

MEMBERS PRESENT:

Chairman Banner  
Vice Chairman Thompson  
Mr. Bennett  
Mrs. Cafferata  
Ms. Foley  
Mr. Hickey  
Mr. Jeffrey  
Mr. Rackley

MEMBERS ABSENT:

Mr. Rhoads (excused)

GUESTS PRESENT:

See attached guest list.

WITNESSES TESTIFYING:

James D. Salo, Appeals Officer, Department of Administration  
Jack Kennedy, Washoe County School District  
Claude Evans, Secretary Treasurer, AFL-CIO  
Hal Curtis, Labor Representative, NIC  
James Lien, Business Manager, Las Vegas Metropolitan Police  
Department  
Chuck Neely, Clark County School District  
Danny Thompson, Assemblyman, District 21, Henderson  
Larry Irvine, Las Vegas Police Association  
Al Angele, California Organization of Police and Sheriffs  
Will Diess, Vice President, International Union of Police  
Richard Siegel, American Civil Liberties Union  
O. C. Lee, President, Nevada Conference of Police and Sheriffs  
Tommy J. Burns, President Police Officer's Association, Henderson  
Jack Sever, Representative, Teamsters Local 995  
Bob Zanger, Hotel-Motel Local 86  
Charles Munson, Harrahs  
Lon Chaney, Assemblyman  
Carole Vilardo, Citizens for Private Enterprise  
Fred Davis, Greater Reno/Sparks Chamber of Commerce, Greater  
Las Vegas Chamber of Commerce  
Barbara Durbin, Deputy Chief, Parole and Probation  
Jim Berry, City of Reno, Personnel Division  
Vince Swinney, Under Sheriff, Washoe County  
Richard Putnam, Sergeant, Washoe County Sheriff's Department  
Russ Jones, Nevada Polygraph Association  
Robbins Cahill, Nevada Resort Association  
Jerry Higgins, Gaming Industry Association  
George Vargis, General Counsel, Nevada Bankers Association  
Tommy Parker, Vice President and Director of Security for Valley  
Bank  
Michael de la Torre, Director, Department of Law Enforcement  
Assistance  
Larry McCracken, Director Employment Security Department

Witnesses Testifying: (Continued)

Robert Ostrovsky, Director of Industrial Relations, MGM Grand Hotel, Reno

Pete Kelley, Nevada Retail Association

Charles Aplin, Nevada Licensed Polygraph Examiner

Steve Cloud, Owner, Cloud's Cal Neva Hotel

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Chairman Banner called the meeting to order at 5:10 P. M. and announced that the committee would hear SB-191, AB-229, AB-233 and continuation of AB-208.

SB-191: Removes limit on number of appeals officers.

James D. Salo, Appeals Officer for the Department of Administration, told the committee that the bill was introduced at their request to remove the statutory limits on the number of appeals officers that may be appointed by the Governor. There is currently one appeals officer in Las Vegas and the work load there is as high as 240 cases in a six month period. The hearings are longer than in the past and more hotly contested by all parties, employer, claimant, NIC or in some cases the self insured employers.

Mr. Salo noted that they have asked this bill be effective upon passage by both houses and approval by the Governor. They will immediately fill the slot in Las Vegas and have enough funds in the current fiscal year budget to accomodate a third appeals officer.

Chairman Banner commented that he has personally observed the tremendous workload and backlog of the appeals officers and that Mr. Salo spends much time in Las Vegas helping in addition to his own cases in the north.

Jack Kennedy, Washoe County School District, supports the bill and said that in his defense work for the Washoe County School District in NIC matters he has observed that the hearings take longer because of the participation both with claimant counsel and state supportive counsel as well as employer counsel and there is a tremendous backlog in terms of decisions coming out.

Claude Evans, Secretary-Treasurer, AFL-CIO, supports the bill and told the committee that the average delay of seven months from the time of the hearing until the decision was rendered was not unusual and the need for more appeals officers was genuine.

Hal Curtis, Labor Representative, NIC, told the committee that the NIC supports the addition of another appeals officer.

AB-229: Limits eligibility of guards at school crossings for unemployment compensation.

James Lien, Business Manager for the Las Vegas Metropolitan Police Department, explained that the purpose of this bill is to exempt school crossing guards from the unemployment compensation. They are nine month employees and their work coincides with the school year. If the guards were employees of the school district they would be exempt from unemployment compensation as NRS 612.432 precludes eligibility for school district employees when off for summer vacations or extended periods of time when they are assured of reemployment the following school year. The Clark County District Attorney's office in an opinion dated March 4, 1980 said that school crossing guards performed duties which logically place them within the employment jurisdiction of a school district. Mr. Lien presented a letter of support for AB-229 from Wayne W. Bennett, Chief of Police, attached hereto as EXHIBIT A.

Mr. Lien stressed that they did not want the school district to assume the burden of the \$700,000 school crossing guard program. He said they should receive no more benefits than other nine month employees who work for a school district and urged passage of AB-229 which is to be effective upon passage and approval.

Chairman Banner asked Mr. Lien about the termination and rehiring process and Mr. Lien replied that they are not even taken off the roll but are held and notified of employment in the fall.

Larry McCracken, Director, Employment Security Department, told the committee the purpose of NRS 612.432 is to deny benefits to school employees during vacations or holiday recesses. AB-229 singles out for special mention "employment as a guard at a school crossing." Mr. McCracken said that if the legislature saw fit to enact such a change, that NRS 612.434 should be amended as well because it addresses the denial of benefits between school terms. See the testimony attached hereto as EXHIBIT B.

Mr. Hickey asked if the school crossing guards are allowed to draw unemployment if they are retired and drawing social security. Mr. McCracken said they currently are and that there is a federal requirement for all states to implement a provision to offset unemployment benefits by retirement benefits.

Chuck Neely, Clark County School District, supports AB-229 and supports the police department keeping the crossing guards under their jurisdiction.

Nick Wagner, Engineers Local 30, told the committee that his experience shows that school crossing guards are not told if they will be hired for the following school year in spite of the fact that they are not given a termination notice.

AB-233: Prohibits employer's use of polygraph on applicants for employment or employees.

Vice Chairman Thompson, Assemblyman from District 21, Henderson, told the committee that AB-233 was his bill and came about as the result of forty employees at the Sahara Hotel in Las Vegas being fired. He stated that these people were fired not because they were guilty of some crime but because they refused to take the polygraph examination. He presented newspaper articles from the Las Vegas Sun dated December 3, 1980 and February 25, 1981 attached hereto as EXHIBITS C and D, respectively.

Mr. Thompson said that he was amazed at the violations of the peoples rights exercised under the auspices of polygraph legislation. He stressed the effects of illness and drug upon the tests and also the questionable proficiency of the examiners rendering "inconclusive determinations" made as a result of the polygraph examinations. He read his prepared testimony to the committee, attached hereto as EXHIBIT E.

Mr. Claude Evans, AFL-CIO, supports this bill. He told the committee that a lie detector test presently can be used to deprive an individual of employment but it cannot be used or admitted into a court of law. He said that for a person to be deprived of employment because of a test that has been proven to be unreliable is the height of injustice. He presented the committee with a copy of his testimony and an article written by David Lykken, attached hereto as EXHIBIT F.

Larry Irvine, President, Las Vegas Police Protective Association, supports this bill. Mr. Irvine told the committee that he has personally seen instances where two polygraph examiners within his own department could not agree on the truthfulness of another police officer's answers, very seldom will two polygraph operators read the same chart the same way. He told the committee that the person being examined is at the mercy of the polygraph examiner.

Mr. Hickey asked if the questions asked by a polygraph examiner had a political conotation and Mr. Irvine said a police officer normally would not be required to take an examination unless it involved some criminal activity.

Mr. Irvine stressed the point that in the investigation of a crime, if the suspect declines to take the polygraph examination he is not forced to do so. However, he went on to say, public employees do not have the same right of refusal but must submit to the testing.

Al Angele, California Organization of Police and Sheriffs, supports this bill. Mr. Angele told the committee that a similar bill was passed in California in 1976, which incorporated into it a section on a polygraph and other related areas in regards to abuses. This California Code 3307 includes the right to political activity, reasonable interrogations, provisions in the area of unlawful locker searches and primarily a section on polygraph examinations, attached hereto as EXHIBIT G. He also submitted a copy of the Aegngst Case which is attached hereto as

EXHIBIT H dealing with the inadmissability of polygraph examinations.

Will Diess, Vice President of the International Union of Police, supports this bill. He presented the committee with a copy of a letter from the North Las Vegas Police Officers Association, Inc., supporting this legislation, attached hereto as EXHIBIT I.

Mr. Diess told the committee that the problem surrounding a civil service employee is that if he has been charged with a violation, even though it was never proved and even though he was never tested by a polygraph examiner, his personnel file will always reflect this blemish on his character. He also expressed the undesirability of having one's own peers administer the test; these are the people you work with daily and your relationships with them may or may not be good. This would reflect in the testing and that is not an objective examination.

Richard Siegel, American Civil Liberties Union of Nevada, supports this bill. Mr. Siegel told the committee that they have had difficulties in convincing the federal courts to get involved in the area of polygraph testing, therefore he said that the relief will have to be from the state legislatures. He pointed out that there is a narrow core of constitutional rights that have already been applied to the private sector as well as to the public.

Mr. Siegel explained that the ACLU thinks that the intrusion on personal liberty on privacy is great in the polygraph area because of the added element of coercion. Coercion is applicable in signing waivers relating to polygraph testing.

O. C. Lee, President Nevada Conference of Police and Sheriffs, supports this bill. He agreed with the preceding testimony, especially pertaining to police officers; his organization represents 1,100 members.

Tommy J. Burns, President of the Police Officers Association, Henderson, supports this bill. He told the committee that on two occasions an officer was found to be untruthful by polygraph examiners and subsequently had to go out and pay for his own polygraph examiner which ruled the other way on his testimony. Since that time, through contract negotiations, they have put into their police rules and regulation that no officer will be compelled to submit to a polygraph examination.

Jack Sever, Representative for the Teamsters Local 995 for Lander County Sheriff's Department, Mineral County Sheriff's Department and the Reno Police Protective Association, supports this bill. He told the committee that in connection with the Secret Witness Program in Reno and Lander County protection for the witness is provided. However, a police officer was required to take a polygraph test because of information provided by a secret witness over the telephone. The police officer was not given the same protection that the secret witness was accorded.

Bill Bunker, Federated Firefighters of Nevada, supports AB-233 and strongly urges its passage by the committee.

Bob Zanger, Hotel-Motel Restaurant Employees and Bartenders Union Local 86, Reno, Nevada, AFL-CIO, supports this bill. He referred to employees of Harrahs who were fired for refusal to take a polygraph examination. A copy of the newspaper article referring to this incident is attached hereto as EXHIBIT J.

Charles Munson, Harrahs, told the committee that he thought the preceding speaker mixed up Harrahs with the Sahara because his chief of security accompanied him to the meeting and said that he has never conducted a polygraph examination.

Lon Chaney, Assemblyman from District 7, testified that he was one of the co-sponsors of AB-233 and was prepared to testify but in the interest of time just went on record as totally supporting the bill.

Chairman Banner said that since there was no further testimony in support of the bill, the committee would now hear testimony in opposition of AB-233.

Carole Vilardo, Citizens for Private Enterprise, opposes AB-233. She expressed to the committee that in the previous comments in support of this bill, one of the problems seemed to be the lack of qualified polygraph examiners. Mrs. Vilardo suggested that a solution would be to require qualified examiners. Most small businesses hire polygraph examiners, even though it is a costly proposition for the small businessman. She thinks polygraph testing is effective in weeding out undesirables when there is a genuine discovery of missing money or other possible crime.

In response to a question from Chairman Banner, Mrs. Vilardo, said although she had no direct knowledge of an innocent person being accused as guilty based upon the results of an inaccurate polygraph examination, she was sure there was the possibility of that occurrence in the function of any machine. She pointed out that computers often make mistakes because of people-caused errors but we do not throw away the computers. The same is true of polygraph machines, people make mistakes, but we still need this assistance in the function of industry.

Fred Davis, Greater Reno/Sparks Chamber of Commerce, Greater Las Vegas Area Chamber of Commerce, opposes this bill. He told the committee that his assessment of the real problem is that there is thievery, people breaking job rules and this misconduct adds a great cost to everyone, including the consumer. White collar crime amounts to over \$10 billion and that is the main problem we should address. He pointed out that prospective employees are not forced to apply for jobs which require polygraph testing. An honest employee should freely submit to a polygraph examination.

Mr. Thompson stated to Mr. Davis that if an honest employee refuses a polygraph test he then places himself in a position of being insubordinate to an employer. Most employers would terminate an employee on the grounds of being insubordinate. Mr. Davis replied that if the employee knows the possibility of a polygraph examination is a pre condition of employment, then the employee knows before accepting the job that a polygraph examination may be required and has the option of accepting or rejecting that position of employment.

Jim Hartshorne, Reno Police Department, opposes the bill. He told the committee that they utilize polygraph examinations in four areas, internal investigation complaints, criminal investigation complaints, the complaints outside the department against police officers and in hiring practices. He mentioned that in addition to all the other examinations required at the time of hiring, the polygraph testing is a key issue in pre-employment screening. The moral character, criminal activity and background of law enforcement applicants must be accurately obtained and polygraph testing is viewed as an important method of obtaining otherwise hidden information.

Mr. Hartshorne said that out of 600 applicants, 162 passed all the required examinations up to the polygraph testing. Upon the administration of the polygraph examination, 59 failed. Fifty of them failed by admissions prior to being actually hooked up to the machine. Admissions included being involved in armed robberies, sexual activity with an immediate member of the family (incestuous) and possession of drugs. He told the committee these are people who otherwise might have been hired and given positions of public trust. Mr. Hartshorne explained that the polygraph examiner in their department has a doctorate in behavioral sciences and is a Certified Polygraph Examiner.

Mr. Hartshorne said in closing that within the organization of the Reno Police Department there is a document entitled "Officer's Rights Under Investigation". This has been in use for approximately five years and they have never felt the need to legislate these rights into the statutes. A letter from the Assistant Chief of Police, Frank Better, and a copy of the "Officer's Rights Under Investigation" are attached hereto as EXHIBIT K.

Mr. Thompson asked Mr. Hartshorne if he could really tell the moral character of a person by the polygraph testing and Mr. Hartshorne replied that he believed that information could be perceived by the questions that are asked.

When Mr. Hickey asked if there were questions of a political nature involved in the testing, Mr. Hartshorne answered no questions of a political nature were ever asked. He told Mrs. Cafferata that the polygraph examiner is not a police officer who is employed by the City of Reno.

Ms. Foley asked if these individuals were ever retested for pre-employment if they failed the polygraph examination and Mr. Harts-horne replied that it would depend upon what type of evidence or admission was found as a result of the examination.

Barbara Durbin, Deputy Chief, Parole and Probation, opposes the bill. She stated that their department does not use the poly-graph testing in their hiring practices but expressed the thought that they probably should do so. She noted that two of the last four persons who failed their probationary period with the depart-ment were terminated because things surfaced regarding their character and past which made them undesirable as peace officers. This could have been avoided had they used the polygraph. She told the committee that the polygraph would be a valuable tool in their investigations.

Barbara Durbin said the department would propose an amendment to this bill in the event it is passed. The amendment would exempt law enforcement agencies or those agencies who perform law en-forcement functions as was done in California.

Jim Berry, City of Reno, Personnel Director, opposes the bill. He told the committee that the City of Reno does not support the bill and approximately one month ago they started an in-house study on the policy surrounding the polygraph procedures and practices employed. The information they have obtained from all over the United States, starting with the Department of Justice down to the local level, reveal that the recommendations are that sworn police officers be polygraphed prior to employment. They will also recommend to the City Council and the City Manager that certain civilian employees within the police department who have access to sensitive and classified information of a criminal nature that may be part of an on-going investigation be poly-graphed prior to employment.

Vince Swinney, Undersheriff, Washoe County, opposes the bill. He wished to relate a personal experience to the committee in regards to this legislation. In 1960 he was a patrolman working graveyard shift out of the Juvenile Division. There were six officers within the department who were committing burglaries, and all of the officers on the graveyard shift had the same oppor-tunity and the means to commit the burglaries, thus all were under suspicion. The officers were requested to take a poly-graph test and he was one of the first to comply and was cleared. He spent the next 30 days with another detective out of the District Attorney's Office conducting an internal investigation of his own department. Mr. Swinney said he did not regard the polygraph testing as a degrading experience but rather a means to determine a clean bill of health.

Mr. Swinney told the committee that for the past several years the average of undesirable applicants has been in excess of 40 percent with regard to the polygraph experience. The vast



majority of pre-employment polygraph examinations were not even needed as the applicants admitted to wrong doing prior to the time of the actual polygraph test being conducted.

Mr. Thompson asked why polygraph examinations are not admissible evidence in a court trial. Mr. Swinney replied that he thought they were admissible under certain circumstances and Mr. Thompson noted that the polygraph examination findings must be agreed upon by both parties before being admitted as evidence.

Richard Putnam, Sergeant, Washoe County Sheriff's Office, opposes the bill. Mr. Putnam has been a polygraph examiner with the Washoe County Sheriff's Department for six years. From January, 1978 through February, 1981, he has conducted 429 polygraph examinations, 50.35 percent of those people tested were not accepted by the department for employment. Only two instances of disqualification were based solely upon the polygraph charts and in those two cases there were general admissions of deception. In all other instances the disqualifications were based upon admissions made by the applicant either before or following the actual examination.

In response to a question from Mr. Hickey, Mr. Putnam explained that prior to a polygraph examination there is a pre-questioning period where questions can be formulated in such a manner so that the individual can be truthful. Certain information is obtained for the formulation of proper questioning. He explained to Mr. Hickey that certain personal and political questions are asked. Political questions are limited to the applicant's involvement with militants, dissidents, or extremist groups such as American Nazi Party, etc.

Mr. Putnam stressed to the committee that no questions are ever asked about union activities as it is a violation of the standards of ethics of the American Polygraph Association to ask any questions concerning organized labor activities.

There was an exchange among the committee members and Mr. Putnam as to what constitutes an extremist organization and Mr. Putnam read to the committee the questions he actually asks the applicant in pre-employment examination.

Ms. Foley asked how long the pre-examination questioning, polygraph examination and post questioning take and Mr. Putnam replied about three hours.

In response to Mr. Bennett's question of his educational background, Mr. Putnam told the committee that his formal education includes and associate degree in criminal justice.

Russ Jones, Chairman of the Board of Nevada Polygraph Association, Past President of the Nevada Polygraph Association, member of the American Polygraph Association, and has been a licensed polygraph examiner in Nevada for ten years. He opposes the bill.

Mr. Jones referred to the polygraph examinations that were the subject of the newspaper articles about the Sahara Hotel investigations in Las Vegas, and told the committee that he was one of the polygraph examiners assigned to that particular matter. He said earlier testimony had indicated that 40 people were fired as a result of refusal to take a polygraph examination or failed the examination. Mr. Jones wanted to point out that over 500 people at the Sahara in Las Vegas were cleared of any possible further burden of suspicion. Without divulging results or any information pertaining to the polygraph examinations, he wanted to strongly suggest to the committee an overwhelming majority of people that he talked to who were subjects of the investigation and testing felt that were treated in a courteous and dignified manner and that the examinations were conducted fairly. Most of the people thought the polygraph examinations significantly lifted the cloud of suspicion from them.

In response to questioning from Mr. Jeffrey and Mr. Hickey pertaining to the Waiver and Consent Forms used in connection with the polygraph testing, Mr. Jones stated that the language used is fairly standardized. He told the committee that he would submit Waiver and Consent Form used by him to the committee.

Robbins Cahill, Nevada Resort Association told the committee that he wanted to go on record as opposing this bill.

George Vargis, General Counsel for the Nevada Bankers Association, is opposed to the bill. He asked to introduce three of the top security executives of the First National Bank, the Nevada National Bank and the Valley Bank who offered to explain to the committee the problems that the banks have with reference to AB-233.

Tommy Parker, Vice President and Director of Security for Valley Bank, retired FBI agent of 27 years service with the bureau. He told the committee that he was speaking for the three above named banks and opposed the bill.

Mr. Parker stated that the polygraph is used as a condition of pre-employment in critical areas, people handling large sums of money. This is not extended to tellers behind the counter. Additionally, polygraph is used in the new service of automatic teller machines because when the machine runs out of money at 11:00 P. M. there are individuals on call who might handle up to \$100,000. Polygraph is used in the investigations of missing money and have found it to be of great assistance. He told the committee that they have no in-house polygraph operators but use outside licensed polygraph examiners.

Michael de la Torre, Director, Department of Law Enforcement Assistance, opposes the bill. He presented to the committee information regarding the policy for use of the polygraph instrument, attached hereto as EXHIBIT L.

He stated that his department responds to requests for the use of the polygraph by the Attorney General, any sheriff, Police Chief or District Attorney within the state for criminal investigations.

Mr. de la Torre added that his department uses the polygraph as a pre-employment tool for their own agency. Law enforcement personnel should be held to a higher standard of trust and he stressed four things the department looks at; honesty, perversion, sadism and hidden felonies. He told the committee that when administering polygraph tests, they adhere rigidly to standards that have been set out by the Supreme Court relating to specific questions about duties and the answers cannot be used in any subsequent criminal prosecution, in effect they do not ask anyone to waive any Fifth Amendment rights and finally the penalty for refusing may be dismissal.

Robert Ostrovsky, Director of Industrial Relations, MGM Grand Hotel, Reno, opposes the bill. He told the committee they use polygraph examinations in pre-employment for specific jobs. The jobs he outlined are; cage, locksmith, cashier, cage clerk, soft count and coin wrapper. He said they have found the reason most people fail the polygraph is that they falsify their employment application.

Mr. Ostrovsky stated that they also give polygraph examinations in special circumstances such as money missing from the count, large window shortages in the cage, missing cards, missing keys from the locksmith's department, large cash drawer shortages and occasionally employees request to take a polygraph test while undergoing internal board of adjustment procedures.

Mr. Ostrovsky asked this statement of policy regarding polygraph examinations be read into the record:

"The MGM believes that with respect to a limited number of job classifications involving the handling of large amounts of cash the use of polygraph tests under strictly controlled conditions provides a quick and reliable method for verification of information furnished on applications for employment and for annual review of work performance, therefore it is our policy to use polygraph tests as an aid in confirming an applicant's qualifications for certain highly sensitive job classifications, for annual review of work performance and in special circumstances.

The MGM requires its examiners to administer standardized tests to insure that all persons are fairly

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and equitably tested. The questions will relate solely to job related areas of concern no matter where and by whom tested. Prior to the test, persons tested will be advised concerning matters that will be covered by the test. The results and the answers will not be used in any criminal proceedings.

With full knowledge and understanding of the above, I hereby declare that I voluntarily consent to undergo a polygraph test prior to my employment and if hired I voluntarily consent to undergo a polygraph test on an annual basis or in special circumstances. Failure to sign this statement and the employee will not be hired."

Mr. Ostrovsky stated that he has never had an employee refuse to sign this polygraph statement at the time of hire.

Steve Cloud, Owner of Cloud's Cal Neva Hotel, opposes this bill. Mr. Cloud said the committee may not understand that a gaming institution pays 5 ¼ tax on the gross revenue and that if this bill passes it will cost Nevada millions of dollars.

Mr. Cloud told the committee that about 45 days ago a scam took place at the Cal Neva. Several people were under suspicion, one of those being the shift boss, a man that was suspected to be the least likely person to steal. He took and failed the polygraph test and afterwards he admitted that he was involved in the \$8,500 scam. Without the polygraph this man would have been cleared and the other floor man who was under suspicion would have been fired. The second man took the polygraph test and passed. Mr. Cloud expressed the thought that polygraph tests protected the innocent.

Mr. Cloud asked the committee why there were no little people testifying at the hearing such as waitresses, truck drivers, cooks and dealers.

Chairman Banner and Vice Chairman Thompson informed Mr. Cloud that they represent many of the so called "little people" in the State of Nevada by their presence at the Nevada State Legislature.

Pete Kelley, Nevada Retail Association, opposes the bill. Mr. Kelley read his prepared statement to the committee, attached hereto as EXHIBIT M. Retailers estimate their loss of one third of profits by theft from both consumers and employees. Polygraph examinations are a necessary tool for the investigations of cases of suspected thefts. Retailers should be allowed to use these tests if they deem it necessary.

Charles Aplin, Licensed Polygraph Examiner, member of American Polygraph Association and Vice President of the Nevada Polygraph Association, opposes the bill. He presented prepared testimony on behalf of the Nevada Polygraph Association attached hereto as EXHIBIT N. In addition he presented five letters from employers in Clark County opposing the bill attached hereto as EXHIBIT O.

Mr. Aplin told the committee that due to the late hour he would not read from his prepared testimony but would like to make himself available for questioning and to comment on a couple of points. He addressed Mr. Hickey when he said that questions pertaining to politics and union activities were strictly forbidden by the American Polygraph Association in any part of testing.

Since there was no further testimony Chairman Banner asked for a motion to conclude the meeting. Ms. Foley made the motion, seconded by Mrs. Cafferata and the meeting adjourned at 8:45 P.M.

Respectfully submitted,

  
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Janice Fondi  
Committee Secretary

GUEST LIST

ate: March 9, 1981

PLEASE PRINT YOUR NAME	PLEASE PRINT WHO YOU REPRESENT	I WISH TO SPEAK		
		FOR	AGAINST	BILL N
<del>Carlos Vitardo</del>	UPE SO	<del>X</del>	X	233
<del>John Davis</del>	Greeter Bros Cafe		X	
JIM HARTSHORN	RPD			233
Dorcas M Duran	Parole & Probation		X	233
Vince Swinney	Washoe County Sheriff's Dept		X	233
Russ Jones	N.F.A		X	233
RE CAHILL	NEV RESORT ASSOC			
S HIGGINS	GAM Ind Assoc		X	
Tommy Parker	Valley Bank of Nevada		X	
Walter A. DeLuca	Dir. Dept. of Soc. Ed. & Training		X	233
RA OSTROVSKY	MBM - GRAND HOTEL	X		233
Steve Clouse	Clouse Cal Nevada Hotel		X	233
Pete Kelley	Nev. Retail Assn		X	
Charles Aplini	Nevada Polysynth Assn		X	233

LABOR AND MANAGEMENT COMMITTEE

GUEST LIST

Date: March 9, 1981

PLEASE PRINT YOUR NAME	PLEASE PRINT WHO YOU REPRESENT	I WISH TO SPEAK		
		FOR	AGAINST	BILL
James Lien	Metro	✓		AB 229
Winston Kasparian	Cloud's Cal-Neva Hotel + Casino	✓	✓	233
Steve Cloud	OWNER CLOUD'S CAL NEVA HOTEL		X	AB 233
Buckley	Summa Corp.			
Jerry Higgins	Comm. Ind. Assoc.		X	AB 233
Joe Cathcart	City of North Las Vegas			
Larry McCracken	Employment Security			AB 229 208
Robert Ostrovsky	MGM GRAND HOTEL - RENO		X	AB 233
Russ Jones	NEVADA PROFESSIONAL ASSN.		X	AB 233
H. C. Lentz	" " "			
Marie Egbert				
Lynn McDowell				
Jenny M. High	Local 86-Culinary			322 208
W. Hinson	Wassahs			
Ray Schlotter	"			
Bill Burker	Federated Fire Fighters	✓		AB 233
LARRY IRVINE	Las Vegas Police Protective Assn	✓		AB 233

SENATE COMMITTEE ON \_\_\_\_\_

DATE: \_\_\_\_\_

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
<i>Jack R. Kennedy</i>	<i>NASHIC C. Sold District</i>	<i>322-9041</i>
<i>Lewis W. Dawson</i>	<i>C.W.A. 9413 1150 Terminal Reno</i>	<i>323-9413</i>
<i>BL ACK: F EVAN</i>	<i>STAC</i>	





LABOR AND MANAGEMENT COMMITTEE

GUEST LIST

126

Date: March 9, 1981

PLEASE PRINT YOUR NAME	PLEASE PRINT WHO YOU REPRESENT	I WISH TO SPEAK		
		FOR	AGAINST	BILL #
James D. Salo	Dept of Admin	<input checked="" type="checkbox"/>		191
Jack C. Kinnish	WCSO	<input checked="" type="checkbox"/>		191
H. CORTIS	NIC	<input checked="" type="checkbox"/>		
J. Lica	Metrol	<input checked="" type="checkbox"/>		209
Larry Mcracken	ESD			209
CHUCK NEELY	CCSD			
DANNY L. THOMPSON	ASSEMBLY DIST 21	<input checked="" type="checkbox"/>		233
LARRY IRVINE	Las Vegas Police Assn.	<input checked="" type="checkbox"/>		233
AL ANACLE	CALIF ORA OF POLICE & SHERRIF	<input checked="" type="checkbox"/>		237
Will Diess	vice president International Union of Police			233
Rubyn Siegel	American Civil Liberties Union	<input checked="" type="checkbox"/>		233
PCU	PCOPS	<input checked="" type="checkbox"/>		233
THOMAS J. BURNS	HENDERSON POLICE ASSN	<input checked="" type="checkbox"/>		233
Bot Zongue	Local #16	<input checked="" type="checkbox"/>		233

LABOR AND MANAGEMENT COMMITTEE

GUEST LIST

127

Date: March 4, 1981

PLEASE PRINT YOUR NAME	PLEASE PRINT WHO YOU REPRESENT	I WISH TO SPEAK		
		FOR	AGAINST	BILL
BARBARA DURBIN	PAROLE + PROBATION		<input checked="" type="checkbox"/>	AB 233
Larry Kumbhagen	LVMPD	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	19233
Tim Hartshorn	Reno Police	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	AB 233
Jim Barry	City of Reno Personnel Dev.		<input checked="" type="checkbox"/>	233
Bob Zinner	Local #86	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	233
JAMES D. SALO	DEPT. OF ADMIN.	<input checked="" type="checkbox"/>		191
Vince Swinney	Washoe Co. Sheriff's Dept		<input checked="" type="checkbox"/>	233
Richard Siegel	American Civil Liberties Union	<input checked="" type="checkbox"/>		233
RICHARD PUTNAM *	WASHOE CO. SHERIFF'S DEPT		<input checked="" type="checkbox"/>	233
Carol Vilardo	C.P.E. SO		<input checked="" type="checkbox"/>	233
George E. Wanger	NEV. BANKERS ASSN	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	233
Tommy Baker	Vice Pres. Dir. of Security - Valley Bank		<input checked="" type="checkbox"/>	233
PAUL MORRIS	VICE PRES, Dir of Sec Nev Nat'l Bank		<input checked="" type="checkbox"/>	233
VERN LOETTERLE	" " Dir. of Security FNB		<input checked="" type="checkbox"/>	233
REATHILL	NEV. RESORT ASSOC.		<input checked="" type="checkbox"/>	233
Bill Champion	MGUSKAND LAS VEGAS		<input checked="" type="checkbox"/>	233
Charles Aplin	Nevada Polygraph Association		<input checked="" type="checkbox"/>	233

GUEST LIST

Date: March 9, 1981

PLEASE PRINT YOUR NAME	PLEASE PRINT WHO YOU REPRESENT	I WISH TO SPEAK		
		FOR	AGAINST	BILL NO
John H. Madell	AFL CIO	<input checked="" type="checkbox"/>		191
Walter A. Tom	AFL-CIO DLIA	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	233
Don C. Brown			<input checked="" type="checkbox"/>	233
Don Strait	Re. Gibbons Co. Inc	<input checked="" type="checkbox"/>		191
			<input checked="" type="checkbox"/>	208
H. CURTIS	N.I.C.	<input checked="" type="checkbox"/>		191
Jack SEEVER	TEAMSTERS	<input checked="" type="checkbox"/>		233
Jack Edgars	Engineers Local #59	<input checked="" type="checkbox"/>		233
FRED DAVIS	C of C Reno-Las Vegas		<input checked="" type="checkbox"/>	233
Nick Wagner	Engineers, Local 39		<input checked="" type="checkbox"/>	233
TAMMY T. BURNS	HENDERSON POLICE OFFICERS ASSN	<input checked="" type="checkbox"/>		233
O. C. LEE	NAT. CONFERENCE OF POLICE SHERIFFS	<input checked="" type="checkbox"/>		233
Wm. DAGGETT	RPH NEV. SOLIC. ADMIN	<input checked="" type="checkbox"/>		208
ROSS GILBERTSON	NPERC		<input checked="" type="checkbox"/>	208
CHUCK NEELY	C.C.S.D			
Bill Curran	Clark County P.A. Office			

*For Jim Lien*

EXHIBIT A

POLICE DEPARTMENT

*Boulder City*  
*Nevada*



543 CALIFORNIA STREET

P.O. BOX 698

89005

702-293-1424

March 6, 1981

James Banner  
Chairman  
Labor and Wage Committee  
Nevada State Legislature  
Carson City, Nevada

Dear Mr. Banner:

It has come to my attention that Assembly Bill 229 is being considered by your committee on Monday, March 9th.

With the present day emphasis on conservation of financial resources, it would appear that the subject matter of this bill would enhance this position. School crossing guards know when they are hired that it is a part-time position. Full time benefits do not accrue to part-time positions; and yet school crossing guards have been filing for benefits during holidays and the summer months. Payment of these benefits is not justifiable.

I support Bill 229 strongly.

Sincerely,

*Wayne W. Bennett*  
Wayne W. Bennett  
Chief of Police

WNB:tr

RECEIVED

MAR 9 1981

LVMPD  
BUSINESS OFFICE

## MEMORANDUM

STATE OF NEVADA  
EMPLOYMENT SECURITY DEPARTMENT

Assemblyman James J. Banner, Chairman and  
Members, Committee on Labor and Management

TO \_\_\_\_\_ DATE March 9, 1981

FROM Larry McCracken, Executive Director \_\_\_\_\_ SUBJECT AB 229

The purpose of NRS 612.432 is to deny benefits to school employees during vacations or holiday recesses. AB 229, on line 7, singles out for special mention "employment as a guard at a school crossing."

The intent of this proposal would appear to be to bar the payment of unemployment benefits to school crossing guards. The basis for this may be the fact that nearly all such guards are paid by the sheriffs department or the police department in the various communities where they work and not by the school district. Because they are not paid by the school district, they could be paid benefits under the law as currently written.

If the Legislature saw fit to enact such a change, it would seem advisable to amend 612.434 as well. This is so because since 434 addresses the denial of benefits between school terms, i.e., summer vacation, it is much more commonly applied than the denial under 612.432.

As a matter of information, it is my understanding that school crossing guards are employed in Carson City and Clark County and paid by the sheriffs department or the police department in both cases. There are no school crossing guards employed in Washoe County or, as far as we have been able to determine, in the rural balance of state areas.

bam

L.V. SUN. Dec 3, 1980



Aladdin Hotel owner Wayne Newton's defamation of character suit against NBC will be filed by late next week, according to Reno attorney Frank Fahrenkopf.

The network has not made a move toward a retraction of its claim that Newton was closer than good sense should allow to underworld figures who supposedly have a stake in the Aladdin.

Not surprisingly, Newton, state gaming officials and other Aladdin officials have flatly denied there is anything to the NBC charges.

And information disclosed during Newton's Aladdin licensing hearing certainly indicates local officials have a better command of the facts than does NBC.

Filing of the suit has apparently been delayed as papers were served at the NBC offices in Los Angeles and New York and executives there were then given the chance to respond.

...

Sahara Hotel executives continue to show a remarkable lack of interest in good management-employee relations.

Blackjack dealer Gloria Nelson was recently booted into the ranks of the unemployed when she refused to take a polygraph test under the rather unusual circumstances dictated by management.

She had the gall to ask that she be able to consult with an attorney and she refused to sign a waiver form indicating the polygraph test was not being given under duress.

Nelson is not the only dealer who lost a job there for a similar reason as the Sahara investigates evidence of a credit scam.

But Nelson is unusual in that early this year she was named an employee of the month. She was also chiefly responsible for organization of a labor union vote that dealers won overwhelmingly.

Nelson wrote the Sahara a letter asking that she be permitted another chance to take the test, a chance that was offered other personnel who took the test and actually flunked it.

Nelson says that she has had absolutely no response from the Sahara. Not a word.

Sahara officials may have been privately pleased to be rid of a personality they viewed as a troublemaker, but they still have hundreds of other casino employees whose attitudes are very much affected by the insensitive treatment of any employee.

SUN-2-25-81

**GAMING GAMBIT**  
by Phil Hevener



**Casino 'Black Book' (**  
**Where Wa**

By JERRY RALYA  
SUN Staff Writer

saw in the restaurant prior t  
leaving hurriedly wit  
Spiegel.

The man alleged to be the  
bodyguard and chauffeur for  
Anthony Spilotro denied in  
Justice Court Tuesday that  
the reputed mob figure was  
in Sam's Town last Sept. 28,  
but a Metro Police in-  
telligence officer testified  
that he saw Spilotro in there  
having drinks.

Spiegel and Chandl  
were two of seven witness  
called by Deputy District  
torney Don Campbell  
Spilotro's preliminary br  
ing on a gross misdemeanor  
charge of entering a gar  
establishment.

Samuel Spiegel, who said  
he was an unemployed char-  
ter boat operator, admitted  
that he arranged a dinner for  
Spilotro's wife and friends,  
but denied that Spilotro was  
at the table.

Nevada's "Black Bo  
lists nine "undesirables,"  
cluding Spilotro, who  
banned from casinos  
casino faces the possibili  
losing its license for ad-  
ting anyone on the list.

Detective Roy Chandler,  
meanwhile, positively identi-  
fied Spilotro as the man he

Justice of the Peace E  
White continued the day-l  
proceedings until March  
when Sam's Town wa

Sands Hotel Vice President and Casino  
Manager Harry Goodheart will be moved  
to the Desert Inn unless the company  
purchasing the Sands gives him an offer  
he can't refuse.

The confirmation Tuesday from a well-  
informed Summa Corp. source should end —  
but probably won't — the speculation about  
Goodheart's future.

Texas-based Inns of America is buying the  
Sands from Summa for \$85 million, but  
Goodheart, a respected local resort veteran  
with 10 years at the Sands, was not part of the  
deal, since he is under contract to the Summa  
corporate office and not the Sands.

Inns of America has drafted an offer to  
Goodheart, but his response is not known. If  
Goodheart accepts the transfer to the Desert

Lynn Simons' transfer to the Sahara  
Tahoe Hotel as vice president and general  
manager was probably noted with more  
than casual interest by dozens of present  
and past employees at the Las Vegas  
Sahara.

Simons was the man who took much of the  
heat some six months ago when casino em-  
ployees at the Las Vegas Sahara were being  
forced to take lie detector tests.

At the time, Simons was vice president in  
charge of casino operations for Del Webb  
Corp. and the acting casino manager at the  
local resort which is owned by Del Webb.

Del Webb officials argued then that the  
polygraphs were a necessary element in their  
investigation of a credit scam and Simons was  
the man toward whom many Las Vegas Sahara  
employees vented their anger. About 40 were  
fired.

It was the forced polygraph tests that were  
a major reason behind the loss of a union  
organization vote to the Teamsters.

Jockey Club Casino President Bill  
McLaney reports that his casino's license  
application may go before state gaming  
authorities during March.

That's good news for hundreds of out-of-  
work casino employees who will get jobs as  
a result of the anticipated opening.

The opening of this newest casino across the  
street from the Aladdin Hotel has been  
delayed more than a year mostly because of

Items include poker, craps  
and blackjack tables, bar and  
restaurant equipment,  
stained glass panels, lamps, a  
pony-drawn stagecoach, rail-  
road memorabilia and other

gales businessman Dev.  
Brewer has signed a agree-  
ment to lease the casin  
where the Jackpot was h  
cated. Brewer poured mon

**Business Decline**  
**From Fires Denied**

By SCOTT A. ZAMOST  
SUN Staff Writer

Business at Las Vegas resorts has not suffered in the wake  
of the MGM and Las Vegas Hilton fires because tourists  
quickly stop dwelling on the tragedies, a top hotel executive  
said Tuesday.

"I'm amazed at the amount of business we've had. The  
demand is stronger than ever," said Desert Inn president  
Barton Cohen. "I don't think the two fires that occurred in  
the eyes of the consumer pinpoints Las Vegas as any more  
vulnerable than any other hotel or large building they may  
visit."

"If it did anything, it makes them a little more cognizant  
of fire laws and safety procedures."

Cohen, vice president of the Nevada Resort Association,  
stressed each hotel must individually assess its fire safety  
needs as opposed to an across-the-board standard.

"There's been continuing discussions by the resort associa-  
tion. The consensus is like motherhood and God — everybody  
is in favor of this. We're just trying to figure out the best  
direction to take," he said. "I don't think you can come in  
with a broad brush and solve this problem."

Desert Inn executives are studying the possibility of  
sprinkling rooms and/or hallways in the original nine-story  
building. The 14-story tower contains room sprinklers.

Repeating earlier statements in an interview after the  
Nov. 21, 1980 MGM fire, Cohen compared tourist reaction to  
the fire with a car accident: "You don't stop driving your  
car because of a fire."



I WOULD LIKE TO START BY SAYING THAT A.B. 233 CAME ABOUT AFTER AN INCIDENT AT THE SAHARA HOTEL IN LAS VEGAS LAST YEAR. AFTER THE ELECTION IN NOVEMBER, I WAS ASKED BY MY CONSTITUENCY TO INTRODUCE THIS LEGISLATION.

A.B. 233 SIMPLY STATES THAT AN EMPLOYER SHALL NOT REQUIRE ANY APPLICANT FOR EMPLOYMENT OR EMPLOYEE TO SUBMIT TO EXAMINATION BY A POLYGRAPH OR SIMILAR DEVICE AS A CONDITION OF EMPLOYMENT OR CONTINUED EMPLOYMENT.

PRESENT NEVADA LAW PLACES NO RESTRAINTS ON THE USE OF LIE DETECTORS IN PUBLIC OR PRIVATE EMPLOYMENT. SUCH TESTS MAY BE REQUIRED AS OFTEN AS THE EMPLOYER DESIRES AND THE QUESTIONS ASKED CAN STRAY FROM EMPLOYMENT-ORIENTED TOPICS TO INCLUDE HIGHLY PERSONAL AND POLITICAL MATTERS. NEVADA LAW PRESENTLY SEEKS ONLY TO REGULATE LICENSING REQUIREMENTS FOR POLYGRAPH EXAMINERS.

SEVERAL BILLS DEALING WITH THE ACCEPTABILITY OF EMPLOYMENT POLYGRAPHS WERE INTRODUCED IN THE 1977 LEGISLATIVE SESSION. FOUR ASSEMBLYMEN SOUGHT TO PROHIBIT ANY REQUIREMENT OF POLYGRAPHIC EXAMINATION AS A CONDITION OF PUBLIC EMPLOYMENT.<sup>2</sup> TWO LEGISLATORS PROPOSED AN ALTERNATE BILL THAT WOULD HAVE MADE UNLAWFUL THE REQUIREMENT OF EMPLOYEE POLYGRAPHS BY ANY EMPLOYER DOING BUSINESS IN NEVADA, WITH THE EXCEPTION OF DESIGNATED LAW ENFORCEMENT AGENCIES.<sup>3</sup> OPPOSITION FROM POLYGRAPH OPERATORS AND OTHER INTERESTS NARROWLY DEFEATED THE LATTER PROPOSAL. HOWEVER, THE ISSUE WAS REACTIVATED EARLY IN 1978 WHEN HARRAH'S, THE LEADER OF NORTHERN NEVADA CASINO GAMBLING, FIRED SEVERAL WAREHOUSE EMPLOYEES AFTER REQUIRING NUMEROUS PEOPLE TO TAKE LIE DETECTOR TESTS AS PART OF AN INTERNAL INVESTIGATION OF THEFT.

ORIGINALLY OF CONCERN ONLY TO THE COURT - AND THERE THE SUBJECT OF GREAT CONTROVERSY - THE USE OF POLYGRAPH EXAMINATIONS HAS SPREAD WIDELY IN THE BUSINESS SECTOR. FACED WITH RISING THEFT RATES, EMPLOYERS ARE INCREASINGLY TURNING TO THE POLYGRAPH AS A MEANS OF VERIFYING THE HONESTY, LOYALTY, AND BASIC CHARACTER OF THEIR EMPLOYEES. WHILE EMPLOYERS HAVE LEGITIMATE CONCERNS IN THESE AREAS, SERIOUS QUESTIONS HAVE BEEN RAISED AS TO HOW AP-

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PROPRIATE THE USE OF THE POLYGRAPH IS IN THIS RESPECT, BOTH IN TERMS OF THE RELIABILITY AND/OR ACCURACY OF THE TECHNIQUE, AND THE LEGALITY AND MORALITY OF SUCH USE.

ALTHOUGH EXACT FIGURES AS TO THE EXTENT OF POLYGRAPH TESTING IN EMPLOYMENT ARE NOT AVAILABLE, IT IS EVIDENT THAT ITS USE HAS INCREASED SIGNIFICANTLY IN RECENT YEARS. DATA ON THE EXTENT OF SUCH TESTING IN NEVADA ARE NOT AVAILABLE. HOWEVER, ONE SOURCE ESTIMATES THAT AS MANY AS ONE-FOURTH OF ALL MAJOR AMERICAN CORPORATIONS MAKE SOME USE OF THE POLYGRAPH.<sup>4</sup>

THE POLYGRAPH, AND INDEED ALL MODERN "LIE-DETECTION" TECHNIQUES, IS BASED ON THE BELIEF THAT WHEN A PERSON LIES, AN INNER EMOTIONAL CONFLICT DEVELOPS. THIS STRESS CAUSES CERTAIN PHYSICAL CHANGES WHICH ARE DETECTED AND RECORDED GRAPHICALLY BY THE POLYGRAPH MACHINE.

BUT THE RELIABILITY OF SUCH MEASURES IS SUBJECT TO SOME DOUBT. ANGER, EMBARRASSMENT, EXTREME NERVOUSNESS, PHYSIOLOGICAL ABNORMALITIES (HEART CONDITIONS, HIGH BLOOD PRESSURE, HEADACHES, COLDS), PSYCHOLOGICAL PROBLEMS (LOW INTELLIGENCE, PSYCHOSES, NEUROSES), THE USE OF DRUGS OR ALCOHOL, AND FATIGUE CAN AFFECT THE OUTCOME OF TESTS. IT IS POSSIBLE FOR SOME PEOPLE TO CONTROL THEIR RESPONSES AND SUCCESSFULLY MASK DECEPTION. ALTHOUGH OPERATORS CLAIM THAT THEY CAN ALLOW FOR ABNORMALITIES, THERE IS DOUBT AS TO THE EFFECTIVENESS OF THEIR COMPENSATIONS.

ALTHOUGH MANY OPERATORS CLAIM TO BE ACCURATE IN ABOUT 94% OF THE TESTS. OTHERS REPORT ACCURACY AT 70% OR LOWER.<sup>5</sup> THESE FIGURES ARE ALMOST IMPOSSIBLE TO VERIFY SINCE CASES WHERE POLYGRAPH RESULTS ARE EITHER SUPPORTED OR REJECTED DUE TO SUBSEQUENT INVESTIGATIONS ARE RARE.

RESEARCH ON POLYGRAPH TESTING, MUCH OF IT DONE BY REPRESENTATIVES OF THE POLYGRAPHY INDUSTRY, IS INCONCLUSIVE IN MANY RESPECTS. AFTER REVIEWING INDEPENDENT RESEARCH THE STAFF OF THE SENATE JUDICIARY COMMITTEE RECOMMENDED IN 1974 THAT "THE CONGRESS SHOULD TAKE LEGISLATIVE STEPS TO PREVENT FEDERAL AGENCIES AS WELL

PAGE 3

AS THE PRIVATE SECTOR FROM REQUESTING OR PERSUADING ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT TO TAKE ANY POLYGRAPH TEST.<sup>6</sup> THIS POSITION WAS SUPPORTED IN A 1974 REPORT BY THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS.<sup>7</sup>

ON THE OTHER HAND, POLYGRAPH EXAMINERS REJECT MANY OF THE INDEPENDENT STUDIES, CLAIMING THAT THE RESEARCHERS LACK PRACTICAL EXPERIENCE IN THE FIELD.<sup>8</sup> THIS POINTS TO WHAT IS A CENTRAL ISSUE IN THIS DISCUSSION, THE CRUCIAL IMPORTANCE OF THE OPERATOR IN THE TEST.

THE VALIDITY OF A POLYGRAPH TEST RESTS ON A SERIES OF HIGHLY SUBJECTIVE DETERMINATIONS MADE BY THE OPERATOR. YET TWO OF THE MOST RENOWNED EXPERTS IN THE FIELD HAVE CONCEDED THAT THEY CONSIDER ONLY ABOUT 20% OF THE EXAMINERS COMPETENT.<sup>9</sup> THERE IS CONSIDERABLE DISAGREEMENT IN THE INDUSTRY AS TO WHAT THE MINIMUM REQUIREMENTS FOR AN OPERATOR SHOULD BE. THE AMERICAN POLYGRAPH ASSOCIATION RECOMMENDS THE FOLLOWING:

1. AT LEAST 25 YEARS OF AGE.
2. DEGREE FROM ACCREDITED COLLEGE.
3. AT LEAST 5 YEARS INVESTIGATIVE EXPERIENCE.
4. A COMPLETE BACKGROUND INVESTIGATION, SATISFACTORY COMPLETION OF PSYCHOLOGICAL TESTS, AND A PSYCHIATRIC REVIEW.
5. HIGH MORAL CHARACTER AND SOUND EMOTIONAL TEMPERAMENT.
6. SUCCESSFUL COMPLETION OF AN ACCREDITED POLYGRAPH TRAINING COURSE.

THERE IS SOME QUESTION, FOR EXAMPLE, AS TO THE RELEVANCE OF COLLEGE DEGREES OUTSIDE OF THE PHYSIOLOGICAL OR PSYCHOLOGICAL SCIENCES. FURTHER, IT IS DOUBTFUL WHETHER MANY POLYGRAPH TRAINING PROGRAMS ARE REALLY ADEQUATE. ALTHOUGH THE LEADING SCHOOLS PROVIDE FROM 200 TO 500 HOURS OF TRAINING, NONE OFFERS MORE THAN FIFTY HOURS WHICH RELATE DIRECTLY TO MEDICAL AND PHYSICAL EVALUATION OF EXAMINEES.<sup>10</sup> FURTHER, THE TRAINING OF MOST OPERATORS FALLS SHORT OF EVEN THESE STANDARDS.<sup>11</sup>

IT IS DUE TO SUCH TECHNICAL ISSUES THAT POLYGRAPH TEST RESULTS ARE STILL HELD TO BE GENERALLY INADMISSIBLE AS EVIDENCE IN COURT. FURTHER, IT IS THE POLICY OF THE U.S. JUSTICE DEPARTMENT NOT TO SEEK THE ADMISSION OF POLYGRAPH EXAMINATIONS IN ANY CRIMINAL

PAGE 4

PROCEEDING. IT IS PROSECUTING, AND TO OPPOSE ALL SUCH ATTEMPTS BY THE DEFENSE IN THOSE PROCEEDINGS.<sup>12</sup>

YET THE MAJOR CURRENT ATTACK ON EMPLOYMENT POLYGRAPHS IS BASED MORE ON CONSTITUTIONAL AND MORAL GROUNDS THAN ON TECHNICAL ONES. FIRST, POLYGRAPHS MAY VIOLATE ONE'S RIGHT OF PRIVACY BY REQUIRING INFORMATION ABOUT SENSITIVE AND HIGHLY PERSONAL MATTERS. FOR EXAMPLE, QUESTIONS ABOUT SEXUAL ORIENTATIONS AND BEHAVIOR HAVE LONG BEEN A PART OF MANY EMPLOYMENT-RELATED POLYGRAPH TESTS. ALTHOUGH THE RIGHT OF PRIVACY IS NOT EXPLICITLY CITED IN THE U.S. OR NEVADA CONSTITUTION, THE U.S. SUPREME COURT HAS EFFECTIVELY INCLUDED IT AMONG FUNDAMENTAL CONSTITUTIONAL RIGHTS.<sup>13</sup>

FIRST AMENDMENT ISSUES OF FREEDOM OF ASSEMBLY AND FREE EXPRESSION OF OPINIONS ARE ALSO ENDANGERED BY WIDESPREAD USE OF POLYGRAPHS. QUESTIONS RELATING TO TRADE UNION ACTIVITY, RELIGIOUS PRACTICES, OR CONTROVERSIAL POLITICAL ISSUES MAY INHIBIT EMPLOYEES FROM EXERCISING SUCH FUNDAMENTAL CONSTITUTIONAL RIGHTS.

VIOLATIONS OF THE FIFTH AMENDMENT GUARANTY AGAINST SELF-INCRIMINATION ALSO MUST BE CONSIDERED. IF THE TEST IS USED TO FORCE THE SUBJECT TO BE TRUTHFUL, THE PROCESS MAY RESEMBLE MEDIEVAL METHODS FOR DISTINGUISHING THE INNOCENT FROM THE GUILTY. WHEN VIEWED IN THIS MANNER, IT BECOMES MORE DIFFICULT TO CONSIDER THE POLYGRAPH AS MERELY ANOTHER SCIENTIFIC PROCEDURE USED IN INVESTIGATIONS. BECAUSE POLYGRAPH TESTING ELICITS RESPONSES WHICH CAN BASICALLY BE CONSIDERED TESTIMONIAL, COURTS HAVE DIFFERENTIATED IT FROM BLOOD TESTS AND THE LIKE.<sup>14</sup> IF SUCH TESTIMONIAL RESULTS CAN BE USED IN CRIMINAL PROCEEDINGS, THEY ARE AFFECTED BY THE FIFTH AMENDMENT.

INDUSTRY SPOKESMEN REJECT MANY OF THESE ARGUMENTS, STATING THAT THE EMPLOYEE OR JOB APPLICANT ALWAYS HAS THE OPTION TO REFUSE TO TAKE THE TEST. BUT ONE CONSEQUENCE OF THE MYTH OF INFALIBILITY THAT SURROUNDS THE POLYGRAPH IS THE STIGMA OF GUILT WHICH IS ATTACHED TO ANYONE REFUSING TO TAKE THE TEST. AN INNOCENT PERSON IS ASSUMED TO HAVE NOTHING TO FEAR FROM THE TEST AND ANY RELUCTANCE IS OFTEN SEEN AS AN IMPLICIT ADMISSION OF GUILT.<sup>15</sup>

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AS STATED BY THE DIRECTOR OF A MAJOR POLYGRAPH COMPANY AND SCHOOL, "A PERSON WHO IS INNOCENT OWES SOCIETY AN OBLIGATION TO COOPERATE AND HELP THE AUTHORITIES PROVE HIM INNOCENT RATHER THAN BE DEFIANT AND SAY: 'LET THEM PROVE MY GUILT.'"<sup>16</sup> HOWEVER, SUCH VIEWS SEEM TO BE IN DIRECT CONFLICT WITH A MAJOR TENET OF OUR LEGAL SYSTEM, THE ASSUMPTION THAT A PERSON IS INNOCENT UNTIL PROVEN GUILTY.

AS WAS THE CASE AT THE SAHARA HOTEL IN LAS VEGAS IN 1980, WHEN 40 EMPLOYEES WERE FIRED SURROUNDING AN ALLEGED CREDIT SCAM AT THE CASINO. IT IS INTERESTING TO NOTE, HOWEVER, THAT ~~S~~ <sup>many</sup> OF THESE INDIVIDUALS WERE TERMINATED NOT FOR FAILING THE POLYGRAPH TEST BUT FOR REFUSING TO SIGN A WAIVER THAT SAID, AND I QUOTE, "THAT THE TEST WAS TAKEN" VOLUNTARILY, OF MY OWN FREE WILL AND WITHOUT DURESS, I FREELY AGREE TO SUBMIT TO A POLYGRAPH EXAMINATION, MORE COMMONLY REFERRED TO AS A LIE DETECTOR TEST. I DO HEREBY GIVE MY CONSENT FOR THE POLYGRAPH EXAMINER TO PLACE THE NECESSARY ATTACHMENTS ON MY BODY IN ORDER TO CONDUCT THE POLYGRAPH EXAMINATION.

I DO HEREBY FREE FROM ALL LIABILITY THE PERSON CONDUCTING THIS EXAMINATION, THE COMPANY OR ITS AGENTS. I DO HEREBY AUTHORIZE THE POLYGRAPH EXAMINER TO RELEASE THE RESULTS OF THIS POLYGRAPH EXAMINATION TO MY EMPLOYER."

~~THE SA amendment~~

A NUMBER OF THE EMPLOYEES IN THE SAHARA INCIDENT DID NOT REFUSE TO TAKE THE TEST BUT ASKED TO HAVE AN ATTORNEY PRESENT, OR EVEN ANOTHER DEALER. HOWEVER, ANY EMPLOYEE WHO REFUSED TO SIGN THE WAIVER, DOING AWAY WITH THEIR BASIC RIGHTS AS U.S. CITIZENS, WERE TERMINATED. I WOULD SUGGEST TO YOU THAT THIS IS NOT "DUE PROCESS OF LAW" BUT MORE LIKE THE TACTICS USED BY THE GESTAPO OF WORLD WAR II GERMANY.

AT THE PRESENT THERE ARE FEW FEDERAL STATUTES RELATING TO THE POLYGRAPH: MOST CONTROLS ON THE INDUSTRY EXIST AT THE STATE

PAGE 6

LEVEL. AS OF 1976, EIGHTEEN STATES, INCLUDING NEVADA, HAD INSTI-  
TUTED LICENSING PROCEDURES FOR POLYGRAPH EXAMINERS. FIFTEEN STATES  
HAVE LAWS PROHIBITING THE USE OF THE POLYGRAPH IN CERTAIN INSTANCES,  
USUALLY IN RELATION TO EMPLOYMENT. FOUR OF THESE PROHIBIT EMPLOYERS  
FROM REQUESTING OR SUGGESTING THAT AN EMPLOYEE TAKE A POLYGRAPH TEST  
FOR ANY REASON. MOST OTHER "BAN" STATUTES DO NOT ALLOW THE EMPLOYER  
TO REQUIRE THE EMPLOYEE TO BE TESTED.<sup>17</sup>

IT SHOULD BE NOTED THAT THE MINIMUM REQUIREMENTS FOR LICENS-  
ING IN NEVADA ARE LESS STRINGENT THAN THOSE IN THE MAJORITY OF OTHER  
STATES, MOST OF WHICH GENERALLY CONFORM TO THE APA RECOMMENDATIONS  
ENUMERATED ABOVE. NEVADA REQUIRES THAT THE LICENSEE BE 21 YEARS OF  
AGE, OF "GOOD MORAL CHARACTER," A RESIDENT OF THE STATE FOR AT LEAST  
6 MONTHS, AND HAVE THREE YEARS EXPERIENCE WITH THE POLYGRAPH.<sup>18</sup> SINCE  
THE VALIDITY OF THE TEST DEPENDS ALMOST ENTIRELY ON THE OPERATOR,  
THE LEGISLATURE SHOULD ACT IMMEDIATELY TO UPGRADE LICENSING REQUIRE-  
MENTS.

EVEN IF THE RELIABILITY OF POLYGRAPH TESTING COULD BE FIRMLY  
ESTABLISHED, CONSTITUTIONAL AND MORAL CONSIDERATIONS INDICATE THE  
NEED FOR RESTRICTIONS ON ITS USE. THE AMERICAN CIVIL LIBERTIES  
UNION AND AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES ARE AMONG  
THE MANY GROUPS THAT SEEK TO BAN POLYGRAPH TESTING IN THE EMPLOY-  
MENT SECTOR.

THE 1981 SESSION OF THE NEVADA LEGISLATURE NOW HAS AN OPPOR-  
TUNITY TO STOP THESE INJUSTICES FROM FURTHER CONTAMINATING THE  
STATES WORK FORCE. THAT OPPORTUNITY IS A.B. 233. IF HOWEVER, THE  
LEGISLATURE IN ITS WISDOM CHOSSES NOT TO ENACT LEGISLATION TO PRO-  
TECT ITS CITIZENS BASIC RIGHTS, THEN THE TRAVISTY OF JUSTICE AND  
THE HYPOCRISY OF BASIC RIGHTS WILL CONTINUE. IT IS WITH A DETER-  
MINATION TO SEE JUSTICE RESTORED TO THE WORK PLACE THAT I URGE YOU  
TO STAND WITH ME FOR THE RIGHTS OF ALL NEVADA CITIZENS. I URGE A  
DO-PASS OF A.B. 233.

I WOULD LIKE TO SAY A GREAT DEAL OF MY TESTIMONY WAS TAKEN  
FROM THE NEVADA PUBLIC AFFAIRS REVIEW BY RICHARD L. SIEGEL AND  
BLAIR WEST.

INTERESTING TO NOTE STATES LIKE NEW YORK  
AVOIDANCE FROM STATES  
EMPLOYERS  
+ CAUSE.  
ARE ILLEGAL 138

- 2 Assembly Bill No. 303, sponsored by Assemblymen Dale Goodman, Marion Bennett, James Kosinski, and Steven Coulter, dated February 14, 1977.
- 3 Assembly Bill No. 518, dated March 23, 1977, introduced by Assemblymen Robert Price and Dale Goodman.
- 4 Privacy, Polygraphs, and Employment; A Study Prepared by the Staff of the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, 93rd Congress, 2nd Session (1974), p. 8.
- 5 Lee M. Burkey, "The Case Against the Polygraph," American Bar Association Journal 51, no. 9 (September 1965), p. 856.
- 6 Privacy, Polygraphs, and Employment, op. cit., p. 18.
- 7 The Use of Polygraphs and Similar Devices by Federal Agencies, 13th Report by the Committee on Government Operations, H.R. Report 94-795, 94th Congress, 2nd Session (1976), p. 46.
- 8 Fred E. Inbau and John E. Reid, "The Lie Detector Technique: A Reliable and Valuable Investigative Aid," American Bar Association Journal 50, no. 5 (May 1964), p. 470.
- 9 Ibid., p. 471.
- 10 Ibid.,.
- 11 Burkey, op. cit., p. 856.
- 12 Privacy, Polygraphs, and Employment, op. cit., p. 9.
- 13 Kent Greenwalt, "The Right of Privacy," in Norman Dorsen, ed., The Rights of Americans, (New York: Pantheon, 1971) pp. 299-323. The most frequently cited U.S. Supreme Court case supporting the right of privacy is Griswold v. Connecticut, 381 U.S. 479 (1965).
- 14 The Use of Polygraphs, op. cit., p. 33.
- 15 Ibid., p. 9.
- 16 John E. Reid quoted in ibid., p. 33.
- 17 Privacy, Polygraphs, and Employment, op. cit., p. 4.
- 18 NRS 201.250-254.

WAIVER AND CONSENT

*Under the threat*

I, \_\_\_\_\_, voluntarily, of my own free will and without duress, freely agree to submit to a Polygraph Examination, more commonly referred to as a Lie Detector Test.

I do hereby give my consent for the Polygraph Examiner to place the necessary attachments on my body in order to conduct the Polygraph Examination.

I do hereby free from all liability the person conducting this examination, the Company and its Agents.

I do hereby authorize the Polygraph Examiner to release the results of this Polygraph Examination to my employer.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness



Testimony of Claude Evans, Executive Secretary-Treasurer of the Nevada State AFL-CIO before the Assembly Labor and Management Committee on March 9, 1981 regarding Assembly Bill 233, which prohibits lie detector tests for employees.

Mr. Chairman and Members of the Committee:

To quote Mr. David Lykken, professor of psychiatry and psychology at the University of Minnesota, "that there is a machine or a test that can detect lying is one of the great American myths." To be able to use a lie detector test to allow an individual to become employed or to retain his employment is completely illogical when a lie detector test is not admissible into a court of law. A lie detector test presently can be used to deprive an individual of employment but it cannot be used or admitted into a court of law.

We feel this is wrong and should not be allowed in the State of Nevada. For an individual to be deprived of employment because of a test that has been proven to be unreliable and inadmissible in court is, in our opinion, the height of injustice.

The Nevada State AFL-CIO and its 65 affiliated local unions urge the passage of this legislation and urge a unanimous recommendation of the Assembly Labor and Management Committee and your full hearted support for this legislation.

I will be happy to answer any questions the Committee may have.

## To Tell the Truth

*Although DISCOVER generally publishes only short letters or excerpts from them, we make an exception in the following case because of its unusually compelling subject matter.*

That there is a machine or a "test" that can detect lying is one of the great American myths. For nearly ten years I have been trying to explode this myth. In 1980 alone, a million of my countrymen had to submit to lie tests. Thousands of them were refused employment, many others lost their jobs and reputations. Some went to prison convicted of crimes they did not commit.

I have enjoyed the edifying essays of Lewis Thomas, a man of science, culture, and manifest good sense. What, then, am I to do when I find Thomas ruminating on the sociobiological implications of the lie detector myth [December], which he treats as fact, "propped up," he says, "by genuine, hard scientific data"? To tell a lie, "even a small one," he reports, sets off "a highly reproducible cascade of changes in the electrical conductivity of the skin, the heart rate, and the manner of breathing . . . and now we have a neat machine to record it as well."

One is dismayed to see the very essence of the myth thus dignified by the elegant prose of a respected scientist-philosopher. I had assumed that we Americans were uniquely vulnerable to this myth because we are such suckers for technology and what masquerades as scientific; I had supposed that scientists would be less easily taken in. I see now that the problem goes deeper; Americans are suckers, period.

There is no such thing as a lie detector. Lying does not produce a "reproducible cascade" of distinctive physiological changes. There is no specific response that everyone emits when lying but never when telling the truth. When we lie about something serious, most of us experience some sort of inner turmoil, what Daniel Defoe described 250 years ago as "a tremor in the blood." No doubt we remember thinking that, if the target of our falsehood could only see that turmoil within us, the jig would be up. When the polygrapher adjusts the chest belt that measures breathing movements, attaches the electrodes that will record the sweating of the palms, and then pumps up the blood pressure cuff on our arm, we readily believe the jig is up.

What we forget is that a false accusation can elicit an inner turmoil also—

and the lie detector cannot tell the difference! The polygraph pens do no special dance when we are lying. Many polygraphers think that they can see "deception" in the choreography but they are mistaken. Most of the thousands of polygraph examiners in the U.S. are ex-cops, graduates of a six-week course that covers psychology, physiology, electronics, and "the art and science of the polygraph technique," a course using a syllabus that would make Dr. Thomas blush. If we really want to understand the lie detector, we would do better to consult Floyd Fay, a young man who was recently released from prison after serving more than two years of a life sentence for a murder he did not commit (they finally found the real killers).

Fay was arrested at home at 4 o'clock one morning and hauled off to the Toledo jail to be grilled about the murder of his friend Fred. Because he was innocent, Fay agreed to take a lie detector test. He was asked a short list of questions repeated several times. There

### **"A false accusation can elicit an inner turmoil—and the lie detector cannot tell the difference"**

were three relevant, or "Did you do it?" questions, such as "Did you kill Fred?" interspersed with three control questions, such as "Before you were twenty-four, did you ever think of doing bodily harm to someone for revenge?" If Fay had been consistently more aroused or disturbed by the control questions than by the relevant questions, he would have passed the test and been set free. But, not surprisingly, Fay's pulse was stronger and his palms were more moist when he was asked the relevant questions, no doubt because he was sensible enough to realize that "Did you shoot Fred on March 28th?" was considerably more "relevant" to his immediate prospects than those so-called control questions about his thoughts and actions years earlier.

This type of lie test has become standard in the industry precisely because the polygraph measures only relative disturbance or arousal and cannot detect lying *per se*. But because the control questions are not controls at all in the scientific sense of that term, the

polygraph test is strongly biased against the truthful respondent. Put yourself in Fay's place: you didn't kill anyone, your denials are truthful. But the authorities suspect you may be guilty; that is why you are being given the test. When the man asks, "Did you kill Fred?" what would happen to the surging of your pulse, the sweating of your palms?

Fay wound up in a prison where they use the polygraph on inmates who have violated prison rules. Those who fail the test are usually transferred to the maximum security prison, a dangerous and punishing place. Because of what had happened to him, Fay began a study of the law and the lie detector. From an article of mine, he learned how the control question test is supposed to work—and also how it can be beaten. It is not easy to inhibit one's reactions to the accusatory relevant questions. It is quite easy, however, to augment artificially one's reactions to the control questions, and, if the pens dance harder after the control than the relevant questions, you must pass the test. Fay contacted 27 inmates who were scheduled to undergo such a trial by polygraph. He explained the technique to them, showed them how to bite their tongues or secrete a nail in one of their shoes and press on the sharp edge of the nailhead when the control questions were asked. Although all 27 admitted to him that they were guilty of the offenses charged, mostly involving drugs, 23 of the 27 managed to beat the lie test in this manner.

The "hard scientific data" that Dr. Thomas refers to are, I fear, also mythological. For 50 years the lie detector wormed its way into our confidence largely on the basis of extreme and unsubstantiated claims of 95 per cent and 99 per cent accuracy. There are some hard data now, two studies published since 1976 that prove what Fay and thousands of other victims have discovered to their cost: submitting to the lie detector to prove one's innocence is a hazardous expedient. In both these recent investigations, of the suspects who were determined later to have been innocent, *half* of them failed the lie test!

*David T. Lykken  
Minneapolis*

*David Lykken, author of A Tremor in the Blood: Uses and Abuses of the Lie Detector, is a professor of psychiatry and psychology at the University of Minnesota.*

Address letters to DISCOVER, Time & Life Building, Rockefeller Center, New York, N.Y. 10020

EXHIBIT G

**§ 3307 PUBLIC OFFICERS AND EMPLOYEES Title 1**

**§ 3307. Polygraph examination; right to refuse; effect**

No public safety officer shall be compelled to submit to a polygraph examination against his will. No disciplinary action or other reprimand shall be taken against a public safety officer refusing to submit to a polygraph examination, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to submit to a polygraph examination, nor shall any comment or evidence be introduced in a subsequent hearing, trial or proceeding, judicial or administrative, to the effect that the public safety officer refused to take a polygraph examination.

(Added by State 1976, c. 405, p. 1215, § 1.)

**Notes of Decisions**

**1. In general**

Where a provision of this section states that no public safety officer shall be compelled to submit to a polygraph examination against his will because of the fact that a disciplinary hearing will be conducted, the disciplinary action against officer, but before

**§ 3308. Financial disclosure; right to refuse; exceptions**

No public safety officer shall be required or requested for purposes of job assignment or other personnel action to disclose any portion of his property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his family or household) unless such information is obtained or required under state law or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of his official duties, or is necessary for the employing agency to ascertain the desirability of assigning the public safety officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.

(Added by State 1976, c. 405, p. 1235, § 1.)

**§ 3309. Search of locker or other space; consent; search**

No public safety officer shall have his locker or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other spaces for storage that are owned or leased by the employing agency.

(Added by State 1976, c. 405, p. 1207, § 1.)

110 CALAPP <sup>ELATE</sup> 3RD 275

1 I. Polygraph Test Inadmissible at Administrative  
 2 Hearing A.S. 301

3 1. Aengst v. Board of Medical Quality Assurance,

4 Dr. Fred Aengst, a physician specializing in otol-  
 5 aryngology, operated on Damian Huber, a four year old boy on  
 6 March 14, 1972, removing the patient's tonsils and adenoids.  
 7 On March 17, 1972, Damian was pronounced dead on arrival at the  
 8 emergency room of a hospital located near the doctor's office.  
 9 Thereafter, Dr. Aengst was found guilty of gross negligence by  
 10 the Board of Medical Quality Assurance in an administrative  
 11 disciplinary proceeding.

12 During the administrative hearing, Dr. Aengst attempted  
 13 to admit into evidence a polygraph test administered by a  
 14 private qualified polygraph operator. The polygraph examination  
 15 was conducted at the request of Counsel for Dr. Aengst prior to  
 16 the administrative hearing.

17 Upon objection by the attorney-general representing the  
 18 Board, the administrative law judge refused to admit into  
 19 evidence the polygraph examination. Thereafter, Aengst was  
 20 found to be guilty.

21 A petition for writ of Habeas under Code of Civil  
 22 Procedure Section 1094.5 was filed in the Superior Court by  
 23 appellant Aengst. The Superior court denied the petition for  
 24 writ thereby upholding the ruling of the administrative law judge.

25 Appellant Aengst contended on appeal that the adminis-  
 26 trative law judge erred in excluding evidence concerning appellant's  
 27 polygraph examination and that the trial judge compounded the  
 28 error in upholding this decision.

1 In an opinion filed September 16, 1980, the Court  
2 of Appeal upheld the ruling of the Superior Court, and in so  
3 holding, the Court ruled that results of a polygraph test are  
4 inadmissible at an administrative hearing where a party to the  
5 hearing objects.

6 Before the Court of appeal, appellant Aengst argued that  
7 the exclusion of that evidence was in error because the outcome  
8 of the proceeding "depended upon the relative credibility of  
9 the testimony of appellant on the one hand and Mr. Haber...  
10 on the other..." with respect to telephone conversations which  
11 took place on March 16, 1972.

12 Court of Appeal noted that the issue of the admissi-  
13 bility of polygraph evidence at administrative proceedings  
14 had never been decided by an Appellate Court in the State of  
15 California.

16 The Court noted, however, that the state of the law  
17 with respect to the use of polygraph evidence in court pro-  
18 ceedings was that the great majority of decisions have ruled  
19 polygraph evidence to be inadmissible in court proceedings.

20 Appellant contended that a different rule should be  
21 applied in administrative proceedings in that administrative  
22 hearings need not be conducted according to technical rules  
23 relating to evidence and witnesses.

24 The Court of appeal noted that a similar argument had  
25 been unsuccessfully stated by an appellant attempting to admit  
26 polygraph evidence at a hearing to vacate an order of commit-  
27 ment to the C.Y.A.

28 ///

1 Court of Appeal in the Aengst case, held:  
2 "Even under the rules applicable to adminis-  
3 trative proceedings...the evidence must be relevant  
4 and reliable. Apart from the general state of the  
5 law holding polygraph evidence insufficiently  
6 reliable for admission into evidence, there is a  
7 particular reason in this case the proffered evidence  
8 was properly excluded."

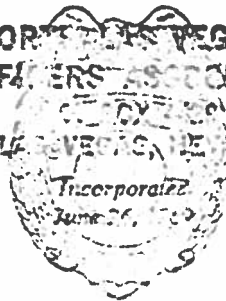
9 At this point in the decision, the Court of Appeal  
10 pointed out that the polygrapher was employed by appellant  
11 to administer the test, and the counsel for the Board was unaware  
12 of the administration of the test until the polygrapher was  
13 called to the stand. The fact that the polygrapher was not  
14 an independent, unbiased, unprejudiced polygraph examiner gave  
15 the court further reason to uphold the exclusion of this evidence.

16 The court in Aengst, did not consider use of a poly-  
17 graph examination being introduced by stipulation by the  
18 parties. This practice is not prohibited by statute or case  
19 law.

NORTH LAS VEGAS  
POLICE OFFICERS ASSOCIATION, INC.

EXHIBIT I

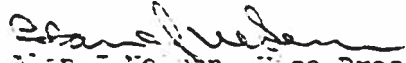
NORTH LAS VEGAS, NEVADA 89030



8 Mar 81

Committee on Labor and Management

The North Las Vegas Police Officers Association strongly supports the passage of Assembly Bill 233. The Police Officers Association has a clause in our contract with the City of North Las Vegas, restricting the use of the polygraph. This has been in effect since 01 Jul 76 and has been beneficial to both the City and the Association.

  
Alan J. Nelson, Vice-President  
NIPON

NAME: Jordan  
2017  
15114 Road  
786-0585

11-11-44  
312 3390

# Harrah's Employees Lose Jobs Over Lie Detector Tests

By DOUG McMILLAN

Three Harrah's warehousing employees lost their jobs Thursday and at least five more could lose their jobs today over their refusal to submit to lie detector tests.

Management of the hotel-casino had a polygraph examiner waiting for the 12 workers at Harrah's warehouse department on Mill Street when they came to work at 8 a.m. Thursday, said Warner Jordan, a six-year employee at the warehouse.

Of the six called upon to submit to the tests, three refused and were fired, said Jordan. This morning, the rest of the department is scheduled for tests. By the end of the day, eight of the 12 employees of the department will have been fired because they refused to take the lie detector tests, he predicted.

Warner said all eight Harrah's warehouse workers at Lake Tahoe also have agreed to risk termination rather than submit to the tests, but none of them could be reached for comment.

"They're laying people off who have been there 12 to 14 years," said Jordan. Although management's orders to take the tests appeared in the wake of a theft several weeks ago, demands that all employees submit came "out of the blue," Wednesday, he said.

The employee accused of the thefts has since been fired, after three other employees told management about the thefts, he said. Now most of the remaining employees believe they should not be forced to take the tests since they haven't been accused of anything, he added.

Jordan expects to lose his job today. "It's just unfair," said Joe Ferretti, one of those fired Thursday. "I feel insulted. My pride's hurt.

They're trying to make us scapegoats for what's missing."

Harrah's vice president for personnel and employee relations, Joe Spacht, issued the following statement when asked about the situation:

"Harrah's routinely polygraphs employees who are responsible for handling company money and property. Each employee agrees when he is employed to take such polygraphs if requested."

Harrah's spokeswoman Candy Pearce said the polygraph requirement appears on every job application and is signed by the employee before starting to work for the company.

Asked if she had to sign the statement when she was hired, Mrs. Pearce said she couldn't remember.

Asked if Harrah's would fire the employees refusing to take the tests, she replied, "If an employee is asked to and refuses, he is subject to termination."

Pete Handke, another employee fired Thursday, disagreed that the polygraph requirement was a long-standing policy of Harrah's. He also accused management of failing to follow its previous policies on polygraphs.

Quoting Harrah's employee handbook, "You and Your Job," Handke said the policy states: "To avoid unnecessary suspicion and accusation, Harrah's provides access to a polygraph examination to those employees who may wish to support their statements."

"We don't have any statements to support because we haven't been accused of anything," said Handke. Jordan said, "I'd like to know what they're accusing me of. I took a polygraph one year ago when applying for a job with the police department. I told them to go read that one."

Jordan said one of the questions he was asked for his

police polygraph was did he ever steal from Harrah's.

"It's kind of a slap in the face," he said. "I've been there six years and they're always talking about treating their employees like they want to be treated . . . Well . . . that's BS."

Ferretti said he was one of the three employees who informed management about the thefts several weeks ago. For several weeks, management "did nothing," he said. Finally, the man who had been accused of stealing was fired for another reason and suddenly, after several more weeks, the rest of the employees are being forced to take polygraph tests.

"This guy stole quite a bit — a money clip, honor and tobacco," said Ferretti. "I told them. Now, if I take it (the test) it wouldn't tell right working for these people anyway. It's a bum rap with the poor people taking the blame for management again. Management should have listened to us a month ago."

"I've taken polygraphs before," said John Slaggar, one of the three fired Thursday. "What they wanted us to do was implicate other people."

He said the examiner was asking long-term employees about other departments they'd worked in for Harrah's years ago. He said he objected to the idea of "ratting on other people."

Many of the employees involved have families with children but are still willing to lose their jobs "on the principle," Jordan said.

State Labor Commissioner Stan Jones said there was nothing he could do for the employees.

Jones said Nevada has no law guarding peoples' rights with respect to employer demands for polygraph tests. The Nevada Legislature has considered such a measure at several past sessions, but never passed one.

"There would be no protection under the state Industrial Relations Law," Jones said of the statutes he administers.

The labor commissioner's advice to the Harrah's employees was to hire an attorney, if they think their

civil liberties have been infringed upon. "There is no other remedy under the law," he said.

Jordan said employees wouldn't have objected as strongly if they had been able to talk with management about the tests. But the only person they had to talk to was the polygraph examiner.

"We haven't had anybody to talk to — the employee's counselor, the board of review . . . This guy just came in yesterday and said take a polygraph."

Jordan said the employees also wouldn't have objected if management personnel also had agreed to take the tests.



POLICE DEPARTMENT

*City of Reno*

POST OFFICE BOX 1900 • RENO, NEVADA 89505 • (702) 785-2000

**EXHIBIT K**

**JAMES L. PARKER**  
*Chief of Police*

March 9, 1981

Assemblyman Banner  
Chairman of the Assembly Labor  
and Management Committee

Re: AB 233 - Use of Polygraph on Applicants for Employment  
and Employees, Nevada Revised Statute 613

Dear Assemblyman Banner:

During my past 29 years in law enforcement with the City of Reno, the use of the polygraph as a pre-employment screening tool and an internal investigative tool in those matters that are not criminal, has only benefitted the citizens of Reno and the state of Nevada. This is to let your committee know the feelings of the Reno Police Department and request a do not pass on AB 233 for the following reasons.

1. In the year 1980, over 600 people applied for employment with the City of Reno Police Department. Of this total, 162 were successful in obtaining a passing grade in our screening process. This process includes a physical agility test, a written examination, an MMPI psychological examination and an oral interview review board. The next step in the process after completion of the above is the polygraph examination. We utilize the polygraph examination in conjunction with personal background investigation, and out of those 162 people, 59 failed to pass the polygraph examination. Some of the reasons of this failure were those things that could not be ascertained in any of the above testing processes.
  - a. One applicant committed an armed robbery in the state of California a few weeks prior to applying for a police position with the City of Reno. He was later charged, apprehended and convicted in court.
  - b. An applicant from the state of New Mexico admitted to the possession of a large quantity of marijuana (approximately 600 pounds) at his home where he gained his livelihood by the sales of this substance in his community. It must be noted that he stated that he would discontinue this practice if employed as a Reno police officer.

- c. One applicant was found to have sex relations with members of his family, i.e., his sisters and brothers; committed two rapes with force; one armed robbery which had occurred while enroute from his place of residence to the City of Reno to take the written examination for police officer.
- d. An applicant who was employed with the City of Reno was found to be untrustworthy and that applicant had misappropriated from the City of Reno, thousands of dollars worth of city equipment and was rejected for the position of police officer.

As you can see by the listings above, there is a definite need in the law enforcement profession for the polygraph as a pre-employment screening tool. To remove this by the passage of AB 233 would put the police department, the City of Reno and the citizens of our city at the mercy of some perverted and criminal law enforcement officers.

Again, I urge you do not pass this amendment.

The additional section of the AB 233 as it relates to conditions of employment or continued employment is not only detrimental to the city but to those employees in which it will effect. Over the past two years, the Reno Police Department has had occasion to submit a number of its employees to internal polygraph examinations. These stem through citizen's complaints from Internal Affairs and the possibility of criminal investigation from the District Attorney's office. I am proud to say that over 85 percent of our people who submitted to polygraph examinations through Internal Affairs have been found to be exonerated of all charges due to the polygraph examination. A cross-section of our police department will answer in this manner regarding polygraphs. Once charges are alleged about their honesty or misconduct, "I'll take the box", referring to a polygraph examination. The remaining 15 percent were found guilty of those charges alleged against them and disciplinary action was doled appropriate to the misconduct.

We have within the organization of the Reno Police Department a document entitled "Officer's Rights Under Investigation". This has been in use for approximately five years and we have never felt the need to legislate these rights into our statutes. I know the state of California and other neighboring states have these rights legislated. We of the Reno Police Department do not need this .

In closing, I would urge you strongly again to vote against the passage of AB 233 as it relates to polygraph examinations.

Sincerely yours,



Frank Better  
Assistant Chief of Police

Attachment  
/mj

**RENO**  
**POLICE OFFICERS' RIGHTS**  
**WHILE UNDER INVESTIGATION**

**November 1, 1976**

## RENO POLICE OFFICERS' RIGHTS WHILE UNDER INVESTIGATION

### General:

All sworn personnel of the Reno Police Department shall be entitled to the protection of what shall hereinafter be termed as the "Rights of Police Officers While Under Investigation."

The wide-ranging powers and duties given to the Department of Police and its members on and off-duty, involve them in all manner of contacts and relationships with the public. Of these contacts come many questions concerning the action of members. These questions often require investigation by superior officers and/or an investigative staff formulated by the office of the Chief of Police. In an effort to insure that these investigations are conducted in a manner which is conducive to good order and discipline, the investigative process, and recent court decisions, the following guidelines are promulgated.

### Section I. Departmental Investigation.

The procedures contained in this section apply only to investigations conducted by the Reno Police Department.

#### A. Advance notice.

— Prior to being subjected to interview by this Department for any reason which could lead to disciplinary action, demotion or dismissal, the employee shall be:

1. Informed of the nature of the investigation and whether he is a witness or a suspect, and other information necessary to reasonably apprise him of the nature of the allegations of the complaint;

2. Afforded an opportunity and facilities to contact and consult privately with an attorney of his choosing: providing the employee does not cause unnecessary delay, the amount of delay allowable will depend on the nature of the investigation and the reason for the delay - final approval to lie with the Chief of Police.

3. Whenever delay in conducting the interview will not jeopardize the successful accomplishment of the investigation, or when criminal culpability is not at issue, advance notice shall be given the officer before the initial interview commences or written reports are required from the officer;

4. If the officer being interviewed is under arrest or is likely to be placed under arrest as a result of the proceedings, he shall be completely informed of all of his Constitutional rights prior to the commencement of the interview.

B. Interview safeguards.

1. Any interview of an officer shall take place when the officer is on duty, unless the seriousness of the investigation dictates otherwise.

2. Should the officer be required to appear at a time not during his normal duty period, he shall be allowed to submit for overtime compensation.

C. Review by Officer

An officer who is under investigation by the Reno Police Department may review the written report of that investigation after the following guidelines are met:

- a. The report is completed; and,
- b. A request for review is made through the Chief of Police.

D. Resulting disciplinary action proposed.

When the investigation results in a determination of a sustained complaint and disciplinary action is to be proposed to the office of the City Manager, only the findings and the disciplinary order may be placed in the officer's personnel files.

All actions taken by the Reno Police Department against any of its employees will follow Civil Service Rules and Regulations.

Section II. Use of Polygraph: Interdepartmental Investigations

A. The polygraph is employed only after a complete and thorough investigation fails to obtain adequately all of the facts needed upon which to make a final decision in a specific case.

B. If a complaint is filed against a police officer by a citizen, and it is apparent that either the complainant or the officer is not being completely truthful about the facts of the case, then consideration will be given to the use of the polygraph.

- C. Should a police officer refuse to take a polygraph examination, and reasonable cause exists to warrant the ordering of such an examination, the officer shall be considered insubordinate.

### Section III. Interviews

- A. Interview shall take place at the Reno Police Department.
- B. Interviews shall be done under circumstances devoid of intimidation, coercion, or reward, and shall not otherwise violate the officers' Constitutional rights. The officers shall not be subjected to abusive language.
- C. Division Commanders shall be notified of all personnel investigations involving their subordinates. Division Commanders shall provide all assistance necessary, as requested by the investigator.
- D. All questions directed to the officer under the interview shall be asked by and through one interviewer at any one time.
- E. Interviews shall not be overly long. The officer shall be entitled to such reasonable intermissions as he shall request for personal reasons, with one 10-minute intermission every hour, at his request.
- F. All interviews shall be limited to activities, circumstances, events, conduct or acts which pertain to the matter under investigation.

G. . . If the circumstances under investigation warrant a recorded interview, the officer being interviewed will be advised that his statement is being recorded. The transcribed statement will be reviewed and signed by the officer, providing he finds it accurate. The officer will have access to the statement as provided above, and the tape recording itself will be placed into evidence where it is accessible after following specified legal procedures.

#### Section IV. Personal Information

No officer shall be required for the purpose of a departmental investigation or other personnel action, to disclose any item of his property, assets, source of income, or personal or domestic expenditures, including those of a member of his family, unless proper legal procedures have been instituted, and only when it may tend to indicate a conflict of interest with respect to the performance of his official duties.



To: ALL PERSONNEL

Date: October 2, 1978

From: VERN CALHOUN, CHIEF

Copies: Personnel

Re: POLICY FOR USE OF THE POLYGRAPH INSTRUMENT

Deadline:

Nevada Revised Statutes mandate the Nevada Division of Investigation and Narcotics the responsibility of interrogating persons by use of the polygraph upon the request of the Attorney General, or any Sheriff, Chief of Police or District Attorney of the State of Nevada.

All of the polygraph records for these agencies, as well as for the Division, are maintained permanently in a central file; however, all polygraph records pertaining to internal investigations are expunged at the end of a six month period.

In line with court decisions, the Nevada Division of Investigation and Narcotics has determined that the polygraph technique is an invaluable aid to resolve accusations of unlawful activities against members of law enforcement agencies, including this Agency, particularly in accuser/accusee situations where little supportive physical evidence is available. Equally as important is the verification of the information that a prospective employee has submitted on his employment application and resume.

James F. Wittenberg, in a written communication (The Polygraph Guidelines for internal investigations) to the Personnel Advisory Commission in the later part of December, 1976 (later distributed to all agency administrators), stated in substance that regarding an internal investigation of unlawful activities, it shall be the duty and responsibility of a classified employee to truthfully, fully and directly answer questions relating to the individual's employment related activities where credible allegations or reliable evidence exists to question the employee's conduct in his official capacity.

The Honorable Michael E. Fondi of the First Judicial District Court of the State of Nevada on October 27, 1977, ruled in substance that, provided U. S. Supreme Court Procedural Safeguards were adhered to, an agency Chief has the right to order a subordinate employee to submit to a polygraph examination and if that employee refused to submit to the examination, he does so under pain of disciplinary action.

Under these safeguards, a person prior to being asked to take a polygraph examination, must be advised that the questions to be asked would be narrow and specific in scope and related only to his performance of duties and he will not be required to waive

his 5th Admendment right to incriminate himself. The person also must be advised in advance that the fruits of the questions asked will not be used for criminal prosecution and that if he refuses to submit to the test, he could be dismissed or incur other disciplinary action.

The Honorable Michael E. Fondi does not stand alone. The United States Circuit Court of Appeals for the Ninth Circuit (which circuit encompasses Nevada within its territorial jurisdictions) in Clifford vs. Schultz, 413F 2d 868, a case involving the use of a polygraph examination, stated "the (Supreme) Court stated, however, that a public employee may be discharged from his job if, without being required to waive immunity, he refuses to answer questions specifically and directly and narrowly related to the performance of his official duties. An employee's invoking of his Constitutional privilege against self incrimination would not in such case be a bar to his dismissal from public employment." Further, in Seattle Police Officer's Guild vs. City of Seattle, 80 Wash. 2d 307, 494 P. 2d 485, the Washington Supreme Court held that the City of Seattle could dismiss or otherwise discipline members of the Seattle Police Department for refusing on the grounds of the 5th Amendment privilege against self incrimination, to answer intra-departmental inquiry questions specifically, directly and narrowly related to the actual performance of their official duties. Such personnel action was held permissible provided that the officers were advised that their answers could not be used against them in later criminal proceedings and that refusing to cooperate could result in their dismissal. The fact the United States Supreme Court meant this interpretation to be placed upon these cases has been decided in at least three other jurisdictions. In Re Addonizio 53 N.J. 107, 248 A. 2d 531; Silvario vs. Municipal Court 355 Mass. 623, 247 N.E. 2d 379, CERT. denied 396 U.S. 878, 90 S. CT 151, 24 L. Ed. 2d 135 and Krammerer vs. Board of Fire and Police Commissioners 44 Ill. 2d 500, 256 N.E. 2d 12.

In a memorandum of November 29, 1976, Colonel Bernard Dehl of the Nevada Highway Patrol stated that Agency administrators have the duty and the Personnel Division Chief the obligation, pursuant to Chapter 284 of the Nevada Revised Statutes to not employ undesirable persons in State service. A blanket prohibition against the pre-employment screening of any classified employee would nullify this duty and obligation and would be a great disservice to the citizens of the State of Nevada.

Considering the grave responsibilities of law enforcement officers, and the liability of the state, the Nevada Division of Investigation and Narcotics has determined that every means possible, including polygraph examinations, will be utilized to investigate the background of prospective employees, as well as, the utilization of the polygraph instrument to resolve accusations of unlawful activities against members of its agency.



# NEVADA RETAIL ASSOCIATION

POST OFFICE BOX 722, CARSON CITY, NEVADA 89701 • 882-1943

Statement by Pete Kelley, managing director, Nevada Retail Association on AB 233.

Retailers are faced with a staggering problem of theft, both by consumers and employees. These shortages are one of the most critical problems confronting retailing today. Retailers estimate such invisible losses amount to as much as one-third of net profits. <sup>Among</sup> ~~one of the~~ components in a program to combat retail theft <sup>are</sup> strong and useful laws. Nevada, as an example, has a strong shoplifting law. Still it is not sufficient because effective apprehension and prosecution of shoplifters is needed. This can only occur through cooperation between retailers, their employees and local police and prosecuting attorneys.

Unfortunately, law enforcement agencies often have neither the personnel nor the time to offer meaningful assistance to retailers in their investigations of theft. Thus, many retailers have found it necessary to undertake the bulk of responsibility for investigating cases of suspected theft in their <sup>own</sup> stores.

To help develop some control over the incidence of employee thefts, retailers in some instances have used the polygraph. To the best of my knowledge, no states have completely banned polygraph. However, 15 or more have limited its use. We would oppose any ban on its use in Nevada, feeling that if retailers wished to use such tests that they should be allowed to do so. It seems apparent to us that there is now proper regulation of the industry in Nevada, sufficient to insure its fair application. Thank you.

TESTIMONY OF CHARLES APLIN  
ON BEHALF OF THE  
NEVADA POLYGRAPH ASSOCIATION

March 9, 1981

Mr. Chairman, Committee Members and Staff:

I am Charles Aplin, a private polygraph examiner, a member of the American Polygraph Association and Vice President of the Nevada Polygraph Association. We appreciate this opportunity to appear before your Committee to present our position on AB 233 and to answer any questions from members of the Committee. I am also submitting a comprehensive written statement for the record. (1)

We welcome the Committee's interest in the use of the polygraph and we believe free and forthright discussion will benefit the public and members of our profession. We hope these hearings will provide a valuable catalyst for a fresh look at the role and responsibility of polygraph examiners. The Nevada Polygraph Association is however, opposed to AB 233.

If enacted into law, this bill can be expected to result in an increase in crime, by deliberately preventing employers from inquiring effectively into the past performance of applicants or employees. We question for example, whether polygraph is banned for the detection of a specific crime in an employment context.

Internal crime, at least half of which is attributed to employees, costs business between fifteen and fifty billion dollars annually. Other estimates indicate that three out of five business bankruptcies result from employee theft; that three out of four employees handling money or merchandise steal from their employers. The United States Senate Select Small Business Committee reported recently that thefts of goods in transit in the United States were in the multiple billions of dollars per year, and that the national economy would no longer afford thefts on such a scale. (2)

White collar and blue collar crime in business and in industry challenges integrity and threatens economy. To combat extensive drug thefts, the U. S. Drug Enforcement Agency has recommended polygraph use for initial hiring and monitoring of drug store employees. The transportation industry has switched to containerized shipments in order to avoid losses, only to find that entire

containers are now being stolen or hijacked. Securities thefts from Wall Street firms have reached such alarming proportions as to undermine the financial integrity of brokerage companies.

While there have been abuses in our profession as in any other profession, the polygraph technique is still reliable. When used properly it can be a protective device which safeguards against blatant costly crime. Commercial polygraph examinations can deter or eliminate internal theft. This result aids not only the business obligation to protect the company and stockholder but also the consumer interest to pay lower retail prices.

Polygraph validity and reliability may well be another major issue addressed during these hearings. While the reliability of certain other lie detection devices ranging from the Psychological Stress Evaluator (PSE) to rapid eye movement analysis may be unproven, there is no question that polygraph accuracy has been established. The American Polygraph Association and the Nevada Polygraph Association believe that no reputable scientist will disagree with the basic psychophysiology upon which the use of the polygraph is based.

The technical expertise and control procedures of qualified polygraph examiners assure with high accuracy that nervous, anxious, angry, and even unstable individuals are not incorrectly identified as untruthful. Objective validity studies in simulated crime situations in various psychophysiological laboratories have established the accuracy of the polygraph in the 85% to 95% range. Moreover, in a recent District of Columbia case Dr. Martin Orne, a prominent psychophysiological and premier figure in polygraph research, testified that field polygraph examinations could be expected to exceed the accuracy of laboratory tests.

Further testimony before this Committee may focus upon the abuse of the polygraph by certain employers. Self-appointed polygraph "experts" may claim deficiencies in instrumentation and techniques. We ask you to demand specifics in accusations and we urge you to demand credentials from these supposed experts.

In a recent survey of the effect of the polygraph in screening Utah job applicants, Dr. Gordon Barland reported two major conclusions based upon his data. First, the rejection rate for job applicants is much higher than usually assumed, namely, about 20%. Second, 90% of the persons rejected for employment following a polygraph examination were rejected on the grounds of their own admissions rather than on unsubstantiated conclusions by the examiner. (3)

Polygraph accuracy is not the controversy. Most proponents of this legislation would be just as strongly opposed if the polygraph were 100% accurate. Nevertheless some witnesses appearing before this Committee may attempt to claim that all errors in polygraph examinations result in injustice to applicants or employees. We urge the Committee to carefully scrutinize any evidence that may support such a conclusion.

Commercial polygraph examinations are used extensively by many major and well known enterprises as well as many local, small businesses. Polygraph examinations are expensive, and time-consuming, but they have been clearly justified on the basis that they are more accurate, more specific, and certainly less offensive than any other investigative procedure currently available. Indeed, there have been several instances where employee organizations, even labor unions, have requested polygraph examinations in preference to any other routine investigative procedure.

The right to individual privacy will be the key issue focused on during these hearings. We believe that this issue requires the most careful attention and discussion. Witnesses who will address this Committee will insist that the right of personal privacy takes precedence over all other rights in America.

Arguments have been made that this bill is necessary in order to curtail unnecessary invasions of an employee's "right to privacy." Not only do these arguments ignore an employer's countervailing need to protect himself and the consuming public from the crippling and inflationary effects of epidemic employee theft, but they also assume that there is some universally accepted legal definition of privacy and that this definition encompasses the private use of polygraphs in an employment context. In contrast, learned commentators on this legal issue agree that there is no consensus as to what exactly constitutes an individual's "right to privacy." Richard Parker, a professor of Law at Rutgers University, has stated that "[T]here is no consensus in legal and philosophical literature on a definition of privacy." (4) Professor Arthur Miller, in a widely-praised book on the issue, admits that privacy is "difficult to define because it is exasperatingly vague and evanescent." (5) What isn't "vague" is the fact that when the United States Supreme Court has held a particular activity to be an invasion of an individual's constitutionally protected privacy interest, there has uniformly been found some "state action" in the activity at issue. (6) Perhaps the best statement of this crucial distinction between state action and the interaction of private citizens appears in the Supreme Court's decision in United States v. Cruikshank, "The Fourteenth Amendment prohibits a state from depriving any person of life, liberty, or property without due process of law; but this adds nothing to the rights of one citizen as against another." (7) Since no state action is involved in the use of polygraphs by private employers, no constitutionally-protected individual privacy right is impacted.

Moreover, any argument that state prohibition of the use of the polygraphs to curtail theft is necessary to protect defenseless employees against omnipotent employers clearly ignores the realities of the modern employer/employee relationship. First, no employee is "coerced" into submitting to polygraph tests. Their use in the employment context is purely consensual. Second, labor, the most vocal proponent of state prohibition, is well equipped to secure its demands and limit polygraph use through the collective bargaining system. Finally, if a state determines that there is a privacy interest which it wishes to protect in this context, it may through legislative action or through its courts' decisions create a civil damage remedy for invasion of what that state has determined to be a valid privacy right. It is interesting to note that while there is already extensive state regulation of polygraph testing, no court, state or federal, has held that the use of polygraphs to curtail employee theft constitutes the tort of invasion of privacy.

Perhaps the most effective rebuttal to any argument that state prohibition of polygraph use by employers is necessary to protect an employee's hypothetical "privacy right" arises from an examination of the inevitable consequences of such a prohibition. Without the protection of polygraph testing, an employer must by necessity resort to prior work records, arrest records, credit records, and numerous other types of records in screening prospective employees. Not only would this entail inordinate expense to the employer which inevitably means increased costs to the consumer, but the necessity of resorting to such voluminous and varied material must inexorably give rise to a far greater potential for the invasion of any legitimate privacy interest an employee might have. If both polygraph testing and the use of such data compilations were both proscribed, an employer would have no effective mechanism to screen employees or control employee theft. This would inevitably mean that employees will be able to conceal disqualifying information: a drug firm will be unable to prevent employment of a narcotics addict; a bank would be unable to prevent employment of a convicted embezzler as a cashier; and, most importantly, the consuming public will continue to pay prices inflated to cover theft.

We appear today with full confidence in the utility and reliability of the polygraph technique. We believe that the impartial evaluation by this Committee will conclude that AB 233 is a harsh and unnecessary approach to regulation by this Legislature.

Charles Aplin  
Polygraph Examiner  
State of Nevada License #246  
302 East Carson Avenue, Suite 806  
Las Vegas, Nevada, 89101

- (1) Portions of this text have been extracted verbatim from: U. S. Senate Hearings on the Polygraph, Testimony of J. Kirk Barefoot on Behalf of the American Polygraph Association, Polygraph, 1977, 6, 338-342.
- (2) Senate Select Committee on Small Business Report No. 93-276.
- (3) G. Barland, A Survey of the Effect of the Polygraph in Screening Utah Job Applicants: Preliminary Results, Polygraph, 1977, 6 318-324.
- (4) R. Parker, "A Definition of Privacy," 27 Rutgers Law Review, 275, 275-76 (1974).
- (5) A. Miller, The Assault on Privacy, at 25 (1971).
- (6) See, e.g., Roe v. Wade, 410 U.S. 113 (1973) (State Blanket prohibition of abortion unless life of mother jeopardized by pregnancy ruled unconstitutional). Griswold v Connecticut, 381 U.S. 479 (1965) (State prohibition of use of contraceptives by married couples ruled unconstitutional).
- (7) 92 U.S.C. 542, 554 (1875).



  
HOTEL / CASINO

To the Labor and Management Committee of the Nevada Legislature concerning A. B. 233.

At the Maxim Hotel and Casino we require all new employees to state on their applications if they would be willing to take a polygraph if requested.

The use of the polygraph at the Maxim has been restricted to 2 basic uses.

1. To clear employees of suspicion or accusation. Used in this manner it becomes a tool to protect an employee's job rather than endanger it.
2. To verify other information or evidence as to an employee's honesty, integrity, or drug abuse.

We have found the polygraph to be an indispensable tool in certain circumstances (as outlined above) to help protect the integrity of our employees, our hotel-casino, and our industry.

Phil Bryan

*Phil Bryan*  
3/8/81  
Vice President and Casino Manager



**OLIND JENNI PROPERTIES, INC.**

March 6, 1981

Labor and Management Committee  
Nevada State Assembly

Re: Assembly Bill #233

I am opposed to the passage of Assembly Bill #233, prohibiting the use of polygraph tests by employers.

I have been a casino owner in Southern Nevada since 1974 and feel the availability of polygraph tests to my employees has worked in a very positive way for an employee to substantiate his/her statements.

Due to the sensitive nature of gaming; the handling and exchange of large sums of money while under pressure, I feel the availability of lie detector tests is a necessary part of our employment procedure.

I urge your committee to vote "NO" to the passage of Assembly Bill #233.

Sincerely,

Olind Jenni



Telephone: (702) 649-8801

March 6, 1981

Labor and Management Committee  
Nevada State Assembly

Re: Assembly Bill #233

As the General Manager of the Opry House Saloon & Casino I urge your "NO" vote to the passage of Assembly Bill #233, prohibiting the use of polygraph tests by employers.

Polygraph tests should be available to employees in any industry as a part of the employment procedure, or as a condition of employment.

It has been used as an effective screening tool in the selection of honest employees; a very important aspect in gaming, as well as any other business or industry.

Sincerely,

Brad Feitush  
General Manager



March 6, 1981

Labor and Management Committee  
Nevada State Assembly

Re: Assembly Bill #233

As the General Manager of the Ambassador Casino I urge your "NO" vote to the passage of Assembly Bill #233, prohibiting the use of polygraph tests by employers.

Polygraph tests should be available to employees in any industry as a part of the employment procedure, or as a condition of employment.

It has been used as an effective screening tool in the selection of honest employees; a very important aspect in gaming, as well as any other business or industry.

Sincerely,

A handwritten signature in cursive script that reads "M. J. Sidebottom".

Maynard Sidebottom  
General Manager

March 4, 1981

CONCERNING BILL 223 -

We operate 4 mens clothing stores in the MGM GRAND Hotel, Sahara, Aladdin and Riviera Hotels. For the past several years we have used the polygraph as one of our means of screening potential employees. It has worked very well.

It is as good a judge of character as any one person. Also, to my amazement, we have found on occasion some people that had a history of heavy gambling, drinking, and/or drug usage.

Without the polygraph system we would definitely be in the position where we would once again be considering applicants that were felons.

Sincerely,



BRAD WALLIN

ASSEMBLY

AGENDA FOR COMMITTEE ON.....LABOR.....

Date MONDAY, MARCH 9 Time 5:00 P.M. Room 316.....

Bills or Resolutions  
to be considered

Subject

Counsel  
requested\*

THIS AGENDA CANCELS AND SUPERSEDES THE PREVIOUS AGENDA FOR THIS DATE

- |        |  |
|--------|--|
| SB-191 | Removes limit on number of appeals officers.                                     |
| AB-229 | Limits eligibility of guards at school crossings for unemployment compensation.  |
| AB-233 | Prohibits employer's use of polygraph on applicants for employment or employees. |

NOTICE - THE HEARING ON THE BILL LISTED BELOW IS CONTINUED FROM 3/3/81

- |        |   |
|--------|---|
| AB-208 | Removes denial of unemployment compensation for certain school employees under specified circumstances. |
|--------|---|

\*Please do not ask for counsel unless necessary.