1969 by Judge Dana Nicholson. Ferrando was being tried by the jury for lurking in order to commit theft in a northeast Minneapolis bar. After the trial Judge Nicholson told reporters that he had studied the development of lie-detectors, formally called polygraphs, and believed they have reached the point where they are reliable enough to be admitted as evidence (11).

Albert S. Dabrowski, in this article "The Polygraph Revisited: An Argument for Admissibility" as published in the Criminal Law Bulletin Vol. 6, No. 2, 1970, stated:

"The present legal attitude with respect to the lie-detector reflects a position which has not been materially recast since 1923. At that time, the instrument was merely a device concerned with the recordation of blood pressure variations. It has since matured into a sophisticated procedure employing numerous physiological measurements, which, when in the hands of a competent examiner, is commensurate with, and even superior to, most of the presently approved forms of evidence, scientific as well as non-scientific, that feature in criminal and civil trials. (12)

The value of the polygraph technique, when used in a proper manner, warrants judicial recognition. This does not imply unconditional acceptance. The endorsement is limited strictly to the area where the examination has exhibited a high degree of reliability in the hands of a *competent* examiner under the proper test conditions.

The examiner, in all cases, must be available for cross-examination and court inquiry into the test environment, the reliability issue, and his own personal qualifications. In criminal cases, the defendant must be advised of the right to counsel and the right to remain silent.

Attorney F. Lee Bailey, has laid a foundation in support of scientific proof of credibility in not less than six trials, but in each case where such testimony was

- (6) 91 Ariz. 274, 371 P. 2d 894 (1962)
- (7) 85 Cal. App. 2d 686, 193, P.2d 937 (1948)
- (8) Id. at 694-95, 193, P.2d at 942.
- (9) Rodger Pfaff, "The Polygraph: An Invaluable Judicial Aid." American Bar Association Journal, (Chicago, 1964), Vol 50, No. 12, p. 1130.
- (10) Ibid., p. 1131.
- (11) "Results of Lie-Detector Test Accepted," (The Minneapolis Star) American Polygraph Association Newsletter, (Hollywood, 1969), Vol. 3, No. 6, p. 3.
- (12) Preface to Reid at V.

produced by experts, an acquittal resulted and no appellate test could be made of the admissibility of the polygraph. Bailey has stated that the prosecution in almost all cases involved was unable to marshal even a recognizable rebuttal. Bailey has been quoted as follows:

"In these troubled times when courts are backlogged with controversies of every kind and lawyers and judges are forced to rely on a system where mendacity among the litigants is more often the rule than the exception, the polygraph technique could precipitate dramatic and bountiful improvement in our law. The concerned speculation that juries will give way to polygraphs as a system of justice, if perhaps plausible is by no means sound. Much more likely is the fact that those litigants and witnesses who are not inhibited by an oath will, knowing that means of checking their proposed testimony is available, make much less frequent appearances on the witness stand. If guilty defendants are persuaded to plead guilty because of the presence of the polygraph in our column of scientific evidence, good will certainly be the product of this development. Certainly, other scientific progress in the past has reduced the opportunity of the guilty to escape justice and enhanced the likelihood that the innocent will not be tried at all. Fingerprints, firearms identification, chemical tests for intoxication, blood tests for paternity, and even mechanical devices for measuring a motorist's speed have all contributed to the accuracy and reliability of the judgment of a court. The time has clearly come for the adoption in our system of this invaluable aid to judicial accuracy."

(13)

During 1972, a dramatic change was apparent in the attitude of the courts with respect to admissibility of polygraph. Some of the highlights follow.

- a) In August 1972, Judge Warren Douglas of Cherry Hill (New Jersey) Municipal Court upheld the right of an employer to use a polygraph test as an alternative to a credit check in interviewing prospective employees. The New Jersey law stipulates that the employer may not require a lie detector test as a condition of employment or continued employment. Judge Douglas ruled that the polygraph was used only as an alternative to a credit check and that the written statement signed by job applicants sufficiently informed them that the lie detector test was not a condition of employment.
- b) In October 1972, the results of a lie detector test were admitted into evidence in a New York State court for what the judge said was the first time in New York history. Acting Judge Julian R. Hanley of the Family Court said that he had ordered the test for a woman plaintiff in a paternity case. He later admitted the results as evidence and subsequently denied her petition to have the

defendant named as the father of her child. In making his decision, Judge Hanley noted that lie detector tests have been used by prosecutors and lawyers for years. "Everyone but the court has found it a useful and reliable guide to the truth," Hanley said. "The courts and all concerned were fully aware of the fact that lie detector tests have never been allowed into evidence before in the courts of this state." In his decision of this case Judge Hanley said that the lie-detector test was received in evidence "Not as direct proof of fact," but rather "only on the question of the credibility of the petitioner."

- c) Judge James Calhoun of the Juvenile Court in Tampa, Florida now requests parents to take polygraph examinations in cases where questions arise concerning the care of small children, according to a June article in the *Tampa Tribune*.
- d) In late 1972, Judge Edwin Kassofo, a judge of the Queens (New York) Civil Court, used polygraph evidence to help him decide if a man was owed \$910. The judge stated that the case was such that "even the wisdom of a King Solomon would be tried in deciding." Judge Kassofo permitted the introduction of polygraph evidence to help resolve the difficult suit involving a personal loan. The judge was believed to be the first state court judge to permit the introduction of the results of a lie detector test since 1969 when the Court of Appeals prohibited such evidence.
- e) In late 1972, the New Jersey Supreme Court ruled that results of lie detector tests may be used as evidence in criminal trials, when the defense and the prosecution agree to it. In a 5-0 decision the court said that lie detector tests have become reliable enough to use as evidence.

Superior Court Judge Mark A. Sullivan, who wrote the decision, wrote "we conclude that the polygraph testing has been developed into such a point of reliability that in a criminal case when the state and defendant enter into a stipulation to have the defendant to submit to a polygraph test, and have the results introduced as evidence, such a stipulation should be given effect. Polygraph testing has sufficient probative value to warrant admissions under these circumstances. It must also appear that the examiner is qualified and the test administered in accordance with established polygraph techniques."

- f) *In U.S. v. Ridling*, (12 CrL 2055) District Judge Charles W. Joiner of the Eastern District of Michigan, in an extremely well reasoned and analytical opinion, ruled that the defendant who was charged with perjury would be tested by a

(13) Criminal Law Library, F. Lee Bailey, Henry B. Rothblatt, Investigation and Preparation of Criminal Cases, Federal and State, Lawyers Co-operative, Bancroft-Whitney, Rochester, N.Y. 1970, page 310 and 311, paragraph 380.

court appointed expert and that the results of the test would be disclosed to the jury. Judge Joiner, after conducting an evidentiary hearing, wrote an opinion which could very well serve as the precedent for which other District Court Judges have long sought.

- g) Shortly thereafter, the U. S. District Court Judge Barrington D. Parker of the District of Columbia, in the case of *U. S. vs Zeiger* (12 CrL 2057), ruled that the results of the lie detector would be admitted as evidence in court for the first time in the District of Columbia. In making his ruling, the federal judge stated that polygraph has become "an established field of science and technology."
- h) In November 1972, a California judge, Superior Court Judge Allen Miller, accepted a lie detector test as evidence, saying that scientific tests have shown the instruments to be so accurate that the old rule barring the use of lie detector tests in court rooms should be changed. Judge Miller made his ruling in the case of Raymond Cutter who was arrested at Los Angeles International Airport and who took a lie detector test to prove that the evidence involved was illegally seized. The test showed that Cutter was truthful and the judge then ruled that the evidence could not be introduced.

In making his ruling, the judge said that the courts are greatly in need of some way to determine when the witnesses and defendants are telling the truth. "Perjury is prevalent and the oath taken by witnesses has little effect to deter false testimony. The principal role of the trial of fact is the search for truth and any reasonable procedure or method to assist the court in this search should be employed." He further stated that court decisions against admissibility of polygraph evidence "should be reviewed and re-evaluated in light of the current scientific knowledge of the subject."

More recent and other significant legal decisions follow:

A. State Courts

1. *Commonwealth of Massachusetts v. Juvenile* [BR-15,322] decided by the Massachusetts Supreme Judicial Court in June, 1974. The Court recognized that substantial advances have been made in the field of polygraphy since 1963 when the Court rejected the admission of such evidence in *Commonwealth v. Fatalo*, 346 Mass. 266 (1963) and opened the door for the admission of polygraph examination results in criminal trials under certain circumstances.
2. *State of Wisconsin v. Stanislawski*, 216 N.W. 2d 8 (1974). In another recent decision (April

2, 1974), the Supreme Court of Wisconsin departed from its prior decision in *State v. Bohner*, 210 Wis. 651, 246 N.W. 314 (1933) wherein it had rejected polygraph evidence for any purpose and under any circumstances. In the *Stanislawski* case, the Court stated:

"We find it clear that, during the same forty or fifty years, polygraph tests have moved from the 'twilight zone' of *Frye* to such degree of standing and scientific recognition that unconditional rejection of expert testimony based on polygraph testing is no longer indicated."

The Supreme Court of Wisconsin there adopted the conditions for the admission of the results of polygraph examinations previously adopted by the Arizona Supreme Court in *State v. Valdez*, 91 Ariz. 274, 371 P.2d 894 (1962).

3. *State of New Mexico v. Alderete*, 521 P.2d 138 (1974). Also, in a recent decision (February 27, 1974), the Court of Appeals of New Mexico affirmed a trial court's decision which did not admit the results of a polygraph examination into evidence where the polygraphist failed to produce his polygraph records in court. However, Chief Judge Wood of the Court found that upon a proper foundation being laid, the admission of the test results into evidence is within the discretion of the trial court. In a specially concurring opinion, Judge Lopez stated:

"I fully concur in the opinion of Chief Judge Wood. I wish to add that I feel that polygraph testing is potentially of great value to the judicial processes of this state. When we are presented with a proper record meeting the requirements set forth in Judge Wood's opinion, I would hold this type of evidence admissible. I encourage counsel in future cases to develop such a record."

4. *State of Nebraska v. Sanchell*, 216 N.W.2d 504 (1974). In this case (which was decided on March 1974), the Supreme Court of Nebraska held that the agreement of a prosecutor that a defendant would not be prosecuted if he passed a polygraph examination was not enforceable absent the trial court's approval. However, the Court there noted:
"We do not want to do anything to discourage the use of polygraph as it is a useful tool in police and prosecutorial work and no doubt results in many determinations not to prosecute."
5. *State of Ohio v. Donna Sonnie*, No. 73 CR 100, June 20, 1974. The Court of Common Pleas for Lake County, Ohio, ruled that testimony as to the results of two polygraph

tests taken by the defendant would be admitted "as an aid to the jury in arriving at credibility of witnesses and determine guilt or innocence." The Court conditioned its ruling on the defendant taking an additional polygraph examination by an examiner selected by the prosecuting attorney subject to the approval of the Court.

6. *State of Florida v. George Curtis*, No. 70-5585, January 31, 1973. The Circuit Court of the Eleventh Judicial Circuit for Dade County, Florida allowed a Defense Motion for the admissibility of the results of two polygraph examinations, one given by an examiner of the defendant's selection and the other by a court appointed examiner. The court stated that in future cases, polygraph opinions would be admitted in the event the defendant, through his counsel, first requested the State to stipulate to a polygraph test and its results, and if the State rejects the stipulation, the defendant may apply to the court, who will appoint one or more qualified examiners to conduct a polygraph examination subject to certain conditions.
7. *Powers v. Carvalho*, 109 R.I. 120, 281 A.2d 298 (1971). The Rhode Island Supreme Court said at R.I. 126,

"Evidence as to the result of (polygraph) . . . tests is to be admitted only if a foundation has been laid establishing the acceptance of a device as reliable and accurate in the relevant scientific fields of endeavor and of the qualification or expertise of the person who operated the device and interpreted the results. Obviously, evidence as to the results of lie detector tests are never admissible as conclusive of guilt or innocence of a person who is charged with a crime, such conclusion being exclusively within the province of the jury. Neither should it be admitted as conclusive of the truth or falsity of a factual statement made by a person undergoing the test but only as evidence for the jury's consideration on the question of credibility, this being also exclusively within the province of the jury."

B. Federal Courts

In addition to *United States v. Ridling*, 350 F Supp. 90 (E.D. Mich. 1972), two other federal district courts have recently admitted the results of a polygraph examination into evidence, namely *United States V. Hart*, 344 F. Supp. 522 (E.D. N.Y. 1971) and *United States v. Dioguardi*, Crim. No. 72-1102 (E.D. N.Y. 1972) which was not officially reported.

In the *Dioguardi* case, a defendant charged with having falsified a loan application claimed that the

handwriting on the application was not his. Although another man came forward claiming to be the guilty party, the government alleged that his actions were essentially collusive. The defense attempted to introduce the results of polygraph tests on both the defendant and the man who claimed to have committed the crime, but the government objected. In an evidentiary hearing, the polygraph expert for the Manhattan District Attorney's office testified that in his experience the polygraph was more reliable than either handwriting or ballistic evidence, both of which are admissible at trial. Judge Weinstein of the Eastern District of New York, a member of the Advisory Committee on the Federal Rules of Evidence, then ruled that if the two men would agree to submit to a test by a court appointed expert, both the latter's testimony and the testimony of the defendant's expert would be admissible before the jury at trial. The results of the court-appointed expert's test and the defendant's test were apparently the same, and the government agreed to dismiss the indictment.

In the *Hart* case, two former federal narcotics agents were accused of soliciting bribes. The principal government witness, a confessed narcotics dealer, revealed during cross-examination that he had taken a lie detector test at the request of the government. When the tests indicated he was lying, the court ordered that the results be disclosed to the jury. Without holding a prior evidentiary hearing, Judge Judd ruled that the government should be prepared to show why it administered the test to the witness and why it subsequently disregarded the results. The government subsequently dismissed the indictment.

The decision of Judge Barrington D. Parker in *United States v. Zeiger*, 350 F. Supp. 685 (Dist. of Col. 1972) to receive the results of a polygraph examination into evidence was reversed in a *per curiam* order by the Court of Appeals in 475 F.2d 1280 (1972). However, in an address before the Fourth Annual National Workshop on Practical Polygraph Procedures, Delta College, Michigan, Judge Parker viewed the matter as follows:

"In 1971 Judge Earl Larson of the U. S. District Court of Minnesota in a post trial motion for reduction of sentence filed on behalf of a defendant convicted of tax fraud was concerned with the "criminal intent" of the defendant. His counsel was permitted—over the objection of the district attorney—to present testimony of a polygraph expert—who testified at some length and in some detail as to the procedure employed.

"In 1972 Judge Jack Weinstein of the Eastern District of New York in an unreported decision—ruled in an evidentiary hearing to admit the testimony of two polygraph experts—one court appointed—before the jury at trial.

"The defendant was charged with falsification of a loan application, but a 3rd party admitted to the charge. The prosecuting attorney claimed, however, that his actions were essentially collusive. Both men agreed to and were examined by the court expert. The tests confirmed the defendant's contentions and the government dismissed the indictment.

"At approximately the same time in the Eastern District of New York there is a reported decision—*United States v. Hart*, 344 F. Supp. 522, involving solicitation of bribes by a narcotic agent.

"During the trial it was brought out on cross examination of a government witness that the witness had taken a polygraph test—administered by the government which indicated he was lying. Judge Orrin Judd, who was presiding, ruled that the government must show why it administered the test to its witness and why it later disregarded the results. The government then dismissed the case and elected not to appeal the trial court's ruling.

"More recently—in 1972—other reported opinions were regarded as signaling perhaps a change in the established rule against the admissibility of polygraph testimony.

"*U. S. v. Zeiger*. In that case your speaker was impressed by the highly professional performance of—Mr. Frederick Barnett—the lead counsel—and the knowledgeable witnesses—Mr. Lynn Marcy, Mr. John Reid, Mr. Warren Holmes, Mr. David Raskin, and Mr. Cleve Backster. (Unfortunately) in less than 72 hours it was reversed by the U. S. Court of Appeals for the District of Columbia without an opinion.

"The unfortunate aspect about the case was that no opportunity was afforded for a complete, and detailed briefing and argument of the issues involved.

"The case went up on appeal pursuant to a provision of the D. C. Code permitting the United States to appeal a ruling during the trial which involves a substantial question of law requiring appellate resolution. The Code provides for an expedited appeal—with argument before the appellate court and a decision by them within 96 hours. Because of limitations on time and briefing, a full and comprehensive presentation of the subject was impossible.

"Following the ruling on inadmissibility the trial resumed and fortunately Mr. Zeiger was acquitted. This might be regarded as an unfortunate development for his counsel—who were deprived the opportunity to present a well developed brief and argument on all issues—allowing for a more thoughtful and deliberate consideration by the appellate court under normal circumstances."

Also, in *United States v. Lanza*, 356 F Supp. 27 (M.D. Fla. 1973), Judge Tjoflat found that an insufficient foundation was laid in that case to justify admitting the results of the polygraph examination in evidence. However, he disagreed with the government's position that the results of polygraph examinations should never be received into evidence and ruled that given an adequate foundation, it would be within the discretion of the trial judge whether to receive such evidence. The Court there stated (p. 30):

"During the trial of this case, the defendant John Newton Fountain advised the Court that as a part of his defense he proposed to offer expert testimony on the results of a polygraph examination that had been administered to him. The government objected to the admission of any evidence relating to the polygraph test, citing numerous decisions on the subject and noting that no federal court has admitted the results of a polygraph examination.

"In *United States v. Chastian*, 435 F. 2d 686, 687 (7th Cir. 1970), and *United States v. Wainwright*, 413 F. 2d 796 (10th Cir. 1969), both cited by the government, the refusal to admit the polygraph results were based on the failure of the proffering party to lay a proper foundation for the testimony. In each instance, the Court noted that, given an adequate foundation, it would be within the discretion of the trial judge whether to receive such evidence. The Court views this, rather than the *per se* rule urged by the government, to be the correct approach to the question of admissibility."

For the benefit of those who wish to research the legal area of the polygraph further, a special bibliography is presented herewith.

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880 NEWS AND VIEWS

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Let's Quit the Stupid Snooping that Passes for "Store Security"

By David McDonald, President of Local 880

It's about time someone blew the whistle on the little tin-horn gestapo that passes itself off as "security forces" in some of our distinguished retail establishments.

Personally, I got about as much of it as my weak stomach could take when a blameless—and incidentally, underpaid—employee came to us recently and announced that he had been forced to quit his job for "stealing."

Had he stolen? He said no, he had not, but the "security" quizzed him, browbeat him, finally got him to "confess." Then the bold investigators dictated the "confession"—and the poor guy signed it after being promised he would not be molested, his reputation would not be stained, and he could quit in secret.

What he was not told is interesting. If he had let it go at that, the record would be left with his employer. And then, every time he sought a job, and the prospective new boss checked on his previous place of work, he would be turned down.

For the rest of his days, he would never have known what hit him. Each successive company to which he applied would note him as a thief. And yet he would never doubt that the "security" had kept its promise not to give him away.

The payoff is most remarkable. This man was innocent! Even as he protested his innocence, he was tricked into making a confession of something he knew he had not done. To his amazement, he even learned that his fellow employes had "seen" him do the evil deeds. By the time the grilling ended, he was eager enough to sign something and get out of the room, out of the store, out of the company, out of the job.

He was even convinced that by signing, he had avoided a 30-year jail sentence and permanent dishonor for his family. Even though he was innocent, he had been convinced that the "evidence" was sufficient to hang him.

This is not an isolated incident. Sometimes, as in this case, the offended worker will come to his

union. Sometimes, as in this case, the union will help prove that the "confession" is phony. Sometimes, as in this case, the employee's job is won back, his slate wiped clean, his boss lavish in apology. The boss, by the way, can get away with that, too. There is no false arrest, because the man was not actually arrested.

This is another way in which the two-bit gumshoe can score his lousy points. He goes to the real law enforcement authorities and to the real courts on only rare occasions. His job ends after browbeating some poor chump into finking on himself—for nothing, if necessary.

In some cases, this closes matters—and in many cases, if a real crime has been committed, the self-styled private eye has let the real culprit go free.

Perhaps this column should have been written a long time ago. Perhaps all of us were a little reluctant to speak our minds because it is never popular to be—or even seem to be—on the side of lawlessness against the forces of law and order.

Well, we have nothing to apologize for on that point. We do not condone thievery. We have no affection for crooks, and we are as interested as the employer is in exposing and ousting them.

I strongly recommend that any employer who suspects a worker of dishonesty get in touch immediately with Local 880. If there is any cause for pursuing an investigation, we will cooperate to the fullest. If disciplinary action is needed, we will not stand in the way of any fair and, if necessary, firm action. If we find reason for calling the police or the prosecutor's office, we'll support that, too.

To our members, however, we must give these words of warning:

1. If the "Securities" call you in, do not cooperate with them. Call the union to learn of your rights.
2. Do not sign anything.
3. Under no circumstances should you submit to "lie detector" tests. These can be—and often are—rigged.

As for the employers, we can only say they had better start leashing their clumsy bloodhounds.

CRIME'S BIG PAYOFF

A look at the record shows why so many people make a career of crime. For a professional, it's a "business" of high profits, low risks.

There are, by official estimates, as many as 500,000 people in the U.S. who are "career" criminals.

Why the attraction of crime? Sociologists, criminologists and other experts have searched for years for answers to this question.

Clarence M. Kelley, Director of the Federal Bureau of Investigation, suggests one simple explanation: too often, crime pays.

Says Mr. Kelley: "For many people in

America today, crime is a business, a full-time job, the principal source of income. They make a living by crime. They find in crime a lucrative profit."

Official statistics and recent studies, including analyses by the Economic Unit of *U.S. News & World Report*, provide support for Mr. Kelley's statement.

Road to riches. Contrary to the adage that "crime doesn't pay," crime can—and often does—provide a good living for even an ordinary criminal, such as a robber or a burglar. It can—and frequently does—produce riches for a master crook, such as a swindler, loan shark, embezzler, narcotics dealer or illegal gambler. Fortunes are made by leaders of organized crime.

As the chart on page 51 shows, a career lawbreaker can "earn" an annual income ranging all the way from a modest but self-supporting \$15,000 up to a plush \$165,000—or even more.

All of this income is tax-free, because it is not reported to the Government. A tax-free income of \$25,000 per year from crime is the equivalent, in buying

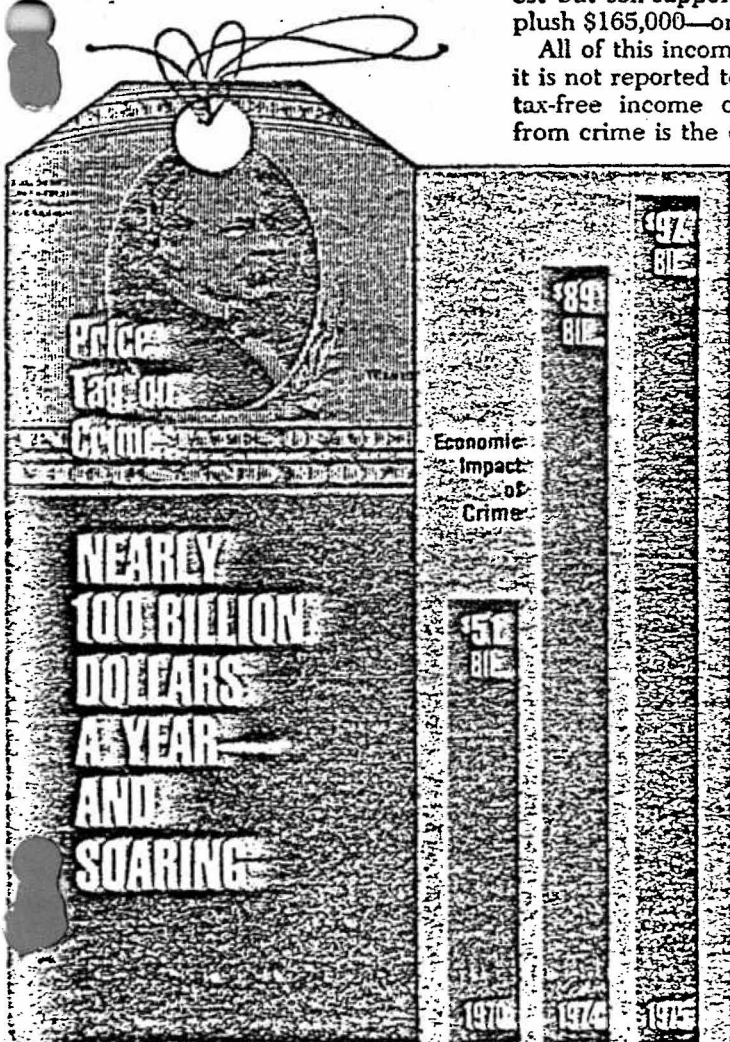
value, of a \$36,000 income for a single person who pays taxes on it.

The major "business expense" for a career in crime is the risk of getting caught and sent to prison or fined. And that risk, official statistics reveal, is all too slight.

Odds with criminal. According to the FBI's Uniform Crime Reports, for only 1 crime in 5 is a suspect ever arrested. For example, arrests are made in only 18 per cent of all burglaries and only 15 per cent of all motor-vehicle thefts. The odds are still higher against a criminal's being punished. Only 1 crime in 20 is officially solved by conviction of the suspect on the charge originally placed against him. Many suspects are permitted to plead guilty to lesser offenses that carry milder penalties. And many of those convicted are never sent to prison. They often are freed on probation.

In the words of FBI Director Kelley: "Criminals feel the odds are largely in their favor. . . . Our crime statistics plainly tell us that a high percentage of the criminals beat the risk. They are able, for a variety of reasons, to make a profit out of their crimes."

How large these profits of crime can be is described in a book, "Crime Pays!" written by Thomas Plate and published recently by Simon and Schuster. In this book, Mr. Plate tells the story of such successful lawbreakers as: a Miami drug



THE WAY COSTS ADD UP

Based on estimates for 1975—

ORGANIZED CRIME'S "TAXE"	\$40 BILLION
(gambling, narcotics, hijacked goods, loan sharking, others)	
CRIMES AGAINST PROPERTY AND BUSINESS	\$25 BILLION
(embezzlement, fraud, robbery, theft, shoplifting, vandalism, arson, others)	
CRIMES AGAINST PEOPLE	\$10.5 BILLION
(homicide, assault, etc.)	
LAW ENFORCEMENT	\$15 BILLION
(police, prisons, courts)	
PRIVATE CRIME-FIGHTING	\$8.5 BILLION
(costs of services, equipment)	
TOTAL	\$97 BILLION

Source: estimates by USNS/WP Economic Unit, based on government industry data

importer who nets \$165,000 a year; a New York organized-crime lieutenant and a New York loan shark who make \$25,000 each; an East Coast securities thief who clears \$100,000; hotel and industrial burglars who make \$75,000, and a numbers-racket controller in Brooklyn whose take is \$60,000.

For the lowly—\$20,000. Even such lowly criminals as a Miami pickpocket and a Washington, D.C., shoplifter are described as grossing \$15,000 to \$20,000 a year.

Criminals, says Mr. Plate, "certainly have a tremendous incentive: money. This is why criminals are winning the war on crime."

The Economic Unit of *U.S. News & World Report* computes the total cost of crime in this country at about 97 billion dollars last year—up from 51 billion in 1970 and 89 billion in 1974. Of this total, about 65 billion went to the criminals themselves in the form of illegal revenue.

Break down the crime bill according to the nation's population, and you find it averages about \$451 a year for every man, woman and child.

In 1975, the Commerce Department estimated ordinary crimes against business amounted to 24 billion dollars a year—equal to about 13 per cent of total business income before taxes. Offenses covered by that report include burglary, robbery, vandalism, bad-check writing, arson, credit-card fraud, counterfeiting and employe theft.

An Economic Unit study indicates that organized crime is the most lucrative "business" in the U.S., taking in more profits than General Motors, Exxon and Sears, Roebuck & Company combined.

Meyer Lansky, described by officials as "chairman of the board of organized crime" in the U.S., is estimated to have put together a 300-million-dollar empire from the rackets, with dealings in gambling, narcotics, loan sharking and real estate. Yet Mr. Lansky has spent only three months and 16 days behind bars, and is free today.

Odds against amateurs. It is the amateur or the part-time criminal who runs the greatest risk of being caught. The professionals tend to operate in the safer categories of law violations, such as gambling, narcotics and fraud. In such rackets, crime experts say, the professional lawbreaker has less than a 2 per cent chance of winding up in jail. For top figures in organized crime, the odds are even better.

For a closer look at crimes that attract the "career criminals"—

Gambling is the financial backbone of organized crime. It supplies seed money for a variety of other illegal oper-



HOW MUCH DO SUCCESSFUL CRIMINALS MAKE?

Estimates of gross incomes of 14 successful criminals, while still uncaught, as reported by Thomas Plate in his book, "Crime Pays!" The figures are based on the criminals' own statements and other authoritative sources. They are not represented as typical.

Criminal	Location	Annual Income
Hotel burglar	East Coast	\$ 75,000
Pickpocket	Miami	\$ 20,000
Numbers runner	Harlem	\$ 26,500
Numbers controller	Brooklyn	\$ 60,000
House burglar	Long Island	\$ 25,000
Burglar, industrial	Westchester County	\$ 75,000
Bank robber	East Coast	\$ 24,000
Shoplifter	Washington, D.C.	\$ 15,000
Drug distributor	Los Angeles	\$ 27,000
"Hit man" working on contract	Chicago	\$ 75,000
Loan shark	New York	\$125,000
Drug importer	Miami	\$165,000
Mob "lieutenant"	New York	\$125,000
Securities thief	East Coast	\$100,000

Note: Authorities point out that these estimates of gross income make no allowance for the criminal's expenses — much less the impact of a stretch in the penitentiary when caught.

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ations. Federal officials estimate that organized crime controls 75 per cent of the 40 billion dollars' worth of illegal wagers made yearly in the U.S. Total net profits from gambling operations are set at about 7 billion a year. The Internal Revenue Service calculates that illegal bets provide untaxed profits at the rate of about \$800,000 per hour.

The mainstay of the gambling combine is the "numbers runner." His role is to accept bets from people in their homes, places of employment or, perhaps, their neighborhood bar. The runner's income is based on a percentage

of his "take"—between 15 and 25 per cent of all bets accepted—plus a 10 per cent tip from the customers who win.

If a numbers runner handles \$500 in "action" each day, then his daily income would be roughly \$100, tax-free.

The numbers racket, especially popular in black neighborhoods and "blue collar" areas, is estimated to gross 10 billion dollars a year—with a whopping profit margin of around 40 per cent.

Why crime succeeds. The numbers racket illustrates one reason criminals are so successful: Many people accept or even willingly participate in criminal

CRIME'S BIG PAYOFF

(continued from preceding page)

ations. One study estimated that 2 out of 3 inner-city adults play the numbers. Millions of people smoke marijuana. For every hijacked load of goods or every piece of stolen property, a buyer stands ready—eager to get the goods at less than wholesale price.

Another high-profit racket is narcotics. According to the Drug Enforcement Administration, the average drug user, commonly known as a "junkie," needs 50 milligrams of heroin a day to satisfy his habit. The cost is about \$65 a day, or \$24,000 a year, at usual prices. There are estimated to be 100,000 to 150,000 hard-core heroin users in the U.S., making narcotics at least a 2.4-billion-dollar-a-year business.

Marijuana is the biggest seller of all illegal drugs. The Senate Internal Security Subcommittee estimates that 35 million Americans have smoked marijuana at some time in their lives, and more than 10 million are regular users.

Narcotics is almost an ideal field for the professional lawbreaker. Legitimate businesses are deterred from supplying the commodity because of its illegality. The criminal element is not. And the market is huge.

"Best of both worlds." Says Thomas Plate: "Society's hostility to the use of marijuana is so weak that it gives the drug entrepreneur the best of both worlds. On one hand, the drug can be marketed at artificially high prices because of its illegality. On the other hand, the tacit consent of the very people whom the law against marijuana was designed to protect simplifies the marketing problem and reduces overhead insofar as the police are involved."

To see why traffic in illegal drugs is so profitable, just follow a typical operation, step by step:

- An importer-wholesaler goes to Mexico and buys 5 kilograms (11 pounds) of 80 per cent pure heroin for \$50,000 per kilo (2.2 pounds)—a total investment of \$250,000.

- The wholesaler dilutes the heroin by adding milk sugar and quinine, thus turning 1 kilo into 2. He sells the 40 per cent pure heroin at \$65,000 per kilogram, making a profit of \$400,000 on the initial 5 kilos.

- The heroin is sold to several major suppliers who dilute it further, turning 1 kilo into 1.6 kilos. Then it is cut into quarter-kilo bags that sell for \$15,000 each. The suppliers' combined profits thus come to more than \$300,000 on the entire shipment.

- Finally the heroin is diluted at least once more, to about 5 per cent, by dope pushers who sell it on the street in \$5



TWO THIRDS OF ALL ARRESTS INVOLVE EXPERIENCED CRIMINALS

Proportion of repeaters among persons arrested for crimes during 1970-74—

Auto theft	79%
Robbery	79%
Stolen property	73%
Forgery	73%
Illegal weapons	72%
Murder	68%
Gambling	65%
Rape	65%
Assault	65%
Burglary	64%
Narcotics	59%
Fraud	58%
Larceny	55%
Embezzlement	28%
All others	68%
ALL CRIMES	65%

Source: Federal Bureau of Investigation

and \$10 bags. Profit to the pushers: about \$300,000 per kilo.

Another widespread operation of organized crime is loan sharking. In this, there is always a seller's market. People turn to loan sharks for fast help when banks and other legitimate lending institutions will not accept them as a safe risk.

The usual interest rate charged by a loan shark is 20 per cent per week on short-term small loans. By contrast, many usury laws limit rates on such loans to 18 per cent per year.

For large long-term loans, a common interest rate among loan sharks is 1.5 per cent per week. This yields a return of \$78,000 a year on a \$100,000 loan—an interest rate of 78 per cent.

The New York State Commission of Investigations once reported that in New York City, 121 leading criminals affiliated with five organized-crime "families" were active loan sharks and that many of them had at least a million dollars of loans outstanding.

Loan sharking is often a lever for organized crime to wedge its way into legitimate business. A businessman borrower who falls behind in his payments may be faced with the alternative of

most unpleasant treatment by mobster "goons"—even of being killed—or of making payment by giving up a part of his legitimate business.

"The scam." Bankruptcy fraud is a fast-growing method of turning big, illegal profits. This operation is known as "the scam." Approximately 250 scams are pulled off annually by crime syndicates, according to sources at the U.S. Justice Department. Each scam involves upwards of \$250,000 in merchandise or materials. How the scam works is described in the "Deskbook on Organized Crime," published by the U.S. Chamber of Commerce:

A new company is formed, headed by a "front man" who has no police record. "Nut money" of \$30,000 or so is deposited in a bank to establish credit. A few modest orders are placed with suppliers, who are paid in full—at first. Gradually, orders are increased in size and payments slow down or decline. The final step is the placement of a large order. When the goods from that order come in, they are either sold off quickly at bargain rates or concealed. The "nut money" is withdrawn. Then the scam operators vanish. The supplier is left holding the bag.

"Fence" and hijacker. "Fencing" is another big and profitable field for career criminals. Without fences to buy the stolen goods, thieves would have difficulty turning their loot into cash. During one year in New York State, there were 6,400 arrests for criminal possession of stolen property. But apparently, the risks of fencing are small. According to Mr. Plate, only 30 of those 6,400 arrested actually served time in prison.

Hijacking also seems to be a low-risk field. In New York State, in one recent year, 99.5 per cent of all hijacking arrests resulted in dismissal of charges, probation or assessment of fines.

Not every lawbreaker makes a career of crime. However, it is the "old pro," experienced in cheating the law, who is most likely to make crime pay—and professionals are the ones who commit most of the crimes. According to FBI Director Kelley: "Studies of criminal histories reveal convincing evidence that as much as two thirds of all offenses are committed by recidivists—persons who have been arrested for and convicted of crimes previously."

What is the answer to the problem of career criminals?

"One way to reduce crime," the FBI chief suggests, "is to take the profit out of crime, to make it less lucrative to those who engage in it. Or, another way of saying the same thing, we must increase the cost of crime for those who now benefit from its reward."

mony (U.S. v. Zeiger) Dr. Martin Orne asserted his belief that real-life examinations would exceed the accuracy of laboratory experiments. Empirical evidence collected by examiners, in cases verified by confessions or convictions, indicates that meaningful examinations may be expected to be accurate in the 90 per cent range. This is certainly as accurate, if not more so, than almost any other measure where human beings are involved, including medical diagnoses, psychiatry, and forensic science.

WHY DO THE COURTS REFUSE TO ADMIT POLYGRAPH EVIDENCE?

The answer is that they admit it. In many jurisdictions through stipulation between opposing counsel, polygraph evidence is freely admissible. The courts have been reluctant to admit polygraph evidence because of the honest fear that the testimony of the polygraph expert might unduly influence the jury. Thus, a 1923 decision (*Frye*) has for years been the controlling decision. However, in 1975 (U. S. v. Oliver) the Eighth Circuit Court of Appeals affirmed a decision by the District Court to admit polygraph testimony which was objected to by the defense counsel. Although not controlling in other jurisdictions, the decision will undoubtedly have an effect on future admissibility considerations. In general, the APA feels that the polygraph examiner should be able to testify as an expert witness, and that his testimony should receive the same degree of credence as that given to any other expert witness. Preliminary evidence indicates that juries are not unduly influenced by polygraph testimony.

WHY ARE SOME JURISDICTIONS TRYING TO BAN THE POLYGRAPH?

In the views of some people, the primary problem with the polygraph is not that the polygraph does not work; the problem is that it works entirely too well. There are sincere and well-meaning organizations who are strongly opposed to *any* type of investigation or preemployment check on the grounds that the privacy of the individual must reign supreme. Other powerful interests are not so idealistic, and their opposition is based on selfish interests. Both groups feel that the easiest way to secure their objectives is to ban the use

of the polygraph, and they have been the moving spirits behind much of the proposed legislation.

WHAT IS THE APA POSITION IN REGARD TO THE POLYGRAPH?

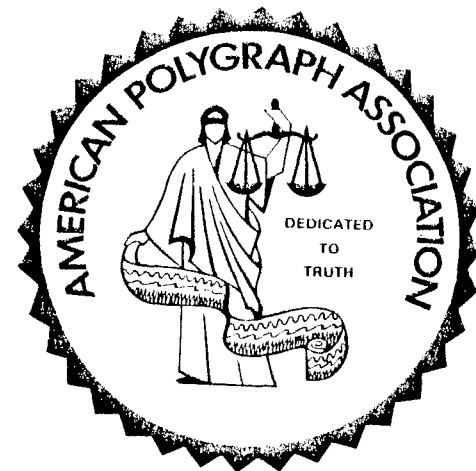
The APA logo carries the motto, "Dedicated to Truth," and we believe that our highest function is to assist in establishing truth in matters of controversy. We believe that the states should license and supervise the administration of polygraph examinations in order to assure that only competent, trained, and ethical individuals practice the combination of art and skill which constitutes a polygraph examination. While making no exaggerated claims for infallibility, we believe that there is no other investigative tool which even approaches the accuracy of a polygraph examination.

WHAT ARE THE POINTS OF CONTACT FOR APA INFORMATION?

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AMERICAN POLYGRAPH ASSOCIATION



WHAT IS THE AMERICAN POLYGRAPH ASSOCIATION (APA)?

The APA was formed in 1966 by a merger of three smaller organizations, The Academy for Scientific Interrogation, the American Academy of Polygraph Examiners, and the National Board of Polygraph Examiners. Since that time the APA has been the national representative of the polygraph field in its efforts to combat the self-serving attempts of various organizations to limit or to eliminate the use of the polygraph. The APA is incorporated in the District of Columbia as a non-profit technical, professional, and educational organization. The APA has approximately 1500 members. In addition, many other polygraph examiners are members of regional or state associations which are affiliated with the APA.

WHAT IS A POLYGRAPH?

Although a polygraph is frequently called a "lie detector," in actuality the instrument does not record directly whether a person is telling the truth or lying. Instead, the polygraph is a very sensitive instrument which records some of the changes which take place in the body during an emotional reaction. When a person tells a lie under meaningful circumstances; when the result is important to him, he cannot avoid an inward emotional response. The polygraph records the physiological changes which accompany these responses.

WHAT DOES THE APA DO?

Most of the APA activities can be grouped around five basic programs: standards, ethics and principles of practice, training, research, and publications. The basic drive of the APA is to upgrade professionalism in the field, and to assure that a competent, ethical, trained professional is available in those cases where truth is an area at issue. In addition, the APA is pledged to fight for the passage of licensing legislation by state and municipal governing bodies, and to fight against unfair legislation which would deny the right to use polygraph examinations to organizations and individuals who might wish to avail themselves of the services of APA members.

WHAT STANDARDS DOES THE APA RECOMMEND FOR THE POLYGRAPH FIELD?

The APA establishes standards for polygraph instruments. For example, the APA requires that a polygraph instrument make a permanent recording of at least three physiological patterns: pulse and blood pressure, breathing, and skin resistance. (Scientists agree that each of these body functions is affected strongly by an emotional response.) The APA opposes the use of instruments which do not make a permanent record or which record less than three physiological patterns. The APA establishes minimum standards of training and education for its members, and by implication for the polygraph field.

WHAT ARE THE APA ETHICS AND PRINCIPLES OF PRACTICE?

In general, APA members are required to maintain the highest standards of moral, ethical, and professional conduct. They are sworn to discharge their duties with complete impartiality, dignity, and respect. They recognize that their primary responsibility is to the person being examined, and they are forbidden to allow considerations of race, religion, politics, union activity, or economic status to play any part whatsoever in their examinations. They are pledged to issue an objective and unbiased report and to protect the confidentiality of the examination. A complete list of APA Ethics And Principles of Practice will be provided on request.

WHAT HAS THE APA DONE IN REGARD TO TRAINING?

The APA has taken the forefront in regard to polygraph training. The APA School Accreditation Committee examines the curriculum, the instructional staff, and the physical facilities and equipment of schools which apply for APA accreditation. APA inspectors also visit the schools at unannounced intervals to check continued compliance with APA standards. In general, APA believes that a minimum of six weeks of full-time instruction, followed by not less than six months of intern training are required to obtain basic polygraph skills. Entrance into the field normally requires a college degree, although a provision is made in unusually deserving cases for a written and practical examination, together with extensive applicable experience, to substitute for the degree requirement.

WHAT IS APA DOING ABOUT RESEARCH?

As a practical matter, the APA has been able to do little in the way of financing or directly sponsoring research. As a relatively small organization with nominal dues to its membership, the APA has never had the funds to undertake expensive research programs. On the other hand, the APA has served as a consultant to the Department of Defense, to the Law Enforcement Assistance Administration, and to other federal, state and academic institutions which were considering or conducting polygraph research. At the present time two APA members are in the process of preparing a definitive polygraph bibliography, which should prevent costly and wasteful duplication of research into polygraph validity, reliability, and methodology. The APA and its members participate in numerous workshops and seminars, during which polygraph professionals engage in the exchange of data which will improve the skills of those in attendance.

WHAT DOES THE APA DO IN THE WAY OF PUBLICATIONS?

The APA is practically the sole source of information concerning the polygraph. *Polygraph*, the journal of the APA, publishes scholarly articles in the polygraph field, and reprints, when available, research materials relating to the polygraph in other scientific journals. The *APA Newsletter* publishes shorter articles and announcements which are of interest to polygraph professionals. Both publications are provided to APA members and also have wide circulation to universities, libraries, and individuals who are interested in the polygraph. The APA frequently publishes research papers delivered in seminars and workshops which are of interest to its members. The APA estimates that approximately half of its annual budget is expended on publications.

HOW ACCURATE IS THE POLYGRAPH?

It is almost impossible to determine in real-life cases exactly how accurate the polygraph is because of the impossibility of knowing absolute truth in such cases. In laboratory role-playing experiments, with reasonable attention to motivation, research psychologists have achieved accuracy of over 80 per cent. In sworn testi-



AMERICAN POLYGRAPH ASSOCIATION

CODE OF ETHICS

The Members of the AMERICAN POLYGRAPH ASSOCIATION hold themselves bound, individually and collectively, to the following Code of Ethics:

- I. To maintain the highest standards of moral, ethical and professional conduct; to be governed by laws of equity and justice in the performance of all functions.
- II. To respect the inherent dignity of all mankind; to deal justly, fairly, and impartially with each individual, irrespective of social, political, racial, ethnic or religious considerations, economic status, or physical characteristics.
- III. To discharge professional duties and obligations with independence, dignity, and self-respect; to keep all decisions and reports scrupulously free from any personal financial, political, fraternal, social or other extraneous influences.
- IV. To refrain from false or misleading advertising; to accept no remuneration for services rendered unless such be fair and reasonable; to decline to represent knowingly both sides of an area at issue, except by express permission of those concerned, given after a full disclosure of the facts; to represent with undivided fidelity.
- V. To refrain from express or implied public criticism of any Member of AMERICAN POLYGRAPH ASSOCIATION, except as may be required by due process of law, placing the welfare and advancement of the Association and the polygraph profession above personal desires and ambitions.
- VI. To recommend for membership in the AMERICAN POLYGRAPH ASSOCIATION only those persons who are believed to be fully qualified for the class of membership for which they are applying; who subscribe completely to the moral and ethical Standards and Principles of Practice of the Association; and who will strive in every way to be a credit to the polygraph profession.
- VII. To support to the best of their ability the professional goals of the AMERICAN POLYGRAPH ASSOCIATION: to support scientific research in the polygraph field; to contribute to better community relations; through word and deed to elevate the status of the polygraph profession.

EXHIBIT ¹⁴⁵⁹ C

STANDARDS AND PRINCIPLES OF PRACTICE

In order to achieve unity of purpose, to assure a clear concept of obligations to each other and the profession, and to provide for the continuing welfare and protection of the general public, all members of the AMERICAN POLYGRAPH ASSOCIATION have agreed to abide by the following Standards and Principles of Practice.

1. A Member shall recognize the fact that his primary responsibility must be to the person who has volunteered for a polygraph examination, regardless of the circumstances which created the need for the examination.
2. Recognizing that a polygraph examination cannot be conducted on a person against his will, no Member will attempt to conduct an examination when he has reason to believe the examinee has been subjected to coercion or duress. Further, no Member shall conduct any examination on a person without first advising the examinee of the rights enjoyed by every American citizen against self-incrimination and invasion of privacy.
3. (Amended 6/75 - 8/76) No Member shall initiate an examination on any person unless he uses an instrument which makes a permanent simultaneous recording on a moving chart of at least three (3) physiological tracings, the pneumograph, the cardio-sphygmograph and the galvanic skin response. This shall not preclude the recording of additional physiological phenomenon on the same charts. No Member shall conduct an examination on an instrument wherein the manufacturer has not supplied information for self-calibration and sensitivity standards for that instrument. Every Member shall calibrate his instrument periodically and keep a record of the dates of calibration. No Member shall record any psychological or physiological phenomenon with an instrument or any part of an instrument without the subject being aware that their physiological or psychological phenomena are being recorded. The provisions of these paragraphs shall be subject to such additional indices as may be required to comply with any State or Federal licensing regulation.
4. No Member shall conduct an examination on any person whom he believes to be physically or psychologically unfit for testing. In case of doubt as to the propriety of administering a test in any given situation, the Member shall seek expert guidance from a competent medical or psychological authority prior to testing.
5. No Member shall render a conclusive verbal or written decision or report based on chart analysis without having administered two or more polygraph charts.
6. No Member shall terminate a polygraph examination without affording the examinee a reasonable opportunity to explain and to eliminate any reactions which are evident on the charts. Further, no Member shall accept the explanation of the examinee for a chart response without verification.
7. No Member shall, unless professionally qualified to do so, include in any written report any statement purporting to be a medical, legal or psychiatric opinion or which would infringe upon areas under the cognizance of professional in those fields. This shall not preclude the examiner from describing the appearance or behavior of the examinee if this is pertinent to the examination, as long as the examiner refrains from offering any diagnosis which he is professionally unqualified to make.

8. A Member shall not conduct an examination where he has reason to believe the examination is intended to circumvent or defy the law.
9. A Member shall not conduct an examination where he has reason to believe the examination is intended to interfere with or to prevent the lawful organizational activities of a labor union.
10. A Member shall not solicit or accept irregular fees, gratuities, or gifts which may be intended to influence his opinion or decision. Further, no Member shall set a fee for professional polygraph services; contingent upon the findings or results of such services; nor shall he increase any initial fee as a direct result of his findings during any polygraph examination.
11. A Member shall not knowingly issue or permit his employees to issue a polygraph examination report which is misleading, biased, or falsified in any way. Each polygraph report shall be a factual, impartial and objective account of the pertinent information developed during the examination and the examiner's professional conclusion, based on analysis of the polygraph charts.
12. A Member shall be guilty of gross negligence if it be proven that he did not in fact obtain data reported as factual in any polygraph report. Further, it shall be deemed highly unethical for any examiner to express verbally or in writing a test conclusion which is based solely upon subjective opinion of personal assumption. This does not preclude a professional judgment based on analysis of the polygraph charts, in the absence of substantive admissions by the examinee.
13. A Member shall not publish nor cause to be published any false or misleading advertisements relating to the polygraph profession.
14. A Member shall not offer testimony concerning the charts or conclusions presented by another member unless he is thoroughly familiar with the techniques and procedures used by the other Member. This paragraph shall not prohibit a Member from testifying concerning his independent examination of the same examinee.
15. Any person who is convicted of a felony or a crime involving moral turpitude shall be ineligible for any class of membership in the AMERICAN POLYGRAPH ASSOCIATION.
16. A Member shall abide by decisions and recommendations officially adopted by the AMERICAN POLYGRAPH ASSOCIATION at any regularly scheduled meeting.

STANDARDS AND PRINCIPLES OF PRACTICE AS ADOPTED
BY THE NEVADA POLYGRAPH ASSOCIATION

In order to achieve unity of purpose, to assure a clear concept of obligations to each other and to the profession, and to provide for the continuing welfare and protection of the general public, all members of the NEVADA POLYGRAPH ASSOCIATION have agreed to abide by the following Standards and Principles of Practice.

- objection*
(Putnam)
1. A member shall recognize the fact that his primary responsibility must be to the person who has volunteered for a polygraph examination, regardless of the circumstances which created the need for the examination.
 2. No member shall conduct an examination on any person unless he uses an instrument which makes a permanent simultaneous recording on a moving chart of at least three physiological tracings; the pneumograph and cardio-tracing, to also include psycho galvanic tracing; this shall not preclude the recording of additional physiological phenomena on the same charts. The provisions of this paragraph shall be subject to such modification as may be required to comply with any State or Federal licensing regulation.
 3. No member shall conduct an examination on any person whom he believes to be physically or psychologically unfit for testing. In case of doubt as to the propriety of administering a test in any given situation, the member shall seek expert guidance from a competent medical or physiological authority prior to testing.
 4. No Member shall render a conclusive verbal or written decision or report based on chart analysis without having administered two or more polygraph charts.
 5. No member shall, unless professionally qualified to do so, include in any written report any statement purporting to be a medical, legal or psychiatric opinion which would infringe upon areas under the cognizance of professionals in those fields. This shall not preclude the examiner from describing the appearance or behavior of the examinee if this is pertinent to the examination, as long as the examiner refrains from offering any diagnosis which he is professionally unqualified to make.
 6. A member shall not conduct an examination where he has direct knowledge that the examination is intended to circumvent or to defy the law.
 7. A member shall not solicit or accept irregular fees, gratuities, or gifts which may be intended to influence his professional polygraph services contingent upon the findings or results of such services; nor shall be increase any initial fee as a direct result of his finds during any polygraph examination.
 8. A member shall not knowingly issue or permit his employees to issue a polygraph examination report which is misleading, biased, or falsified in any way. Each polygraph report shall be factual, impartial and objective account of the pertinent information developed during the examination and the examiners professional conclusion, based on analysis of the polygraph's charts.
 9. A member shall be guilty of gross negligence if it be proved that he did not in fact obtain data reported as factual in any polygraph report. Further, it shall be deemed highly unethical for any examiner to express verbally or in writing a test conclusion which is based solely upon subjective opinion or personal assumption. This does not preclude a professional judgement based on analysis of the polygraph charts, in the absence of substantive admissions by the examinee.
 10. A member shall not publish nor cause to be published any false or misleading advertisements relating to the polygraph profession.



LARRY R. HICKS
District Attorney

Washoe County Courthouse
South Virginia and Court Streets
P.O. Box 11130 • Reno, Nevada 89510

April 5, 1977

Assembly Judiciary Committee
Legislative Building
Carson City, Nevada

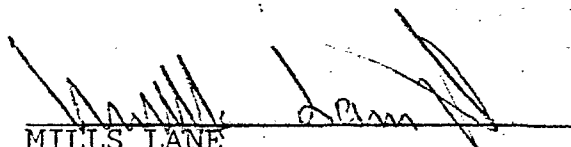
Re: Assembly Bill No. 527

Gentlemen:

I would like to give my personal endorsement to the above referenced bill and the purpose to which it is directed.

Polygraph examiners and their work have been used increasingly by law enforcement and prosecutors in sifting through evidence to find the truth. It is my opinion that in my "legal lifetime" the results of polygraphs will be universally accepted in Court on significant issues and probably on the ultimate question. It seems to me that the regulation of the examiner and his work is of critical importance and because of that fact I would personally wholeheartedly support the above referenced bill.

Sincerely,


MILLS LANE
Chief Criminal Deputy

ML/lc

1463

EXHIBIT D

GUEST LIST

NAME

REPRESENTING

IF YOU WISH TO SPEAK

Pro Con

(Please print)

27
518
203
AB
739
5518
5518
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527
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519
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527
2239
740
40
527
78
78

	(Please print)		Pro	Con
27	★ KEN FOLWER	785-2151 RENO POLICE DEPT / I.L.I.C. BOARD		X
518	FRANK SUE DEL. PAPA		X	
203	ED BOWERS ★	GAMING INDUSTRY ASSOC.		X
AB	FRANK JOHNSON	HILTON HOTELS CORP.		X
739	R & E Cahill	HEROLD RESISTANCE		X
5518	J. McLoth	LV METRO POLICE		X
5518	HARLES LEE	NEVADA POLYGRAPH ASS.		X
518	FRANK P. CARMEN	CLARK COUNTY SWEDE COURT		X
527	AL WITTENBERG	NW. POLYGRAPH ASSOC.	X	
527	RICHARD L. PUTNAM	NW. POLYGRAPH ASSOC. AFA	X	
519	WALTER F. ATWOOD	APA	X	
517	RUSS JONES	NEV. POLYGRAPH ASSN.	X	
521	Carroll Sauer	DIV. OF MATH & I.I.P.	X	
527	George D. Wendell	State Drug Trade & Narcotics		
2239	DAVID R. FRANK	JUDICIAL PLANNING UNIT	X	
740	Jim McCreary	Dept. Motor Vehicles	X	
40	Bob Gagner	SNEA	X	
527	Quinn Johnson	SNEA		
78	Dean Brown	Nevada Bankers Assoc		—
78	Jim Whitaker	Nevada Bankers Assoc		—