

# Polygraph

Volume 12

June 1983

Number 2

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## A COMPENDIUM ON POLYGRAPH VALIDITY

By

Norman Ansley

### Summary

When research is conducted using real polygraph cases in which independent means are employed to check truth or deception, the average validity is 96 percent, with a range of 86.3 to 100 percent. These statistical results, based on the follow-up of nearly two thousand real cases, do not include those examinations in which the results were reported as inconclusive. It is the use of the inconclusive range that gives the field examiner the opportunity to be fair and safe, and say "I don't know."

Inspector Doran, of the FBI, has spoken of the importance of this inconclusive range. He said, "the inconclusive range serves a purpose - it is the safety zone and should be protected to avoid unnecessary errors. No examiner should render a judgment if he/she is not completely comfortable with his/her findings."\*

When research is conducted in a laboratory setting where truth and deception is known (except to the examiner), the validity of polygraph techniques average 93.6 percent, with a range of 69.0 percent to 100 percent. Not all of the laboratory projects cited in this compendium were conducted to determine validity. Some were projects to evaluate variations in techniques, methods of analysis, specific and often single physiological recordings, and specific types of subject populations. For example, the third study by Heckel was of delusional psychotics which showed low validity, 69%; while the studies of psychopaths resulted in a surprise, with an average detection rate in excess of 90%. That polygraph techniques are cross-cultural is evident from the similarity of the results of studies made in Poland, Israel, Iceland, Japan, Canada and the United States.

Among the major techniques, there is little difference in their accuracy. The validity of control question formats average 95.2 percent, relevant-irrelevant formats average 96.8 percent, peak of tension formats average 91.2 percent, guilty-knowledge formats average 94.4 percent, and screening examinations average 96.7 percent. Since field examiners often use combinations of these techniques, no average can describe the accuracy

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\*"Inspector William. Y. Doran Addresses Federal Examiners." Polygraph 10(2)(June 1981): 61-62. Inspector Doran was Deputy Assistant Director, Laboratory Division, Federal Bureau of Investigation.

The author of this article is a member of the Board of Directors of the APA, and the chief of a major federal polygraph program.

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## Polygraph Validity

of examinations in individual cases. The research shows that in screening examinations, the errors were predominantly calling deceptive persons truthful. The research also shows that polygraph techniques are slightly better at verifying truthfulness than detecting deception.

On the following pages are a table for quick comparisons of the results of the studies, and two sections of material describing each of the research projects with the source of the material. The first section describes follow-up studies on real cases, while the second section describes the results obtained from laboratory studies.

### VALIDITY

#### Criminal Cases

| <u>Researcher</u> | <u>Validity</u> | <u>No Tested</u> |
|-------------------|-----------------|------------------|
| Ben Ishai 1       | 94.0%           | 100              |
| Ben Ishai 2       | 100.0%          | 10               |
| Bersh             | 92.4%           | 157              |
| Bitterman         | 100.0%          | 81               |
| Edwards           | 98.3%           | 959              |
| Elaad             | 96.6%           | 184              |
| Lyon              | 100.0%          | 40               |
| Peters            | 90.2%           | 172              |
| Raskin 1          | 86.3%           | 92               |
| Raskin 2          | 88.2%           | 41               |
| Summers           | 100.0%          | 90               |
| Widacki           | 91.6%           | 38               |
|                   |                 | <u>1,964</u>     |

The average validity for 1,964 persons tested was 96.3%.

#### Laboratory Cases

| <u>Researcher</u> | <u>Validity</u> | <u>No Tested</u> |
|-------------------|-----------------|------------------|
| Benussi           | 97.5%           | 80               |
| Blum              | 96.2%           | 106              |
| Correa            | 92.0%           | 40               |
| Davidson          | 97.9%           | 48               |
| Dufek 1           | 83.3%           | 30               |
| Dufek 2           | 90.0%           | 20               |
| Dufek 3           | 100.0%          | 10               |
| Dufek 4           | 85.0%           | 20               |
| Gudjonsson 1      | 91.7%           | 12               |
| Gudjonsson 2      | 83.3%           | 12               |
| Gudjonsson 3      | 94.4%           | 12               |
| Gudjonsson 4      | 72.3%           | 12               |
| Hammond           | 96.8%           | 62               |
| Heckel 1          | 100.0%          | 5                |
| Heckel 2          | 87.5%           | 5                |
| Heckel 3          | 69.0%           | 5                |
| Kircher           | 95.6%           | 100              |
| Krenbergerova     | 96.7%           | 10               |
| Liebllich         | 97.0%           | 58               |
| Lykken 1          | 93.9%           | 49               |
| Lykken 2          | 100.0%          | 20               |
| McNitt            | 100.0%          | 59               |
| Ohkawa            | 90.2%           | 40               |
| Ohnishi           | 92.0%           | 50               |
| Podlesny 1        | 89.0%           | 60               |
| Podlesny 2        | 90.0%           | 60               |
| Raskin            | 87.5%           | 48               |
| Widacki           | 95.0%           | 80               |
|                   |                 | <u>1,113</u>     |

The average validity for 1,113 persons tested was 93.6%.

VALIDITY OF CRIMINAL CASES

| <u>Research</u>  | <u>Cases</u> | <u>Percent</u> |
|--|--------------|----------------|
| Akiva Ben-Ishai. "Some Remarks on Polygraph Research." Paper presented at the Ninth Annual Meeting of the American Academy of Polygraph Examiners, Chicago, 1962.  |              |                |
| #1 Independent judgment of case files compared to polygraph results:   | 100          | 94.0%          |
| #2 Blind review of charts from confirmed cases:  | 10           | 100.0%         |
| Philip J. Bersh. "A Validation Study of Polygraph Examiner Judgments." <u>Journal of Applied Psychology</u> 53 (1959): 399-403.  |              |                |
| Independent judgment of case files compared to polygraph results:  | 157          | 92.4%          |
| M.E. Bitterman and F.L. Marcuse. "Cardiovascular Responses of Innocent Persons to Criminal Interrogation." <u>American Journal of Psychology</u> 60 (1947): 407-412.   |              |                |
| Test results compared to investigative outcome:  | 81           | 100.0%         |
| Robert H. Edwards. "A Survey: Reliability of Polygraph Examinations Conducted By Virginia Polygraph Examiners." Bureau of Forensic Science, Department of General Services, Commonwealth of Virginia, July 31, 1981. Reprinted in <u>Polygraph</u> 10 (4)(1981): 229-272.  |              |                |
| Test results compared to investigative or judicial outcome of the cases:   | 959          | 98.3%          |
| Eitan Elaad and Esther Schahar. "Polygraph Field Validity." In I. Nachshon (Ed.) "Scientific Interrogation in Criminal Investigation." Selected papers presented at the First National Conference on Scientific Interrogation in Criminal Investigation, Bar-Ilan University, Ramat-Gan, Israel, November 3-4, 1976. |              |                |
| Test results compared to investigative or judicial outcome of the cases:   | 184          | 96.6%          |
| Verne W. Lyon. "Deception Tests With Juvenile Delinquents." <u>Journal of Genetic Psychology</u> 48 (3) (1936): 494-497.   |              |                |
| Test results compared to investigative or judicial outcome of the cases:   | 40           | 100.0%         |

## Polygraph Validity

| <u>Research</u>  | <u>Cases</u> | <u>Percent</u> |
|--|--------------|----------------|
| Robert B. Peters. "A Survey of Polygraph Evidence in Criminal Trials." <u>The American Bar Association Journal</u> 68 (February 1982); 162-175.  |              |                |
| Test results compared to the outcome of the trials, pleas, or disposition of charges:  | 172          | 90.2%          |
| David C. Raskin, Gordon H. Barland and John A. Podlesny. <u>Validity and Reliability of Detection of Deception</u> . Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, U.S. Department of Justice, 1978, pp. 4, 8, 10. |              |                |
| #1 Results from blind analysis of the polygraph charts compared to the independent judgment of the case files:   | 92           | 86.3%          |
| #2 Results from blind analysis of the polygraph charts compared to the judicial outcome of the cases:  | 41           | 88.2%          |
| Walter B. Summers. "The Electric Pathometer." <u>Proceedings of the International Association of Chiefs of Police</u> . Washington, D.C.: IACP, 1938, pp. 142-143.   |              |                |
| Test results compared to judicial outcome of cases:  | 90           | 100.0%         |
| Jan Widacki. <u>Analiza Przestanek Diagnozowania w Badaniach Poligraficznych</u> . (The Analysis of Diagnostic Premises in Polygraph Examination.) Uniwersytetu Slaskiego, Katowice, Poland, 1982.   |              |                |
| Results from the blind analysis of the polygraph charts compared to the judicial outcome:  | 38           | 91.6%          |

### VALIDITY OF LABORATORY CASES

| <u>Research</u>  | <u>Experiments</u> | <u>Percent</u> |
|--|--------------------|----------------|
| Vittorio Benussi. "Die atmungssymptome der Luge." <u>Archiv fur die Gestamte Psychologie</u> . ("The Respiratory Systems of Lying.") Tr. and reprinted in <u>Polygraph</u> 4(1)(March 1975): 52-76.  |                    |                |
| Measured inspiration/expiration ratios before and after lying.   | 80                 | 97.5%          |
| Richard H. Blum and William Osterloh. "The Polygraph Examination as a Means for Detecting Truth and Falsehood in Stories Presented by Police Informants." <u>Journal of Criminal Law, Criminology and Police Science</u> 59 (1968): 133-137. |                    |                |

| <u>Research</u>  | <u>Experiments</u> | <u>Percent</u> |
|--|--------------------|----------------|
| With a polygraph had to determine which informants were telling the whole truth, telling partly true stories, or telling totally false stories. There were 106 issues to be decided, told by 20 subjects.        | 106                | 96.2%          |
| Eileen J. Correa and Henry E. Adams. "The Validity of the Preemployment Polygraph Examination and the Effects of Motivation." <u>Polygraph</u> 10 (3) (September 1981): 143-155.                                 |                    |                |
| Determine from 40 subjects who was truthful on their application forms, and among the untruthful, what items on the form were not truthful.  | 40                 | 92.0%          |
| P.O. Davidson. "Validity of the Guilty-Knowledge Technique: The Effects of Motivation." <u>Journal of Applied Psychology</u> 52 (1)(1968): 62-65.  |                    |                |
| Simulated crime in which the motivation varied, one group getting 10¢ to a \$1.00, the other \$25 to \$50, if they committed the crime and escaped detection by the polygraph test. Missed one low motivation S. | 48                 | 97.9%          |
| Miroslav Dufek. "A Contribution on the Problem of Polygraph Examinations." <u>Czechoslovak Criminalistics</u> (February 1969). Tr. from Czech.   |                    |                |
| #1 Thirty subjects wrote a number from two to ten. Searching peak of tension test to pick the number. Chance was 11.0%. (Five inconclusive, no errors.)  | 30                 | 83.3%          |
| #2 20 subjects who examined one of six items. Searching peak of tension test to pick the item. Chance was 16.7%. (Two inconclusive, no errors.)  | 20                 | 90.0%          |
| #3 Ten subjects picked a first name with personal meaning, placed with nine neutral. Searching peak. Chance was 11.1%.   | 10                 | 100.0%         |
| #4 Experiment like #2, but subjects knew the exact order of the items prior to the peak of tension test. Chance was 16.7%. (Three inconclusive, no errors.)  | 20                 | 85.0%          |
| G.H. Gudjonsson. "The Efficacy of the Galvanic Skin Response in Experimental Lie Detection. Some Personality Variables." Master of Science Thesis, Department of Psychology, University of Surrey, England.      |                    |                |
| #1 12 uniformed Icelandic policemen took three peak of tension tests. One on their month of birth  |                    |                |

## Polygraph Validity

| <u>Research</u>  | <u>Experiments</u> | <u>Percent</u> |
|--|--------------------|----------------|
| (91.7%), one on a number (100%), and one on a word (83.3%). Chance was 14.3%.  | 36                 | 91.7%          |
| #2 12 Icelandic detectives took three peak of tension tests. One on their month of birth (83.3%), one on a number (83.3%), and one on a word (83.3%). Chance was 14.3%.  | 36                 | 83.3%          |
| #3 12 Icelandic clergymen took three peak of tension tests. One on their month of birth (100%), one on a number (100%), and one on a word (83.3%). Chance was 14.3%.   | 36                 | 94.4%          |
| #4 12 Icelandic criminals took three peak of tension tests. One on their month of birth (75%), one on a number (83.3%), and one on a word (58.3%). Chance was 14.3%.   | 36                 | 72.2%          |
| <p>David L. Hammond. "The Responding of Normals, Alcoholics and Psychopaths in a Laboratory Lie Detection Experiment." Doctoral Dissertation, California School of Professional Psychology, 1980.</p> <p>Subjects were 21 normals, 20 alcoholics, 21 psychopaths, all tested by students in a polygraph course about a mock crime. Control question technique. Charts read blind by expert examiner.</p> |                    |                |
|  | 62                 | 96.8%          |
| <p>R.V. Heckel, J.R. brokaw, H.C. Salzberg, and S.L. Wiggins. "Polygraphic Variations in Reactivity Between Delusional, Nondelusional, and Control Groups in a Crime Situation." <u>Journal of Criminal Law, Criminology and Police Science</u> 53 (3)(1962): 380-383.</p>   |                    |                |
| #1 Subjects were 5 normal males who took a polygraph test in regard to what they thought was a real theft. Charts were read blind by four examiners. All S's were innocent. Chart analysis indicated:  | 5                  | 100.0%         |
| #2 Subjects were 5 nondelusional psychiatric patients. Procedure as in #1.   | 5                  | 87.5%          |
| #3 Subjects were 5 delusional psychotic psychiatric patients. Procedures as in #1.   | 5                  | 69.0%          |
| <p>John C. Kircher and David C. Raskin. "Cross-Validation of a Computerized Diagnostic Procedure for Detection of Deception." Paper presented at the meeting of the Society for Psychophysiological Research, October 1982, Minneapolis, Minnesota.</p>  |                    |                |

| <u>Research</u>   | <u>Experiments</u> | <u>Percent</u> |
|---|--------------------|----------------|
| #1 100 subjects of which half committed a mock crime, half innocent. Computer analysis of the polygraph charts.   | 100                | 91.3%          |
| #2 Same as above but charts scored blind by expert examiner.  | 100                | 95.6%          |
| Jana Krenbergerova. "Experimental Experiences With the Use of the Polygraph." <u>Socialist Legality</u> (May-June 1969). Tr. from Czech.  |                    |                |
| Ten men hid weapons in various buildings. Searching peak of tension tests were given to locate (1) the building, (2) the floor, and (3) the room. Each list had 18 items. Chance was 5.6%. There were 30 tests given.   | 30                 | 96.7%          |
| Israel Lieblich, Gideon Naftali, Joseph Shmueli and Sol Kugelman. "Efficacy of GSR Detection of Information With Repeated Presentation of Series of Stimuli in Two Motivational States." <u>Journal of Applied Psychology</u> 59 (1)(1974): 113-115.  |                    |                |
| There were 58 subjects, half in low and half in high motivational states. Searching peak of tension for their first name among five names (chance 20%) produced 60% results for low and high at end of first test. Ten tests conducted on each subject, scored cumulatively produced the results below. 20 of 28 high motivational subjects admitted after the test they tried countermeasures. |                    |                |
| #1 Low motivational group   | 29                 | 96.0%          |
| #2 High motivational group  | 29                 | 98.0%          |
| David T. Lykken. "The GSR in the Detection of Guilt." <u>Journal of Applied Psychology</u> 43 (6)(1959): 385-388.   |                    |                |
| 49 subjects in 4 groups. 13 enacted 2 "crimes," a "murder" and a "theft." 12 enacted only the "murder" and 12 enacted only the "theft." There were 12 innocent. Chance was 25%.   |                    |                |
|   | 49                 | 93.9%          |
| David T. Lykken. "The Validity of the Guilty Knowledge Technique: The Effects of Faking." <u>Journal of Applied Psychology</u> 44 (4)(1960): 258-262.   |                    |                |
| 20 subjects were taught to give false GSR responses, and to do so during the tests. Also, offered a \$10 prize to beat the test, a searching peak of tension on personal information.   | 20                 | 100.0%         |



## Polygraph Validity

| <u>Research</u>  | <u>Experiments</u> | <u>Percent</u> |
|--|--------------------|----------------|
| Reginald D. MacNitt. "In Defense of the Electrodermal Response and Cardiac Amplitude as Measures of Deception." <u>Journal of Criminal Law, Criminology and Police Science</u> 33 (1942): 266-275.   |                    |                |
| Subjects were employees, some who had stolen merchandise (confessed) who were told to lie during the tests and some employees considered honest. Relevant-irrelevant screening tests conducted on the 59 subjects by examiner blind to situation.  | 59                 | 100.0%         |
| Hisatsugi Ohkawa. "Comparison of Physiological Response of 'Yes,' 'No,' and 'Mute' Conditions in Peak of Tension Test." <u>Reports of the National Institute of Police Science</u> (1963): 1-4. Tr. from Japanese.   |                    |                |
| A mock theft involving 40 subjects, who stole one of eight items. Searching peak of tension. Chance was 12.5%. (Mute results 87.5%, honest answer, 75.0%).   | 40                 | 90.2%          |
| Kazuo Ohmishi, Katsunori Matsuno, Masana Arasuna and Akhiro Suzuki. "The Objective Analysis of Physiological Indices in the Field Detection of Deception." <u>Reports of the National Institute of Police Science</u> 29 (3)(August 1976): 181-188. Tr. from Japanese, Abstract in English.  |                    |                |
| Searching peak of tension to pick the correct number from six numbers. Subjects were 50 suspects in criminal cases. Chance was 16.7%.  | 50                 | 92.0%          |
| John A. Podlesny, David C. Raskin and Gordon H. Barland. "Effectiveness of Techniques and Physiological Measures in the Detection of Deception." Report No. 76.5, Contract 75-NI-99-0001, National Institute of Law Enforcement and Criminal Justice; Department of Psychology, University of Utah, Salt Lake City, Utah. August 20, 1976. |                    |                |
| #1 Control question technique used to detect participation in a mock theft experiment, in which 30 were guilty, 30 were innocent.  | 60                 | 89.0%          |
| #2 As above, but a guilty knowledge technique was used.  | 60                 | 90.0%          |
| David C. Raskin and Robert D. Hare. "Psychopathy and Detection of Deception in a Prison Population." <u>Psychopsychology</u> 15 (2)(1978): 126-136.  |                    |                |

Norman Ansley

| <u>Research</u>   | <u>Experiments</u> | <u>Percent</u> |
|---|--------------------|----------------|
| 48 prison inmates of which half were diagnosed psychopaths were tested in a mock crime with a control question technique. (There was no difference in detectability of psychopaths from non-psychopaths.)   | 48                 | 87.5%          |
| Jan Widacki and Frank Horvath. "An Experimental Investigation of the Relative Validity and Utility of the Polygraph Technique and Three Other Common Methods of Criminal Identification." <u>Journal of Forensic Sciences</u> 23 (3)(July 1978): 596-601. |                    |                |
| 80 students participated in an experiment in which 20 of them were guilty of participating in the delivery of an envelope to a specific location.   | 80                 | 95.0%          |

\* \* \* \* \*

## COMMENTARY

### OVER-REACTION--THE MISCHIEF OF MIRANDA v. ARIZONA

By

Fred E. Inbau\*

Immediately after the attempted assassination of President Ronald Reagan in Washington, D.C. on the early afternoon of March 30, 1981, Secret Service agents and the District of Columbia police arrested John W. Hinckley, Jr. and took him to the local police headquarters, arriving there at 2:40 p.m. They wanted to question Hinckley not only as to his motive but also about the possible involvement of accomplices. Before doing so, however, they dutifully read to him the warnings of constitutional rights that the Supreme Court in 1966 mandated in its five to four decision in Miranda v. Arizona.<sup>[1]</sup> The warnings given to Hinckley, as we shall see, contained embellishments of the ones specified in Miranda, and they were read to him on three separate occasions within a two hour period. After receiving the third set of warnings Hinckley was presented with a "waiver of rights" form on which he responded "yes" to the questions whether he had read his rights and understood them. Then he was asked whether he "wished to answer any questions." At this point Hinckley answered, "I don't know. I'm not sure; I think I ought to talk to Joe Bates[his father's lawyer in Dallas]." Hinckley added: "I want to talk to you, but first I want to talk to Joe Bates."<sup>[2]</sup>

Following the D.C. police "booking procedure"(identification data and fingerprints), and while the police were attempting to contact Joe Bates, two FBI agents arrived and arrested Hinckley for violation of the Presidential Assassination Statute.<sup>[3]</sup> They were informed of all that had transpired and then took Hinckley to the FBI field office at approximately 5:15 p.m. He received the Miranda warnings for the fourth time, at the field office. He was also presented with another waiver form, supplied by the FBI. Hinckley signed his name to it; however, "it was clearly understood that he did not waive his right not to answer questions before consulting counsel." Nevertheless, he did answer various "background" questions asked by FBI agents.

The "background" information was suppressed by the D.C. District Court. It reasoned that the information was elicited from Hinckley in violation of Miranda, which prohibits the interrogation of a custodial suspect after he announces or indicates he wants to have a lawyer present.<sup>[4]</sup> As already quoted, Hinckley had said he wanted one, although he did so rather hesitatingly.

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\*John Henry Wigmore Professor of Law Emeritus, Northwestern University School of Law; Founder and Past President, Americans for Effective Law Enforcement.

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The district court ruling was affirmed by the Court of Appeals for the D.C. Circuit.[5] Both courts rejected the government's contention that the questioning of Hinckley at the FBI office was merely "standard processing procedure" of an "essentially administrative nature." The courts concluded that Hinckley had, in fact, been interrogated and that the purpose of the questioning was to obtain personal background information from Hinckley which would negate an anticipated insanity plea at the time of trial. It was obvious that Hinckley could not deny he did the shooting, so the only conceivable defense would be that of insanity. That was, in fact, the plea at his trial, which began on April 26, 1982.[6]

In view of the court rulings declaring the "background information" inadmissible at trial, whatever value that information may have been to the prosecution was irretrievably lost. The government decided not to seek Supreme Court review of the appellate court's decision. Reliance had to be placed, therefore, upon independent evidence of Hinckley's sanity.

Before proceeding to discuss several other cases to illustrate the mischief occasioned by Miranda, the writer reiterates that Hinckley had received the prescribed warnings three times within a two-hour interval, and that a signed waiver was sought from him at the D.C. police station when he was asked if he wished to answer any questions. Nowhere in the Miranda opinion is there anything requiring such a repetition of the warnings, or the need for a signed statement, or the ascertainment of any other kind of waiver than an indicated willingness to be questioned. Why, then, the mischief?

The mischief in the Hinckley case resulted from a concern on the part of law enforcement officers--and an understandable concern--that whatever they say to a suspect by way of Miranda requirements might later be considered inadequate by a judge or appellate court. Hence, they over-react; they embellish the warnings or add new ones. Each time someone wants to talk to the suspect, or the same interrogator wants to resume his interrogation, the warnings are repeated. The repetitive warnings are followed by a request to sign a legalistically shrouded waiver form. As a consequence of all of this, suspects who might otherwise have been willing to talk are far less apt to do so.

Another illustration of over-reaction to Miranda appears in an appellate court case within the District of Columbia that was decided only one month prior to the interrogation of Hinckley. In that case, United States v. Alexander,[7] a suspected murderer received the following warnings, as prescribed in a D.C. police department regulation:

You are under arrest. Before we ask any question, you must understand what your rights are.

You have the right to remain silent. You are not required to say anything to us at any time or to answer questions. Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we question you and to have him with you during questioning.

## Miranda

If you cannot afford a lawyer and want one, a lawyer will be provided for you.

If you want to answer questions now without a lawyer present you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

Following the reading of the warnings to the suspect, she was presented with a printed waiver form, on which the first three questions were:

1. Have you read or had read to you the warnings as to your rights?
2. Do you understand these rights?
3. Do you wish to answer any questions?

Alongside each of the foregoing questions the suspect wrote "Yes." The next question was:

4. Are you willing to answer questions without having an attorney present?

To this fourth question the suspect wrote "No." The next item on the form was:

5. Signature of defendant on line below.

After the suspect's signature, the remaining portion of the waiver document contained space for the time, date, and lines for the signatures of two witnesses.

Following completion of the printed waiver form, a police officer told the suspect, "[w]e know you are responsible for the stabbing," whereupon she confessed and agreed to give a written statement. At this point, the officer issued "fresh Miranda warnings."

The trial court in Alexander suppressed the resulting confession, for the same reason stated in the Hinckley case--the questioning of a custodial suspect after an indication of an interest in having a lawyer present. The suppression order was affirmed by the appellate court. Consequently, the confession could not be used as evidence at trial.

The warnings that were used in the Alexander case presumably were the same ones that were given by the D.C. police department to Hinckley. In those warnings and in the waiver forms, the police went far beyond what the Supreme Court mandated in Miranda, or in any of its subsequent decisions prior to (or since) the interrogations of Alexander and Hinckley. What the Court stated in Miranda was that before a custodial suspect could be interrogated:

[h]e must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.[8]

Following this specification of the required warnings, the Court proceeded to advise interrogators that the suspect's "[o]pportunity to exercise these rights must be afforded to him throughout the interrogation," meaning that if he changed his mind and decided to remain silent or wanted an attorney present he should be accorded that privilege.[9] But this was only a warning to interrogators, not something for incorporation into the required warnings to the suspects themselves. The Court also stated that after the issuance of the warnings, "the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement." Finally, the Court added the mandate that "unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him." [10]

The embellishments of the Miranda warnings and the ritualization of the written waiver, as exemplified in the foregoing Hinckley and Alexander cases, unquestionably have a tendency to dissuade many guilty suspects from submitting to police questioning.

The practice of police resort to written waiver is another illustration of over-reaction to Miranda. The Court in Miranda made no mention of written waivers, and in one of its own subsequent decision, North Carolina v. Butler, [11] the Court specifically held that written waivers are not required. In that case the defendant, as a custodial suspect, orally waived his rights to silence and to have an attorney present, but refused when he was asked to sign a written waiver. The Supreme Court ruled that despite the refusal to sign the written waiver, the oral waiver was sufficient.

The message in Butler has not "trickled down" to some police departments, and even where it has, over-caution still prevails. Written warnings are still sought, and in some instances they will contain all the embellishments exemplified by the following form currently being used by a large state department of law enforcement:

CONSTITUTIONAL RIGHTS AND WARNINGS

Date \_\_\_\_\_ Place \_\_\_\_\_ Time \_\_\_\_\_  
Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

1. That I have the right to remain silent and not make any statement at all.

I understand this segment (initial) \_\_\_\_\_

2. That anything I say can and will be used against me in a court or courts of law for the offense or offenses by which this warning is executed.

I understand this segment (initial) \_\_\_\_\_

3. That I can hire a lawyer of my own choice to be present and advise me before and during any statement.

I understand this segment (initial) \_\_\_\_\_

4. That if I am unable to hire a lawyer I can request and receive appointment of a lawyer by the proper authority, without cost or charge to me.

I understand this segment (initial) \_\_\_\_\_

5. That I can refuse to answer any questions or stop giving any statement any time I want to.

I understand this segment (initial) \_\_\_\_\_

I have read or have had read to me the five (5) inclusive segments stipulating my Constitution rights and understand each to the fullest extent.

\_\_\_\_\_  
Signature

witnessed:

\_\_\_\_\_  
\_\_\_\_\_

Forms such as this are not rare; they, or comparable ones, are in general usage by many police departments.

Most police departments rely upon the oral issuance of both the warnings and the waiver questions. Their officers are supplied with printed plastic cards, on one side of which appear the warnings to be read, and on the other the waiver questions to be asked. Usually the phraseology on the cards is prepared, or at least approved, by the local prosecuting attorney. The warnings on a typical card are as follows:

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to a lawyer and have him present with you while you are being questioned.
4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.
5. You can decide at any time to exercise these rights and not answer any questions or make any statements.

The waiver questions sometimes are:

1. Do you understand each of these rights?
2. Having these rights in mind, do you wish to talk to us now?

Observe, again, the gratuitous inclusion of the fifth warning. As earlier stated, this is not a warning required by Miranda, but rather an expression the Supreme Court employed by way of an admonition to interrogators regarding their obligation in those instances where a person has already agreed to talk without an attorney being present. It was intended as a guideline in case situations where, during the course of the interrogation, a suspect decides to discontinue the conversation or asks for an attorney. The Court did not indicate that this admonition to interrogators should be included as one of the required warnings to suspects.

The inquiry on the waiver side of the card about "understanding the rights" and "bearing them in mind" is the result of caution deemed

necessary by law enforcement agencies to avoid being faulted by the courts for obtaining waivers that were not made "knowingly and intelligently." This was the expression used by the Court in Miranda.

The phrase "knowingly and intelligently" prompts the writer to pose the following rhetorical questions for reader consideration. Assume that the person who is about to be interrogated actually committed the crime. He receives the warnings and is asked the waiver questions that have been described. If, after hearing that ritual, he decides to submit to an interrogation, does not that fact in itself display a lack of the intelligence necessary to make an intelligent waiver? With all such red-flag-waving by the interrogator, is it any wonder that many guilty suspects, the intelligent as well as some unintelligent ones, decide to remain silent or to ask for a lawyer? Presumably the Supreme Court only intended that the waiver must be knowingly made, but mischief has nevertheless resulted from attempts precisely to satisfy the presumed requirements for waiver. Why else would a waiver contain the words, "[h]aving these rights in mind, do you wish to talk to us now?"

What has just been stated about the plastic card guides for the oral issuance of the warnings, and for the asking of oral waivers, is true to an even greater degree when a printed form is used, such as the one earlier reproduced, which requires name-initialing after each of the five segments of the set of warnings, to be followed by the suspect's signature, witnessed by two persons.

In addition to over-reaction with regard to the language of the warnings and waivers, considerable mischief results from the frequently followed police practice of issuing "fresh" Miranda warnings every time an interrogation has been renewed by the original interrogator, or when a different interrogator becomes involved. This occurs even after the suspect waived his rights upon the first occasion, and even though only a short time has elapsed since the first set of warnings were given. Then, too, the interrogators usually are not content with an oral waiver; they will also present the suspect with a written one for his signature.

Sometimes the requested signature to a written waiver will not be forthcoming, as illustrated by the previously discussed case of North Carolina v. Butler. When this happens, police testimony that the suspect actually made an oral waiver may not be considered plausible at a confession suppression hearing, in light of the signature refusal. Also, defense counsel probably would contend that even assuming an oral waiver, the signature refusal evidences a change of mind, which, of course, would require a termination of the interrogation. A factor that should not be overlooked, however, in any evaluation of a situation of this type, is the natural reluctance of people generally to sign any document, regardless of the truthfulness of its disclosure.

As is implicit in what has already been stated, prosecuting attorneys (and other legal advisors to the police) also participate in the over-reaction process. Prosecutors are concerned, and understandably so, about trial court rejection of confessions, or appellate court reversals of convictions, because of some presumed flaw in the Miranda warnings or in the waiver. Even more damaging, however, are the super-cautious warnings and waiver forms that are prepared or approved for police usage, such as the



ones already discussed. Prosecutors seem to exercise as much meticulous care with the warnings and waivers as they do in the drafting of jury instructions for the presiding judge. Nothing must be left out!

Not only have the police and prosecutors over-reacted to Miranda; the same has been true of lower federal courts and of the state courts at all levels. An early over-reaction by a federal circuit court of appeals concerned the phraseology of the warning about the right to appointed counsel. When the appellant in Lathers v. United States[12] was to be questioned while a custodial suspect, the Miranda warnings he received included the statement that "if he was unable to hire an attorney the Commissioner or the court would appoint one for him." This was held by the Fifth Circuit Court of Appeals to be defective because the suspect "was not advised that he could have an attorney present with him before he uttered a syllable." The court said, "[t]he message to him indicated only that a judge or commissioner somewhere down the line would appoint a lawyer for him if he so requested." [13] This ruling prevailed for thirteen years in that circuit, which prescribed the law for the lower federal courts (and indirectly, therefore, for federal law enforcement officers) within a six state area.

A recent decision has overruled Lathers. The court in United States v. Contreras[14] expressed its reluctance to overturn a prior decision in its own circuit, but felt impelled to do so because of the 1981 Supreme Court decision in California v. Prysock. [15] In that case the Supreme Court held there was no requirement "that the contents of the Miranda warnings be a virtual incantation of the precise language contained in Miranda." Instead, it is sufficient if the warnings convey the basic rights to the suspect. According to the Contreras court, this meant, therefore, that the warnings about the right to counsel "need not," as the earlier Lathers case indicated, "explicitly convey to the accused his right to counsel 'here and now'." Ultimately, therefore, the thirteen years of mischief that was created within the Fifth Circuit was finally dissipated.

An even more pervasive misconception with respect to the phraseology of the right to counsel warning developed within the Seventh Circuit. This circuit court of appeals, in two decisions, one in 1969 and another in 1974, decided that the basic philosophy of Miranda warranted the requirement that the warnings should be issued whenever a suspect about to be interrogated was the "focus of suspicion." [16] In other words, not only were the warnings to be given when a suspect who was in "custody" or "deprived of his freedom in any significant way," but also in situations where the investigators wanted to question someone they suspected but had not yet placed in a custodial setting. The rationale for this embellishment of Miranda was the circuit court's perception of "focus of suspicion" as "psychological compulsion ... tantamount to the deprivation of the suspect's 'freedom of action in any significant way,' repeatedly referred to in Miranda." [17] This perception, however, was not acceptable to the Supreme Court. In its 1976 decision in Beckwith v. United States, the Court unequivocally declared, with one justice dissenting, that "focus of suspicion" was not the test for determining whether the Miranda warnings were required; the test was, rather, whether a custodial situation existed. [18] Nevertheless, the "focus of suspicion" rule had prevailed within the Seventh Circuit, which encompasses three large states, from the time of

its imposition in 1969 until the 1976 Supreme Court decision in Beckwith, a span of nine years. After Beckwith, of course, the issue was resolved for all federal courts and for all federal officers. "Custody," not "focus of suspicion," now definitely prevails as the test throughout the federal system.

Prior to Beckwith, a few state appellate courts had adopted, or viewed with favor, the "focus of suspicion" test. One of them, the Supreme Court of Minnesota, which had adopted the test in 1970,[19] and reaffirmed that position in 1975,[20] has not rendered any subsequent decision upon the subject since the Beckwith case. This being so, the police of that state continue to give the Miranda warnings whenever suspicion has focused upon the person to be interrogated. Consequently, the mischief persists in that state.[21]

Another state whose courts had adopted the focus test rejected it after Beckwith, and the courts there now apply the custody test.[22] The Colorado Supreme Court referred to the "focus test" in a case decided shortly after Miranda, but the case actually involved a custodial situation.[23] Since then, and even before Beckwith, custody was declared by the courts of that state to be the proper standard for the police to follow.[24]

There is one final example of the mischief of Miranda that deserves mention, although there are many others that might be included. In the 1979 California Supreme Court case of People v. Braeseke,[25] the police issued the Miranda warnings before questioning a defendant in custody for a triple murder. Although he waived his right to silence and to a lawyer, the defendant later refused to talk without having an attorney present when some incriminating physical evidence was pointed out to him. The interrogation ceased, but as he was being booked, he requested to speak "off the record." He then proceeded to admit the murder and told of the location of the gun he had used in the killings. The California Supreme Court, in a 4 to 3 decision, held that the "off the record" request did not constitute a waiver. The confession and the evidence derived from it were held inadmissible.[26]

Up until 1966, the highest courts of over thirty states,[27] and one federal circuit court of appeals,[28] had held that there was no constitutional requirement that criminal suspects be warned of their self-incrimination privilege prior to police interrogation. Miranda v. Arizona changed this by declaring that the constitutional privilege mandated the issuance of the warning to all custodial suspects. In the words of Justice Clark, in his dissenting opinion in Miranda, the case represented "one full sweep changing [of] the traditional rules of custodial interrogation which this Court has for so long recognized as a justifiable and proper tool in balancing individual rights against the rights of society." [29]

Justice Harlan also dissented in Miranda, in an opinion in which Justices Stewart and White concurred. He made the following observation and prediction (writing, of course, even before the embellishments which the original warnings have incurred over the years since 1966):

There can be little doubt that the Court's new code would

markedly decrease the number of confessions. To warn the suspect that he may remain silent and remind him that his confession may be used in court are minor obstructions. To require also an express waiver by the suspect and an end to questioning whenever he demurs must heavily handicap questioning. And to suggest or provide counsel for the suspect simply invites the end of the interrogation.[30]

The presence of counsel at an interrogation scene, alluded to by the dissent, is the most damaging feature of Miranda's mandate. Why? Because of the fact that when defense counsel appears, his first act is to advise his client to keep his mouth shut. The writer is not submitting a condemnation of such defense tactics; the lawyer is simply following an unwritten rule subscribed to by all lawyers in similar situations. The traditional concept is that his role is of a partisan nature. His obligation is to his client, and to no one else.[31]

On the trial court level, or whenever the judicial process has begun, a lawyer's advice to his client to remain silent is a practice that reasonable laypersons can appreciate. The burden is on the prosecution to prove guilt beyond a reasonable doubt, and the fifth amendment requires that it must do so without verbal help from the defendant. In practice, therefore, it is considered fair and proper for defense counsel to keep the defendant off the witness stand and force the prosecution to prove its case without asking him to utter a single word. It is an entirely different matter, however, to require the police to invite the presence of counsel into an interrogation room, during the investigation of a criminal case. This signals, as Justice Harlan stated, "the end of the interrogation." And indeed it would be, in all but the very exceptional case situation where, for instance, counsel knows of an unassailable alibi.

The Court in Miranda formulated the warnings about the right to counsel for the announced purpose of assuring that custodial suspects would be made aware of their fifth amendment self-incrimination privilege. That privilege, however, is unrelated to the sixth amendment right to counsel, although the two rights are sometimes viewed as though in tandem. It is well, therefore, to be mindful of the language of the sixth amendment provision: "In all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defense."[32]

Apart from the lack of sound judicial reasoning underlying Miranda, so eloquently expressed by the four dissenting Justices, as well as the practical considerations the dissenters discussed, there is another substantive factor worthy of consideration in determining whether Miranda is deserving of vitality. The Miranda doctrine did not evolve because of a perceived need to protect innocent persons suspected of crime. It was created as a product of the Warren Court's pursuit of its egalitarian philosophy. Toward that objective the basic consideration was this: the rich, the educated, the intelligent suspect very probably knows from the outset that he has the privilege of silence, whereas the poor, the uneducated, or the unintelligent suspect is unaware of that privilege. Consequently, all persons in custody or otherwise deprived of their freedom, must receive the warnings prescribed in Miranda.

As commendable as is much of what the Warren Court attempted or accomplished with its egalitarian philosophy in the area of social inequalities emanating from a disregard of clearly applicable constitutional provisions, the writer suggests that the same egalitarian philosophy does not lend itself to the field of criminal investigation. Foremost is the fact that a very high percentage of the victims of crime are from the ranks of the poor, the uneducated, or the unintelligent. It is of little comfort to them to be told that the warnings administered to the person suspected of robbing or raping them, or of burglarizing their homes while they were at work, was for the noble purpose of equalizing humanity, and this is especially so in those instances where the suspect, reasonably presumed to be guilty, accepted the invitation to remain silent, or where his conviction was reversed because the Miranda rights were not properly accorded him. The time to show compassion toward a criminal suspect's unfortunate background is after a determination of whether or not he committed the offense, not before.

There is no better refutation of Miranda philosophy than the opinion of Chief Justice Joseph Weintraub of the New Jersey Supreme Court in a 1968 case, in which he stated:

There is no right to escape detection. There is no right to commit a perfect crime or to an equal opportunity to that end. The Constitution is not at all offended when a guilty man stubs his toe. On the contrary, it is decent to hope that he will. Nor is it dirty business to use evidence a defendant himself may furnish in the detectional stage. Voluntary confessions accord with high moral values, and as to the culprit who reveals his guilt unwittingly with no intent to shed his inner burden, it is no more unfair to use the evidence he thereby reveals than it is to turn against him clues at the scene of the crime which a brighter, better informed, or more gifted criminal would not have left. Thus the Fifth Amendment does not say that a man shall not be permitted to incriminate himself, or that he shall not be persuaded to do so. It says no more than that a man shall not be "compelled" to give evidence against himself.[33]

#### CONCLUSION

In Shakespeare's Henry VI the suggestion was made that "[t]he first thing we do, let's kill all the lawyers." If we, as lawyers, continue to tolerate the kind of mischief created by Miranda, some laypersons may think Shakespeare's idea was not at all bad. The following suggestion is an effort to forestall such an unfortunate event, although, to be sure, there are more realistic reasons for offering it.

The Supreme Court, at the earliest opportunity, ought to overrule Miranda, or else uphold the validity of the test of confession admissibility enacted by Congress shortly after Miranda, as part of the 1968 "Omni-bus Crime Bill." [34] It provides that a confession "shall be admissible in evidence if it is voluntarily given." Congress submitted the following guidelines for determining whether a confession meets the test of voluntariness:

The trial judge in determining the issue of voluntariness

shall take into consideration all the circumstances surrounding the giving of the confession, including (1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment, (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession, (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and (5) whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.

The presence or absence of any of the above-mentioned factors to be taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession.

The state of Arizona enacted an identical provision in 1969.[35] A test case should be sought, therefore, either within the federal system or within the state of Arizona, and brought to the Supreme Court as soon as possible. Alternatively, the Supreme Court on its own initiative might avail itself of a suitable opportunity to address the issue in a case that may already be in the process toward Supreme Court consideration. Meanwhile, the police and prosecutors should reconsider their Miranda practices, and the state as well as federal trial and appellate courts should moderate their apprehension over possible reversals because of shortcomings in Miranda formalities. This three-pronged approach to the problem would help diminish the mischief of Miranda until the Supreme Court eliminates it completely or modifies its principles in conformity with the foregoing Congressional enactment.

#### Footnotes

[1] 384 U.S. 436 (1966). The basic warnings required before any interrogation may be conducted of a custodial suspect are: (1) he has a right to remain silent; (2) anything he says may be used against him; (3) he has a right to consult with a lawyer before or during the questioning of him; and (4) if he cannot afford to hire a lawyer one will be provided for him without cost. The Court's own general phraseology of the warnings will be subsequently discussed.

[2] The above quotations, and the ones which follow, as well as all the case facts reported in this commentary, are from the published opinion of the Court of Appeals for the District of Columbia Circuit, which affirmed the District Court's suppressing all the statements made by Hinckley during the interrogation subsequent to his expression of interest in talking to his father's lawyer. United States v. Hinckley, 672 F.2d 115 (1982) (per curiam), aff'g 525 F.Supp. 1342 (1981).

[3] Presidential Assassination Statute, 18 U.S.C. §1751 (1970).

[4] United States v. Hinckley, 525 F.Supp. 1342 (1981).

[5] United States v. Hinckley, 672 F.2d 115 (1982)(per curiam).

[6] For initial newspaper coverage of the insanity issue, see N.Y. Times, Apr. 28, 1982, §1, at 12, col. 3.

[7] 428 A.2d 42 (D.C. 1981).

[8] 384 U.S. at 479. The formulation of the Miranda warnings in language which seems adequate was suggested in the first footnote to this comment.

[9] Id.

[10] Id.

[11] 441 U.S. 369 (1979).

[12] 396 F.2d 524 (5th Cir. 1968).

[13] Id. at 535.

[14] 667 F.2d 976 (11th Cir. 1982). This appears as a decision of the Eleventh Circuit Court of Appeals, which was split off from the Fifth Circuit by Congressional action due to the excessive case load in the original Fifth Circuit. Nevertheless, in the Contreras opinion the court referred to the Lathers decision as one of its own. The present Eleventh Circuit encompasses Alabama, Florida, and Georgia; the Fifth Circuit, Louisiana, Mississippi, Texas, and the Canal Zone.

[15] 453 U.S. 355 (1981).

[16] United States v. Oliver, 505 F.2d 301 (7th Cir. 1974); United States v. Dickerson, 413 F.2d 1111 (7th Cir. 1979).

[17] United States v. Oliver, 505 U.S. at 305.

[18] 425 U.S. 341, 347 (1976). Justice Stevens, who authored the opinion in Oliver, took no part in the Beckwith case.

[19] State v. Kinn, 288 Minn. 31, 178 N.W.2d 888 (1970).

[20] State v. Raymond, 305 Minn. 160, 232 N.W.2d 879 (1975).

[21] The statement regarding the present police practice of giving the warnings in "focus of suspicion" cases is based upon information received from a number of police officers and from the director of one of the police training schools in Minnesota.

[22] In People v. Martins, 78 Mich.App. 518, 521, 260 N.W.2d 869, 870 (1977), the court stated that "at first blush, it would seem we are bound to follow the mandate of People v. Reed 393 Mich. 342, 224 N.W.2d 867 (1975)," which used the "focus" test, but followed Beckwith, as did a subsequent Michigan appellate court case, People v. Schram, 98 Mich.App. 292, 296 N.W.2d 840 (1980).

[23] People v. Orf, 172 Colo. 253, 472 P.2d 123 (1970).

[24] See, e.g., People v. Conner, 195 Colo. 525, 579 P.2d 1160 (1978).

[25] 25 Cal. 3d 691, 602 P.2d 384, 159 Cal. Rptr. 684 (1979).

[26] After the grant of review by the Supreme Court of the United States, the case was remanded to the California Supreme Court "to consider whether its judgment was based on federal or state grounds, or both." California v. Braeseke, 446 U.S. 932 (1980). The California court certified that its judgment was "based upon Miranda v. Arizona ... and the Fifth Amendment to the United States Constitution." It added: "we re-iterate [our opinion] in its entirety." 28 Cal. 3d 86, 618 P.2d 149, 168 Cal. Rptr. 603 (1980). Further review was denied by the United States Supreme Court. 451 U.S. 1021 (1981).

The defendant Braeseke was retried and convicted. The prosecution used as evidence incriminating statements Braeseke made while in jail after his first conviction, during an interview with Mike Wallace on CBS's "60 Minute" T.V. program. Braeseke's defense at his second trial was influence of an hallucinogenic drug ("angel dust") at the time of the killings.

[27] For an alphabetical listing of the state cases, see F. Inbau and & Reid, Criminal Interrogation and Confessions 169-71 (2d ed. 1967). Included, until 1965, were the state courts of California and Oregon, but the supreme courts of both of those states changed their position and prescribed the warning. See id. at 173. They did so because of their broad interpretation of Escobedo v. Illinois, 378 U.S. 478 (1964) and a correct anticipation of what was forthcoming in Miranda in 1966.

The only other pre-1965 requirements for the warnings appeared in the Texas Code of Criminal Procedure (Article 727), and in the Code of Military Justice (Article 31).

[28] See United States v. Wilson, 264 F.2d 104 (2d Cir. 1959): Heitner v. United States, 149 F.2d 105 (2d Cir. 1945).

Also relevant are two 1958 decisions of the United States Supreme Court about which Justice Clark had this to say in his dissenting opinion in Miranda: "To require all [the warnings and rights prescribed in Miranda] at one gulp should cause the Court to choke over more cases than Crooker v. California, 357 U.S. 433 (1958), and Cicenia v. Lagay, 357 U.S. 504 (1958), which it expressly overrules today." Miranda v. Arizona, 384 U.S. at 502.

[29] Id. at 503.

[30] Id. at 516-17. In a footnote Justice Harlan stated that the Court's "vision of a lawyer 'mitigat[ing] the dangers of untrustworthiness' ... by witnessing coercion and assisting accuracy in the confession is largely a fancy; for if counsel arrives, there is rarely going to be a police station confession." Id. at 516, n.12.

[31] Consider the following comment from Justice Jackson's dissent in Watts v. Indiana, 338 U.S. 49, 59 (1949): "[u]nder our adversary system,

... any lawyer worth his salt will tell the suspect in no uncertain terms to make no statement to police under any circumstances."

[32] U.S. Const. amend. VI. In other decisions unrelated to the subject matter of the present paper, the Supreme Court has interpreted "criminal prosecution" to extend to the very beginning of the judicial process, such as preliminary hearing or indictment. Even in Miranda, however, the Court did not rule that the sixth amendment right was invoked by a custodial interrogation; the right to counsel in that setting, as has already been stated, was considered only as an implementation of the fifth amendment right to silence.

[33] State v. McKnight, 52 N.J. 35, 52-53, 243 A.2d 240, 250 (1968). The case involved a Miranda issue.

[34] U.S.C. §3501 (1969).

[35] Ariz. Rev. Stats. Ann., §13-3988 (1978).

\* \* \* \* \*



"A STILL-LIFE WATERCOLOR":

FRYE v. UNITED STATES

By

J. E. Starrs, LL.M.[1]

Abstract

A review is made of documentary material in Frye v. United States, the case that set the precedent for the Frye test for the admissibility of scientific evidence. The author concludes that the facts of the original case have become seriously distorted with the passage of time.

Paradoxes, ironies, myths, and quirks of fate mark the criminal justice system. Not the least of these is the manner by which we memorialize the rules announced in judicial decisions. We have the Miranda Rule(1), the M'Naghten Rule(2), and the Frye Test(3), among a plethora of others. Rules follow cases and cases are marked by the names of the participants. And the participants whom we recall in criminal cases, win or lose though they may, are those accused of crime. Who can name Ernesto Miranda's victim, and how many of us are aware that Daniel M'Naghten was tried for the killing of Sir Robert Peel's secretary, whoever that may have been?[2]

A knowledge of the facts giving rise to a case from which a new rule emerges can do much to illuminate that rule. More, it can avoid the omnipresent tendency to mythologize a decision, to give it a character and a bearing that does not conform to its facts. Such myth-exploding understanding of the root facts seems particularly necessary in the case of the heavily maligned, much pilloried(4-9) test for the admission of unique scientific testimony that first appeared in the 1923 opinion of the U.S. Court of Appeals for the District of Columbia, which affirmed the conviction of James Alphonso Frye for murder in the second degree.(3)

The facts, as given in Judge Van Orsdel's opinion for the appellate court, portray a landscape denuded of all but the barest factual details. We know Frye was convicted of murder in the second degree. Further, since it was the core of his appeal, it is clear that Frye unsuccessfully attempted to use expert testimony at the trial to introduce the results of a systolic blood pressure test, a precursor of today's polygraph, taken of him prior to trial. More we cannot say about the crime, the trial, or indeed, its aftermath, at least from a simple perusal of the two-page opinion of the appellate court.

Presented at the 33rd Annual Meeting of the American Academy of Forensic Sciences, Los Angeles, 17-20 Feb. 1981.

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The author is a Professor at the George Washington University, National Law Center, Washington, D.C. 20052. Reprints available from the author.

Out of this sparse, indeed almost barren, landscape emerged the now well-known and much publicized Frye test for the admission of expert testimony predicated upon new scientific principles or techniques. As the court stated it(3):

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

This standard of admissibility, although first stated in a case involving an abortive attempt to introduce the results of a deception test, has had significant impact beyond the circumstances of its initial appearance. It has been featured and often controlling in cases involving as diverse scientific principles and techniques as ion microprobiotic analysis of hair samples, multisystem analysis for polymorphic enzymes(10) or proteins in blood(11), hypnotism(12,13), and retesting of Breathalyzer® ampoules(14), among numerous others(15).

The Frye test, now almost 60 years old, has been anything but an evanescent or fleeting phenomenon. In the 1969 bound volume of Shepherd's Federal Citations, covering more than 40 years of Frye in the courts, the entries show one column of cases that have referred to the Frye case. Just eight years later, the 1977 supplemental bound volume of that same Shepherd's series reveals two full columns of case entries; in the pamphlet update in 1980, some three years later, almost two more columns are filled with cases elaborating, in large and small and rarely with vinegar, on the Frye test of admissibility. Evidently the Frye test is here to stay and is gathering momentum. As the Kansas Supreme Court put it in a very recent decision: "The Frye test has been accepted as the standard of practically all of the courts of this country which have considered the question of the admissibility of new scientific evidence."(9,16).

This is not to say, however, that the Frye test has met with universal accord. Far from it. Epithets upon epithets have been piled upon it in an intense and concerted effort to drown it in a sea of frothy criticism.[3] "Infamous"(18) it has been declared to be, often and with the most vehemence by polygraphists who have felt its sting more than others.

The condemnations of Frye have been of the scattershot variety, hitting anywhere and everywhere, in a frenzied effort to cripple it. There are those (see Ref. 7, p. 1205) who point to its having evolved from an opinion just two pages long, as if a succinct judicial opinion lacks the merit of careful reflection and persuasive argument. Short judicial opinions tend also to be memorable, on the target, and sometimes graced with wit. One of my favorites, marked by pith and wisdom, appeared in the report of the appeal in Robinson v. Pioche(19) in the Supreme Court of California in 1855:

The court erred in giving the third, fourth, and fifth instructions. If the defendants were at fault in leaving an

uncovered hole in the sidewalk of a public street, the intoxication of the plaintiff cannot excuse such gross negligence. A drunken man is as much entitled to a safe street as a sober one, and much more in need of it. The judgment is reversed and the cause remanded.

Frye has also been attacked for the imprecision, indeed the ambiguity, of the language used by the District of Columbia Appeals Court to phrase the test it propounded (20-22). When is "general acceptance" to be ascertained and by what divining rod? Who bears the burden of proof of "general acceptance" and by what standard of proof? How is "the particular field" to which the scientific principle or discovery belongs to be determined? Is a broad or narrow brush to be used in that quest? And what is meant by "the thing" which must have gained sufficient "general acceptance" to enable expert testimony derived from it to be admissible?

These queries are not to be minimized, for they are necessary preliminaries to a sound application of the Frye test. But if these conundrums are criticism, they are wide of the mark. It is not that precision of language is to be shunned or mocked, but that the Frye court, like the M'Naghten court, the Miranda court, and so many other courts before them, purposely adumbrated a rule of immense potentialities in words neatly suited to its then ill-defined and even limitless uses. The mark of a formidable, even a percipient, judicial opinion is that it says neither too much nor too little. Frye admirably achieves that objective. It leaves ample room for ingenuity and experimentation in the proper exercise of a trial court's discretion to meet the measure of scientific discoveries and principles yet unborn. It is not strait-jacketed by the facts that gave it being or by the words in which it was formulated. It is adaptable and thereby ageless.

True, the Frye court does not inform us in what way the expert testimony proffered in the trial court was defective. Surely it was unacceptable for lack of general acceptance. But what precisely was not generally accepted? Was it the validity of the principle that deception is reflected in discernible changes in the blood pressure of the prevaricator? Or was it, rather, the validity of the systolic blood pressure test (the sphygmomanometer) to detect such alterations in blood pressure?

The Frye court remarked that "the theory seems to be that ... the utterance of a falsehood ... is reflected in the blood pressure"(3)(emphasis supplied). Others have refused to hedge this bet. Dean McCormick(23), in a more positive vein, wrote in 1927 that "few of us would doubt, or need any evidence other than experience, that conscious lying produces in the ordinary man emotional disturbances." To him the principle was accepted, although the technique to validate it was not--at that time.

This distinction between the validity of a principle and the validity of a technique applying it in concrete circumstances is crucial in determining whether expert testimony should be admitted or not. In the case of the sound spectrograph, it is the difference between the validity of the principle of interspeaker variability and the validity of the sound spectrograph to detect and display that variability. Some courts have apparently blurred this distinction and come to questionable conclusions as a result.

Commonwealth v. Devlin(24-26) is illustrative. There the Massachusetts high court upheld the testimony of a radiologist who identified the torso of an unknown deceased person based upon a comparison of the post-mortem X-rays of the torso and the antemortem chest X-rays of a known person, since disappeared without a trace. The radiologist's testimony identifying the torso would, under the Frye test, have to satisfy the dual requirements of general acceptance of the principle that no two persons have the same bony structure and the fact that X-rays are an adequate means of detecting this similarity or dissimilarity. The appeals court gave undue prominence to the X-ray as a technique and to its use by Dr. Susman\*, the radiologist, and too little to the reliability of the principle of individualization of bone configurations.

The Massachusetts high court disclaimed any concern for a scientific principle and asserted(24) instead that:

There is some considerable murkiness in both this language and this thinking. Admittedly the X-ray technique is generally accepted, but its general acceptance for one or more purposes should not be permitted to mask the need to prove its general acceptance for other, dissimilar purposes. Regardless of the means used by scientists to prove the validity of a scientific principle, a strict adherence to the Frye test will keep the imperative to perform that task before the trial court in proper focus.

Frye is said to have another fault, which to a lawyer groomed in the common law system must seem unanswerable. Put simply, the Frye court cited nary a single case or other legal or other authority to buttress its conclusion(22). It violated the hoary axiom of the law review editor that nothing is worth saying that cannot be footnoted, which, of course, is akin to saying nothing is worth saying that has not been said before.

There is merit, however, in standing against the tide. The flotsam and the jetsam of ages past need not beset and misguide you. A tabula rasa, uncluttered by historical accretions, gives full rein to creative thought. If, I say in recognition of the heresy in doing so, the world can survive on an English cookbook recipe for rabbit stew without the testimonial of its survivors, a judicial opinion can stand on the force of its argument without the artificial prop of historical relevance.

The attack upon the Frye test has also included various assertions concerning the aftermath of the Frye case. The premise appears to be that if, in truth, Frye was innocent of the crime charged, then the rule in the case is the culprit, for it permitted an innocent man to be convicted when science was ready and able to exonerate him. In the absence of the Frye court's parochial, constraining attitude toward the efficacy of scientific evidence, or so the

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\*Dr. Susman's medication opinion that no two adults have identical bone structures was not the produce of a "scientific theory" but was, rather, the product of years of experience viewing tens of thousands of X-rays.

proponents of this position seem to say, an innocent man would not have been unjustly convicted of murder and punished for it.

But was Frye guilty or was he innocent?

It has become fashionable to affirm, almost as *idée fixe*, the following as facts about the guilt or innocence of James Alphonso Frye:

1. Frye served only three years in prison of the life sentence imposed upon him.[4]
2. Sometime after Frye's conviction someone else confessed to the commission of the crime for which Frye had been convicted and sentenced(27)[5].
3. Frye was pardoned for the crime for which he was convicted.[6]

The most full-blown and current version of the injustice alleged to have been suffered by Frye appears in James Allan Matte's The Art and Science of the Polygraph Technique(29). As Matte states the case:

In 1921, a young Negro named James A. Frye was picked up for questioning about a robbery and was routinely interrogated about the murder of a wealthy Negro physician who had been shot to death in his office in November 1920. Frye denied any knowledge of the murder. However, he later confessed to the crime upon advice from a "friend" who told him that by confessing he would collect half of the one-thousand dollar reward for his own conviction. Frye subsequently learned that he had been duped by his "friend" and repudiated his confession, but his claim of innocence fell on deaf ears. In an attempt to arrive at the truth, Frye's attorneys solicited the aid of Dr. William M. Marston, a scientist and inventor of the systolic blood pressure deception test. This test consisted of intermittent recordings of Frye's systolic blood pressure during questioning, using a standard medical blood pressure cuff and stethoscope, requiring repeated inflation of the pressure cuff to obtain readings at intervals during the examination. For that reason it was also called the "discontinuous" technique. Obviously this was an early, crude lie-detection technique by comparison with the sophisticated instrumentation and techniques employed today. Nevertheless, with that primitive lie-detector, Marston accurately determined that Frye was truthful when he denied any involvement in the murder of that doctor. The Court rejected Marston's blood pressure deception test as evidence, holding that the lie-detector test had not yet received general acceptance within the scientific community as a valid means of verifying the truth and detecting deception. However, the jury was sufficiently impressed to reduce Frye's conviction from first to second degree murder, saving his life. Three years later, Frye was freed as a result of further investigation, which revealed that his "friend" who had duped him into making a false confession was the real murderer of the wealthy physician.

Preposterous! Phenomena! balderdash!

Yes, it was in 1921, on 16 August to be exact, that James A. Frye was arrested for a robbery in the District of Columbia and questioned about the murder of a wealthy black physician, Dr. Robert W. Brown, who was murdered in his office at 1737 11 Street, N.W., at 8:45 p.m. on Saturday, 27 Nov. 1920--the same day, it appears, that the Middies defeated the Army football squad at the polo grounds in New York by a mere 7-0 in a nip and tuck battle witnessed by General John Pershing(30). Yes, Frye did confess to the commission of the murder, but not on account of the chicanery of a friend of his, as described by Matte. No, most emphatically no, Frye was not released from prison after three years. No one, other than Frye, ever confessed to having been the actual murderer of Dr. Brown, nor did any investigation reveal someone other than Frye to be the culprit. And the court, meaning I would suppose the then Supreme Court of the District of Columbia with Chief Justice Walter I. McCoy presiding, did not reject the systolic blood pressure test results for the reasons advanced by Matte.

What then were the facts concerning the culpability of James A. Frye? And how can they be verified?

"Yes, we speak of things that matter with words that must be said(31)."

I have personally examined the file in the trial of James Alphonso Frye in the Supreme Court of the District of Columbia as well as the file in the United States Court of Appeals(32). Moreover, I have read the retired files(33) of the Office of the Pardon Attorney in the Department of Justice on the various petitions for executive clemency by Frye.[7] My investigative research has included reviews of newspaper accounts of the Frye trial and conversations with persons who could, by reason of personal knowledge, verify and supplement many of the details I have discovered.

The sum of my research indisputable and unequivocally reveals that, as Leslie C. Garnett, then U.S. Attorney for the District of Columbia, wrote to the Attorney General of the United States on 21 July 1934 in connection with Frye's application for executive clemency(33):

About 5:30 p.m. on November 25, 1920 the defendant went to the office of Dr. Robert W. Brown, the deceased, Dr. Julian D. Jackson, who was visiting Dr. Brown, answered the door and told the defendant that Dr. Brown was not in. So defendant went away and returned about 8:45 p.m. Another man named William Robinson arrived at the same time as defendant did, and defendant told Robinson to go in first, as he was in no hurry, and Robinson did so. When Robinson came out of the doctor's office he noticed that the defendant had put on a pair of smoked glasses. Then Robinson went away and defendant entered the office of Dr. Brown. Dr. Jackson had let defendant in the second time and saw that he had something in his hand which looked like money. Dr. Jackson heard defendant ask Dr. Brown what he had decided to do about that stuff, or words to that effect, and then Dr. Brown replied that he had not decided to do anything and asked defendant what he was talking about. Then Dr. Jackson went back to the kitchen and shortly thereafter heard a pistol shot. He went into

the hallway and saw defendant with a pistol in his hand and saw him shoot a second time at Dr. Brown, who fell on the floor of the hallway. Defendant then stepped over the body and ran out of the hosue. Dr. Jackson pursued the defendant, but the latter turned and fired at him and escaped.

After the commission of this murder this applicant, on July 21, 1921, committed a robbery in this District. He was convicted of this offense and received a sentence of four years.

Further details, not included in District Attorney Garnett's letter, include the arrest of Frye on 16 August 1921; his confession to Paul W. Jones of the Metropolitan Police of the District of Columbia on 22 August 1921; Frye's indictment for premeditated murder filed on 10 March 1922; and his trial from 17 to 20 July 1922, in which the jury returned a verdict of second degree murder, after deliberating less than an hour.

Frye sought to exonerate himself. At his trial he alleged an alibi as a defense. However, because of the paucity of the available stenographic record of the trial that was preserved for the appeal, it is difficult to evaluate the merits of Frye's claimed alibi. We know that he claimed to have been visiting a Mrs. Essie Watson at 417 Q St., N.W., until midnight on the date of the murder. Further, the records show that the court-appointed defense attorney, Richard V. Mattingly, subpoenaed three witnesses to testify for the defense; Stuart Lewis, William Williams, and Sarah Johnson. Mattingly also unsuccessfully sought a continuance of the trial date, arguing that Mrs. Watson's ill health would prevent her attendance on the scheduled date. Frye himself later asserted in a 1934 application for executive clemency, one of many, that a deathbed deposition taken from Mrs. Watson had been admitted at his trial(33). The file sheds no light on the truth or falsity of this claim.

Frye's confession, which he claimed he gave to Detective Sergeant Jones of the Metropolitan Police Department, must have been formidable evidence against him, along with the testimony of eyewitnesses. Attorney Mattingly sought to have the confession excluded because Frye had not been advised of his right to remain silent (shades of Miranda); the confession was thus, he argued, involuntary. On appeal, Attorney Mattingly asserted as Assignment of Error 2 that the trial court had failed "to require the Government to prove that Government Exhibit #1 was a voluntary statement."

Thus the appeals court was in error when it said, in its opinion, that a "single assignment of error is presented for our consideration"(3). In fact eight errors were charged to the trial court, and only Assignments 4 to 8 related to the exclusion of the systolic blood test evidence. Further, in an effort to tidy up the appellate court's opinion, cocounsel at the trial and on the appeal was not Foster Wood, as appears in the reported decision, but Lester Wood, partner of chief counsel Richard V. Mattingly. More, Frye's middle name was spelled Alphonso, with an s, not Alphonzo, with a z, as in the report of the case--that is if we are to credit Frye's spelling of his own name in the papers submitted by him imploring executive clemency.

Frye's confession, according to his own self-serving, unsupported,

and incredible assertions in his 21 July 1936 application for executive clemency, was occasioned by Detective Sergeant Jones telling him that he would "squash" the robbery charge on which Frye was then being detained if he would plead guilty to the murder of Dr. Brown. What--dismissal of the noncapital robbery charge in exchange for his taking the rap for a capital crime? Some bargain, that! Frye attempted to give his version plausibility by maintaining that Sergeant Jones had told him "there would be nothing to the murder charge after the reward was paid, as he knew I was able to prove a rock-bottom alibi"(33). That version from Frye's own pen, unprovable and implausible though it may be, is less of a fantasy than Matte's assertion that Frye confessed to murder in order to claim half the \$1000 (Frye says it was \$1500) reward for the conviction of Dr. Brown's murder(29).

Matte also reports that three years after his conviction "Frye was freed as a result of further investigation, which revealed that his "friend" who had duped him into making a false confession was the real murderer of the wealthy physician"(29). This is an unadulterated, unsupported canard, more of the folklore of the Frye case.

Apparently, it was the New York Judicial Council in its report for 1948(34) that initiated the rumor that three years after Frye's trial someone else confessed to the murder. The author of this report gives no suggestion as to the source of this factual assertion. As Shakespeare has said of all rumors, this rumor was "a pipe blown by surmises, conjectures, and jealousies." As such, the rumor of someone's confession three years after Frye's conviction has been translated into Frye's release after three years imprisonment, which has been transformed into Frye's having ultimately been pardoned.

The truth of the matter(33) is that Frye was paroled from the District of Columbia Reformatory at Lorton, VA, on 17 June 1939, just two months short of 18 years after his arrest on 16 Aug. 1921. Not only did Frye serve a combined total of almost 18 years in jail, first at Leavenworth and later at Lorton, but he never received a pardon or any other form of executive clemency. Indeed, in a letter to Frye dated 2 Sept 1943, found in the pardon attorney's files(33), Pardon Attorney Daniel M. Lyons writes that "the reports on file leave no doubt as to your guilt of the offense for which you were sentenced."

But what of the friend's supposed confession? The only evidence in any official files I have located that gives even the slightest credence to such a confession is Frye's own puffery in his 21 Sept 1936 application for executive clemency. These are Frye's words on this issue(33):

I did not know anything about this crime until about three or four nights after it had been committed. John R. Francis, a dentist and very good friend of Paul Jones (the detective), was talking to me in his office. ... This John R. Francis and I had been looked upon as friends ... He and I could have easily have passed for brothers, and very often were taken as such ...

Francis had told me that he had shot this Dr. Brown, he also stated that he was worried because some man named Broadwax had saw the man run from Dr. Brown's home directly to his office.



On the night of the crime, there was some form of entertainment at the Browns' residence. Among the guests, I learned, was a man named Dr. Julian Jackson of Norfolk, Virginia. This Dr. Jackson from the beginning I was told was afraid to identify John Francis as the man he saw at Dr. Brown's residence, although this same Julian Jackson came to the District jail, would not identify me, until after Paul Jones called him aside and had a private talk.

After John Francis had shot Dr. Brown, and ran from Dr. Brown's residence, changed his hat or cap (I can't recall), he returned to Brown's residence in company of a woman name Lois Dunlop watching the actions of the Police Department. John Francis has told me, that he had twice sent Dr. Brown blackmail letters, but the reason the Police could do nothing was because Robert Jones (deceased and dope fiend) was Dr. Brown's nephew, and acted as Dr. Brown's chauffeur at all times. ... This Robert Jones was a physician, dope fiend, and had served time for violation of the narcotic laws.

Observe, however, that Frye, unlike Matte, alleges that the true culprit was a Dr. Francis and that the person who induced his confession was a Detective Sergeant Jones, two distincting different individuals, not one and the same, as Matte would have us believe.

Much of the folklore surrounding the Frye case seems to have its source in The Lie Detector Test, a book published in 1938 and written by Dr. William Moulton Marston, the expert left waiting at the altar in the Frye case(35). Dr. Marston's book cites nothing more verifiable than his own participation in the Frye case to substantiate his assertion of its details. However, in fairness to Dr. Marston, his excerpted quotes from the dialog between Chief Justice Walter I. McCoy and Frye's attorney are remarkably close to the actual colloquy that appears in the partial trial transcript filed with the appeal (see Ref 35, p. 72). Otherwise it is difficult, at this late date, to confirm or deny other details of the trial proceedings given by him.

Although Frye may have been pleased at not receiving the death penalty (Ref 35, p. 72), there is no substance to Dr. Marston's claim that "further investigation showed that the negro who had tried to put Jim on the spot by inducing him to make a false confession was the real murderer of Dr. Brown"(Ref 35, pp. 72-73).

However, there may be some truth in Dr. Marston's contention that "the (deception) test undoubtedly saved his (Frye's) life. No jury could help being influenced by the knowledge that Frye's story had been proved truthful by the Lie Detector"(Ref 35, pp. 72-73). A similar claim appeared earlier in an account of the Frye trial in Family Circle magazine, which stated that "the fact that there had been a lie detector test which proved Frye innocent got before the jury, and this undoubtedly saved Frye from hanging"(36).

By all rights, the trial jury should not have learned of the results of the deception test conducted by Dr. Marston on Frye, since Justice McCoy excluded it at the trial. The purpose of excluding it would have been

defeated if the jury gained knowledge of its results by other, less straightforward or permissible means. How then could the jury have come to know of it? The most likely possibilities are either that the argument on the admissibility of the evidence was conducted in the presence of the jury or that Defense Attorney Mattingly managed to bring the matter to the jury's attention, by cunning or stratagem, either in his opening or closing statements to the jury or otherwise. Mattingly tried without success to have Metropolitan Police Officer Johnson take the test while he testified, a shrewd maneuver, the intent of which could not have been lost on the jury(37). Since nothing is known today of Mattingly's peroration to the jury, it cannot be said with safety that he made reference to Dr. Marston's test results in it.

On the other hand, we can legitimately infer that the jury did not learn of Frye's having passed the test during Mattingly's argument on its admissibility. No judge worth his judicial robes would allow such argument in the presence of the jury and then indulge in the charade of finding evidence the jury has already digested inadmissible.

Dr. Marston's brief recapitulation of the Frye trial in his book and the existing transcribed portion of the trial record on the appeal do, however, document one major flaw in the Frye case. No one, expert or otherwise, was permitted by Justice McCoy to tender concrete evidence of the "general acceptance" of Dr. Marston's systolic blood pressure test. It would appear to be a gross deviation from presently accepted trial protocol for the trial court to reject such testimony out of hand. A voir dire or other evidentiary hearing, at which time the case can be made for or against general acceptance, seems to be a minimal requirement for the proper exercise of a trial court's discretion on this issue. Indeed, at least that much seems to be mandated by the opinion of the appellate court in Frye itself.

Defense Attorney Mattingly made it quite clear to Chief Justice McCoy that he wanted to present evidence of the general acceptance of Dr. Marston's deception test. The record also discloses that Mattingly showed much pique over Justice McCoy's frustration of his every effort to do so. As Mattingly put it:

This offer to attempt to qualify, of course, is for the purpose of showing that this is not merely theory, that it is generally known among experts of this class, that it is not untried, that it has been in practical use, that it is not new, and that it is available(37).

But Justice McCoy was not to be convinced that he should hear from Dr. Marston, at least not until the validity of deception test results was as certain as the fact that no two "leaves on a tree"(38) are alike. Justice McCoy's view was that deception tests were out of order unless "there is an infallible instrument for ascertaining whether a person is speaking the truth or not(37)." The trial judge seemed to be requiring a much greater foundational showing than general acceptance in the particular field in which it belongs. Attorney Mattingly took note of this and argued(37):

It seemed to me that Your Honor is undertaking to say, without

learning what we have to say on the subject, whether or not this is a matter of common knowledge.

But Justice McCoy was a man of immutable opinions, or as he would say, "a conservative judge"(37) not "a young one who is willing to take chances." [8]

The frustration of Frye's trial counsel at being thwarted in his every effort to make a case for the acceptability of Dr. Marston's test results broke through when he interjected(37)"

We have proof to offer on this point, that it is a scientifically proven fact that certain results will be accomplished under certain conditions. It seems to me that the very least Your Honor can do is to permit us to attempt to qualify the expert. I think we are entitled to it as a matter of law.

Chief Justice McCoy was not to be moved. "Common knowledge"(37) was what he demanded, not scientific acceptance. Since he himself did "not know anything about the test at all,"(37) it was inadmissible. But he retained an open mind--for the future, that is. He indicated a posttrial vacation might change his mind. As he said(37):

I had certain pamphlets submitted to me yesterday to look at, of some Dr. Marston--I believe, his thesis when he got his Ph.D. degree. I am going to read them when I come back from vacation.

His mind was not closed. He was willing to admit the possibility that further reflection might alter his view--in later cases.

Yes, I may try a case next year, after I read those books. I may decide differently next year, but not now.

To what should be the immense relief of the forensic science community, Justice McCoy's rigidly puritanical view of scientific developments did not prevail in the appellate court. Thus matters today could have been worse in the world of forensic science. And for James Alphonso Frye, too, matters could have been worse: he could have been executed for a deliberate homicide.

So Frye was guilty and served 18 years in prison. Does the story end there? What became of him upon his parole in 1939?

Unfortunately, the District of Columbia Parole Board's records on Frye and other inactive files were destroyed or, as the District of Columbia Parole Board put it, "purged," in 1976.[9] But one link to the past still remained. Frye had alleged in his application for executive clemency that he had married since his parole, that he was buying a home in the District of Columbia, and that as a World War I veteran he had joined the James Reese Europe Post 5 of the American Legion. Partly by labor and partly by luck, I happened upon the knowledge that Mrs. James A. Frye still lives. After a number of false starts, I located Mrs. Frye (whose present name is not Frye, but in consideration of a promise to her not to divulge her present identity, I shall continue to call her Mrs. Frye).

On Friday the 13th of February, 1981, I spoke with the 86-year-old Mrs. Frye. She informed me of her marriage to Frye in 1939 and of the unremitting trouble he caused her from that day forward. She denounced Frye as a man who was mean to her, hardly ever resided with her, and abandoned her permanently in February 1948. Not until January 1953 did she hear of Frye again and then only to be informed that he was dead. In deference to their marriage, she visited the undertaker's from which Frye was waked.

Still probing for details, I asked where Frye was buried today. With just a hint of a tremor, she replied, "In Arlington National Cemetery--with all those presidents."

And there we have the final irony, James Alphonso Frye, who was born on 8 April 1895[10] and died on 8 Jan 1953, the confessed murderer of Dr. Brown, who served 18 years imprisonment for his crime, the man who gave his name to the Frye test for the admissibility of evidence based on new scientific principles or techniques, Private James Alphonso Frye who served in the 50th Company, 153 Det. Brig. in World War I, is buried in grave Number 6230, Section 33 of the Arlington National Cemetery, just past McClellan's Gate[11] and on the path leading to and within sight of the eternal flame that exalts the grave of former President John F. Kennedy. May Frye and the myths surrounding the Frye case requiescat in pace. [12]

Footnotes:

[1] Professor, The George Washington University, National Law Center, Washington, D.C.

[2] Edward Drummond was his name. Other societies view the matter differently. In the Republic of Ireland, for example, murders are recalled by the name of the victim, rather than the offender. The famed Colleen Bawn murder in Limerick in 1819 is a classic illustration; see its fictionalization by Gerald Griffin in The Collegians.

[3] Frye has been subjected to misstatement as well as criticism. Although the Frye court unambiguously upheld the trial court's refusal to admit the polygraph's test results, one recent author has described Frye as "one of the first cases in which a ruling of admissibility was granted to an expert witness"(17).

[4] Such an unsupported assertion appears in a pamphlet in the U.S. Secret Service training program for its polygraph examiners. The pamphlet gives the name of Norman Ansley as its author and is entitled Admissibility of Polygraph Evidence in Criminal and Civil Cases.

[5] This canard has been repeated in a recent and monumental tome in an article by a respected scholar(28).

[6] Professor Giannelli cites Wicker(27) as support, but Wicker says merely that someone else confessed, not that Frye was thereafter pardoned.

[7] Unfortunately the vintage of the Frye case precluded a review of FBI files and the DC police records have been destroyed.

[8] According to one source, Justice McCoy "presided over the court (the Supreme Court of the District of Columbia) with assuring impartiality and consistent ability" until he retired on 9 Dec 1929, a day after he reached the age of 70(38).

[9] Telephone conversation of 13 Feb 1981 with Mr. John Remarkus of the Washington, D.C., Jail Records.

[10] Frye's death certificate in the Section of Vital Statistics in the District of Columbia Department of Human Resources gives 5 April 1897 as his date of birth, but his tombstone in the Arlington National Cemetery indicates that 8 April 1895 was his date of birth.

[11] The gate on which is emblazoned Theodore O'Hara's poem "The Bivouac of the Dead," which is hardly the epitaph the facts would have chosen to memorialize James Alphonso Frye. It reads:

Rest on embalmed and sainted dead  
Dear as the blood ye gave  
No impious footsteps here shall tread  
The herbage of your grave.

On fame's eternal camping ground  
Their silent tents are spread  
And glory guards with solemn round  
The bivouac of the dead.

[12] Not only is Frye interred in Arlington National Cemetery, but his burial in that hallowed ground patently violated the then-existing regulations of the Department of the Army as to those eligible for burial there(39,40).

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# MANUAL FOR POLYGRAPH SCHOOL INSPECTIONS

American Polygraph Association  
Committee on Standards and Ethics  
Polygraph School Accreditation Program

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This Manual was adopted as official by the APA Board of Directors on  
May 21, 1983. [Ed.]



HISTORY AND STRUCTURE OF THE STANDARDS & ETHICS  
COMMITTEE OF THE AMERICAN POLYGRAPH ASSOCIATION

Since its inception, the primary objective of the American Polygraph Association (APA) has been to advanced the use of the polygraph as a profession. With this purpose in mind, the APA chose to undertake the task of promoting quality educational opportunities for polygraph students by establishing minimum standards to be met by a Polygraph Program for the APA. Under the APA Constitution and By-Laws, Articles III-1-a and VIII-2, the Committee on Standards & Ethics, appointed annually by the President, was charged with the responsibility of reviewing the polygraph training facilities; and with making accreditation recommendations regarding the polygraph school facilities to the APA Board of Directors.

The accreditation of polygraph training schools by the APA dates back to concepts and programs developed by one of its predecessor organizations, the Academy for Scientific Interrogation. During the early 1960s, the ASI established a school accreditation committee, which subsequently devised a "standard required curriculum" and provided that curriculum for use by the polygraph schools represented in its membership. Lesson plans were studied and, after it was determined that a polygraph school met or exceeded the "standard required curriculum", the facility was considered accredited. Due to this program, preceptor training became an unacceptable method of entry into the polygraph field, since there was no way to appropriately evaluate the quality of this method of training.

With the formation of the American Polygraph Association in 1966, the APA granted accreditation status to all schools which enjoyed accreditation through its predecessor organizations, and, as well, the APA established an Ethics, Standards and School Accreditation Committee. Between 1966 and 1982, the "Polygraph School Accreditation Standards" were periodically reviewed by the Standards & Ethics Committee and their recommendations resulted in occasional revision of several Standards by the APA Board of Directors. Dissention and dissatisfaction developed increasingly among School Directors, however, due to directives regarding school accreditation often being viewed as confusing, arbitrary, poorly defined, and unenforceable. The decision in 1976 to include polygraph school student admission requirements as a Standard upon which accreditation was based, created further division among School Directors, many of whom believed that the imposition of student admission requirements was unreasonable and inconsistent with issues normally addressed by accreditation programs. This enactment resulted in the withdrawal of accreditation of some schools and a threat to withdraw from the accreditation program by others. Nevertheless, the APA School Accreditation Program was viewed by most School Directors as necessary, and with some procedural changes, they expressed total commitment and support.

Beginning in January 1982, the President of the American Polygraph Association charged the Standards & Ethics Committee Chairman to undertake an in depth evaluation and critique of the existing APA accreditation program; and, as well to evaluate the functioning of the Standards & Ethics Committee and its capacity to administer that program. In a report to the American Polygraph Association Officers and Board of Directors in April 1982, it was concluded that the APA School Accreditation Program was in a

state of disorganization, was unresponsive to the needs of the polygraph schools and directors, was functioning in an inefficient manner, appeared to be inconsistent in the enforcement of many of the standards required for accreditation, and, was relatively non-communicative with both the polygraph schools and the APA Officers and Board of Directors. Further, it was reported that this trend appeared to have developed over a number of years and occurred directly as a result of the strong demand on the committee to deal with school accreditation matters which exceeded the ability of the committee to respond as it was currently structured and functioning.

With the support of the Officers and Board of Directors of the APA, an immediate restructuring of the Committee on Standards & Ethics was initiated! A Vice-Chairman was selected; Regional Directors were appointed and charged with the responsibility of implementing the School Accreditation Program in their assigned regions; and, the Regional Directors were asked to make the committee responsive to the needs of the schools as well as asking the schools to be responsive to the needs of the polygraph profession. Each Regional Director was instructed to select School Inspectors within their respective regions, to be trained and certified to conduct thorough, objective, and consistent inspections, and to uniformly apply the school accreditation standards newly adopted.

In June 1982, a meeting of all Polygraph School Directors was hosted by the APA in Dallas, Texas for the purpose of discussing school accreditation standards, focusing primarily on student admission requirement issues, instructor qualification issues, and course requirement issues. Twenty-one (21) school directors from the United States and Canada attended. In August 1982, tentative proposals from the Committee on Standards & Ethics regarding a revision of the Standards and the restructuring of the committee, were made to the APA Board of Directors at their meeting in Vancouver, Canada. In January 1983, the revised Polygraph School Accreditation Standards, included in this package, were offered to the APA Board of Directors by the Standards & Ethics Committee for their consideration. These included a definition of revised course content material and a restructuring of the hours required for instruction in areas defined as primary and supplemental course topics; qualifications for instructors were defined for both primary instruction and supplemental material instruction; required time in attendance to complete a polygraph training school were clearly defined; documentation of matters pertinent to the evaluation of a school's program were redefined; requirements for physical plant facilities were addressed; student admission requirements were eliminated as a criteria upon which accreditation was granted or denied; and, a rigid structuring of the inspection process was ordered.

The American Polygraph Association believes that the new accreditation program, and the newly structured Committee on Standards & Ethics which is charged with implementing and insuring compliance with the Standards of the accreditation program are both workable and defensible. It is the continuing objective of the American Polygraph Association and the Committee on Standards & Ethics to promote professionalism in polygraph by granting accreditation status to those training facilities meeting its standards.

The present Committee of Standards & Ethics is structured as follows:

Chairman: Serves as the intermediary between the Committee on Standards & Ethics and the APA Board of Directors. Coordinates activities of the Committee and advises the Regional Directors in all matters pertaining to the School Accreditation Process. Initiates changes deemed necessary to effectively conduct the business of the Committee, including school accreditation. Serves as the central depository for all records pertaining to past and present school accreditation matters. Receives and reviews all initial applications for school accreditation; assigns facilities to appropriate regions and directors; acts to insure consistency, continuity, uniformity, and cooperation among the Regional Directors, Certified Inspectors, and School Directors; reviews initial or continued inspection reports completed by the Regional Directors; and, makes appropriate recommendations to the Board of Directors of the APA regarding all school accreditation matters.

Vice Chairman: Assists the Chairman in all matters pertaining to school accreditation and serves in place of the Chairman at times when the Chairman may not be available. Initiates appropriate changes in the inspection selection and certification process. Assists the Chairman in coordinating all activities of the Regional Director.

Regional Directors: Coordinates all inspection activities with polygraph training facilities in a specific region designated by the Chairman. Maintains direct communication with school directors regarding all matters pertaining to school accreditation. Supervises the certified inspectors according to the guidelines established by the Chairman/Vice Chairman of the Standards & Ethics Committee. Administers the Inspector Certification Program to insure that the inspection of each polygraph training facility is completed in a thorough, consistent, objective and timely manner. Communicates with the Chairman/Vice Chairman regarding all matters pertaining to School accreditation and school inspection reports. Reviews all inspection reports from the certified inspector(s) and submits a Regional Director's report to the Chairman after every effort has been made by the Regional Director to insure compliance with APA accreditation standards. Maintains files of all regional polygraph schools and is responsive to the needs of each polygraph school regarding all accreditation matters.

Certified School Inspectors: Selected by the respective Regional Director, approved by the Chairman of the Standards & Ethics Committee, appointed by the President of the APA. After the completion of the Inspector Certification Program, conducts inspections of polygraph training facilities at the direction of Regional Director to insure compliance with APA School Accreditation Standards. Submits factual and objective reports of school inspections to the Regional Director for review.

#### CERTIFICATION PROGRAM FOR SCHOOL INSPECTORS

The Standards and Ethics Committee of the American Polygraph Association has initiated a certification program for school inspectors, to be administered by the respective Regional Directors. This program is designed to insure familiarity with the Standards and to provide a thorough guideline for conducting inspections and reporting the results of those inspections to the Regional Directors, and subsequently to the Committee

## Standards and Ethics Committee

on Standards & Ethics and the Board of Directors of the American Polygraph Association.

To promote objectivity, school inspectors selected by the Regional Directors shall:

1. Be a Member in good standing of the APA;
2. Not be a Member of the faculty of any polygraph school; nor have any financial interest in any polygraph school;
3. Not be a graduate of the polygraph school(s) that the inspector would be assigned to inspect.

The minimum eight (8) hours certification program will cover the following topics in the following minimum time frame:

1. Review of the APA Standards & Ethics Committee (3/4 hour)
2. Review of school inspector responsibilities (1 1/2 hours)
3. Review of APA Membership requirements, APA Standards & Principles of Practice, and APA Code of Ethics ( 1/2 hour)
4. Review of APA School Accreditation Requirements (2 1/2 hours)
5. Review of Inspection Procedures (1 1/2 hours)
6. Review of Procedures for completing written inspection reports (1 hour)
7. Question - Answer Session; (remaining quarter hour+)

APPLICATION FOR POLYGRAPH SCHOOL ACCREDITATION  
BY THE AMERICAN POLYGRAPH ASSOCIATION

- I. In accordance with the policies, procedures, and polygraph school accreditation standards adopted by the American Polygraph Association Board of Directors, the Director(s) and Administration of the below titled polygraph school training facility hereby requests that the Standards & Ethics Committee of the American Polygraph Association and their designated representative(s) conduct the necessary on-site inspections, review the below titled polygraph training school in accordance with the accreditation standards described herein, submit their findings to the Board of Directors of the American Polygraph Association, and requests that the APA Board of Directors consider the below title facility for APA accreditation.
- II. It is hereby certified that this Polygraph Training School meets or exceeds the minimum standards of training and practice set forth in the herein described polygraph school accreditation standards.

III. NAME OF POLYGRAPH SCHOOL TRAINING FACILITY \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: (\_\_\_\_) \_\_\_\_\_

SCHOOL DIRECTOR/ADMINISTRATOR \_\_\_\_\_

NAME AND ADDRESS OF PRINCIPAL OWNERS  
OR STOCKHOLDERS

PERCENT OF INTEREST

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Continue on additional sheet if required)

- IV. Has any officer, instructor, owner or major stockholder of this polygraph school ever been convicted of a felony or misdemeanor involving moral turpitude? If so, describe completely on separate sheet and attach.
- V. ON AN ATTACHED SHEET, fully describe all primary and supplementary discipline instructors along with subject(s) taught by each. A curriculum vitae of each and every primary and supplemental discipline instructor must be on file with the appropriate Regional Director, Standards & Ethics Committee. If a vitae is on file with the Regional Director, none additional is required with this application. It is the responsibility of the school to insure that current curriculum vitae are filed in a timely fashion as described in the Standards with the appropriate Regional Director. If a vitae has not been previously submitted on any instructor, one must accompany this application.

Standards and Ethics Committee

VI. Licensing and Accreditation - Attach a copy of the appropriate State, County, and/or Municipal license where such authority exists under which this training school is operating.

VII. ON AN ATTACHED SHEET, please describe completely the subject matter taught in each block of instruction, the number of hours per course of instruction and block of time, the instructor for each course and block of instruction, and a description of the material presented. Also, indicate the method of instruction, i.e., lecture, demonstration, practical exercises, films, etc. for each time period.

VIII. Describe any advanced training or refresher courses offered.

IX. Describe the School Internship Program in detail on an attached sheet. Describe the manner in which the Internship Program is administered, supervised, and documented.

X. Specify tuition to students and any additional costs, excluding tuition, to the students.

XI. It is understood by this polygraph school, their directors and administrators, and agreed to by same that Regional Directors of the Standards & Ethics Committee and any certified inspectors they designate, shall be allowed to uniformly and routinely inspect this polygraph training school prior to the granting of initial accreditation status by the American Polygraph Association Board of Directors; and, that the Regional Directors or designated Certified Inspectors will be allowed to conduct necessary inspection at least once every 18 months thereafter in order to verify that this polygraph training school continues to meet and/or maintain the standards required for accreditation of a polygraph training school by the American Polygraph Association. Special inspections may be conducted by the Standards & Ethics Committee upon receipt of allegations that the school is deficient in meeting or maintaining the required APA standards for school accreditation. Further, it is hereby agreed that special inspections may also be conducted by the Standards & Ethics Committee and their appointed representatives in the event of major changes in faculty, curriculum physical location of the school, or other changes that may be considered as affecting compliance with the APA School Accreditation Standards herein defined.

XII. I, the undersigned, representing the Polygraph Training School making this application, understand and agree that an inspection fee of \$400.00 is required, payable in advance, to the American Polygraph Association, prior to any initial or renewal inspection being conducted. In the event any re-inspection is required to determine correction of a deficiency noted in the initial or renewal inspection, the actual expenses of the inspector will be paid by the school.

XIII. I, the undersigned, representing the Polygraph Training School making this application for accreditation, hereby swear and affirm that the above information, including all attached sheets, is a true and accurate statement of the facts regarding this application for school accreditation to be considered by the American Polygraph Association.

School Inspection Manual

SIGNED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

REPRESENTING: \_\_\_\_\_

\_\_\_\_\_  
(Name of Polygraph Training School)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

at \_\_\_\_\_

Notary Public:

INTENT TO COMPLY WITH THE POLYGRAPH SCHOOL ACCREDITATION  
STANDARDS OF THE AMERICAN POLYGRAPH ASSOCIATION

I/We, the undersigned authorized agent of \_\_\_\_\_  
(Name of School)  
\_\_\_\_\_ certify that the polygraph  
school accreditation standards of the American Polygraph Association have  
been thoroughly reviewed and are understood and agreed to. Further, the  
authorized agent(s) of the above titled polygraph school agree(s) to abide  
by these Standards; and, agree(s) to comply with periodic inspections (as  
deemed necessary by the American Polygraph Association or those authorized  
to act on their behalf) to be conducted by the authorized representative  
designed by the American Polygraph Association Standards & Ethics Commit-  
tee. It is further understood that it will be necessary for the Standards  
& Ethics Committee to inspect classroom facilities, instrumentation, les-  
son plans, student notes, and other related documentation in order to in-  
sure such compliance. This facility and their authorized representa-  
tive(s) agree(s) to provide appropriate documentation as required, and  
will permit the American Polygraph Association Standards & Ethics Commit-  
tee and their designated representative(s) to conduct the necessary in-  
spection in order to establish compliance with the Standards; and, in  
order to allow the Standards & Ethics Committee to make appropriate recom-  
mendations regarding initial or continued accreditation to the American  
Polygraph Association.

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

AUTHORIZED REPRESENTATIVE:

\_\_\_\_\_

TITLE: \_\_\_\_\_

NAME OF POLYGRAPH SCHOOL TRAINING  
FACILITY: \_\_\_\_\_

\_\_\_\_\_



AGREEMENT OF INSPECTION AND RELEASE

The \_\_\_\_\_ hereby  
 (School Name)  
 agrees for an inspection. In accordance with the policies, procedures, and standards adopted by the American Polygraph Association, to be conducted by a Regional Director of the Standards & Ethics Committee of the American Polygraph Association, or by a Certified Inspector designated by that Regional Director or the appropriate representative of the Standards & Ethics Committee of the American Polygraph Association.

It is further understood that the inspection will be conducted in an objective and uniform manner; and, it is understood that the purpose of the inspection is to determine if the above listed and titled polygraph school is in compliance with the minimum standards for accreditation adopted by the American Polygraph Association Board of Directors. Therefore, the above named and titled school and authorized representative(s) signing below, hereby forever releases the American Polygraph Association, the Members of the Standards & Ethics Committee, and its inspecting member from any and all damages or liability resulting from the opinions expressed or actions taken as a result of this inspection.

It is further understood and agreed that this inspection is designed to determine appropriateness of this facility for (Initial) (Continuing) accreditation by the American Polygraph Association.

SIGNED \_\_\_\_\_

TITLE \_\_\_\_\_

AUTHORIZED AGENT FOR \_\_\_\_\_

\_\_\_\_\_  
 (Name of School)

DATE \_\_\_\_\_ TIME \_\_\_\_\_

WITNESSED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

MINIMUM STANDARDS FOR THE ACCREDITATION OF A POLYGRAPH  
SCHOOL (FACILITY) BY THE AMERICAN POLYGRAPH ASSOCIATION

I. PURPOSE OF POLYGRAPH SCHOOL INSPECTIONS

In accordance with Articles III-A-1-a, and VIII-2 of the Constitution and By-Laws of the American Polygraph Association, the Committee on Standards and Ethics is authorized to conduct inspections and evaluations of polygraph schools as herein defined; and, is authorized to recommend to the Board of Directors that American Polygraph Association (APA) accreditation be granted to those schools which have satisfactorily demonstrated to the committee that the programs, instructions, and facilities they offer meet or exceed those standards established by the APA as necessary minimums for providing quality educational opportunities to polygraph students.

II. APPLICATION AND REVISION OF STANDARDS

The standards set forth in this application are minimal, and it must be clearly understood that these standards are subject to future revision by action of the Board of Directors of the APA in accordance with the Constitution and By-Laws of the APA.

III. POLYGRAPH SCHOOLS DEFINED

As will be used by the American Polygraph Association, the term "Polygraph School" shall refer to any private, public, or federal educational or training institution; or, to any course of study within any private, public, or federal educational or training institution which purports to offer instruction in, or the teaching of, the theory and/or practice of detecting deception or verifying truth of statements through the use of any polygraph techniques and/or instrumentation.

IV. PREREQUISITES TO BEING GRANTED ACCREDITATION STATUS BY THE AMERICAN  
POLYGRAPH ASSOCIATION

Unless otherwise required by lawful authority, prior to being granted accreditation status by the APA, each polygraph school must be licensed and/or recognized and approved by the appropriate state, county, and/or municipal licensing authority wherein such authority exists. In addition, in those localities which require accreditation of educational/training institutions, each polygraph school must be accredited by the local or regional accreditation board(s). Documentation may be required to be available for review by the Standards and Ethics Committee representative.

It shall be required that each accredited school or school seeking accreditation indicate in all of their school advertisements, and individually in writing to each entering student, that successful completion of an APA accredited program is only one of the necessary prerequisites for membership in the American Polygraph Association.

## V. INSTRUCTOR QUALIFICATIONS

The following professional qualifications must be demonstrated by instructors (teachers) presenting material in each of the respective areas of instruction:

### A. INSTRUCTION IN PRIMARY COURSE WORK MATERIAL: POLYGRAPH METHODOLOGY, TECHNIQUES, AND INSTRUMENTATION; AND, IN ANY AREA OF POLYGRAPH SCHOOL INSTRUCTION NOT DEFINED UNDER PARAGRAPH B BELOW

1. Each PRIMARY INSTRUCTOR must meet or exceed the requirements necessary for APA Membership, to include:
  - a. Must possess, as a minimum, a degree at the Baccalaureate level from a college or university accredited by the appropriate regional accreditation board(s).
  - b. Must have administered a minimum of 200 polygraph examinations within a three (3) year period following completion of formal instruction;
  - c. Must have completed a basic polygraph school course at a school that was fully accredited by the American Polygraph Association at the time of attendance;
  - d. Must have at least 3 years experience as a practicing polygraphist;
  - e. Exceptions to (a) and/or (c) above may be granted to those persons who are members of the American Polygraph Association.

### 2. GUEST OR VISITING INSTRUCTORS

An individual not meeting all of the criteria described in Section V-A-1 as necessary for primary instructorship, may provide instruction in primary course work to polygraph students; however, they will not be considered as primary instructors and they may not substitute for a primary instructor where the physical presence of a primary instructor is required as described below.

### 3. THE PRESENTATION OF PRIMARY COURSE MATERIAL

- a. Individuals qualifying as Primary Instructors must be physically present with the students, and must provide the instruction to the student during no less than 75% of the minimum hours of primary course material presentation required by these Standards.

This shall be interpreted according to the following formula:

260 minimum total required hours - 48 minimum  
supplemental instruction hours = 212 minimum  
primary instruction hours required.

## Standards and Ethics Committee

75% of 212 = 159 hours instruction requiring the physical presence of a primary instructor.

Therefore, it will be required that, regardless of course length, a primary Instructor be physically present with the students and provide the student instruction during no less than 159 hours of the scheduled primary course material presentation.

- b. At least forty (40) hours of the total time scheduled instruction in primary course material (Section VI-A-1) must be taught by an additional primary Instructor(s). Thus, any Basic Polygraph Course will require that at least two (2) qualified primary Instructors provide the primary instruction to the student.
- c. Where a primary Instructor is not required to be physically present (V-A-3-A,b) additional methods of presenting primary course material to students may be utilized, i.e., guest instructors, video taped lectures, audio tape recordings, handout material, etc.

### B. INSTRUCTION IN THE SUPPLEMENTAL DISCIPLINES

The following is a listing of course materials, instructor qualifications and presentation requirements for the disciplines defined as supplemental to Primary Instruction in Polygraph Methodology, Techniques and Instrumentation:

#### 1. LEGAL ISSUES AND POLYGRAPHY

Instructors teaching legal issues or aspects related to polygraphy for the polygraph student must:

- a. Possess a law degree or jurisprudence degree recognized by the appropriate national or regional bar association(s); and/or,
- b. Be currently licensed to practice law by an appropriate governmental or regulatory licensing authority; and, be a current member in good standing with the bar association in their state of residence where applicable.

#### 2. PHYSIOLOGY AND POLYGRAPHY

Instructors teaching physiological issues and aspects for polygraph students must:

- a. Have successfully completed and been granted at least one graduate degree, beyond the Bachelor level, in Physiology or in a discipline defined as closely related to or aligned with Physiology, i.e., Psychophysiology, Physiological Psychology, etc., from a college or university graduate department approved by the appropriate regional accrediting agency; or, in lieu thereof,

- b. Must have completed and been granted a Bachelor level degree and have been credited with the successful completion of not less than eighteen (18) graduate level semester credit hours or equivalent in Physiology, (Psychophysiology, Physiological Psychology, etc.) from a college or university graduate department approved by the appropriate regional accrediting agency.
- c. Instructors in Physiology need not be practicing polygraphers.

### 3. PSYCHOLOGY AND POLYGRAPHY

Instructors teaching Psychological issues and aspects for polygraph students must:

- a. Have successfully completed and been granted at least one (1) graduate level degree beyond the Bachelor level, in a field of Psychology from an appropriately accredited college or university Psychology graduate department; or, in lieu thereof.
- b. Must have successfully completed and received a Bachelor level degree plus must have been credited with completion of no less than eighteen (18) graduate level semester credit hours or equivalent in a field of Psychology by an approved Psychology graduate department within a college or university approved by the appropriate regional accrediting agency.
- c. Instructors in the discipline of Psychology need not be practicing polygraphers.

### 4. PRESENTATION REQUIREMENTS

The Supplemental Discipline Instructors must be physically present with and must provide the instruction for the students during no less than 75% of the total time scheduled for presentation of the materials in their respective disciplines. Thus, regardless of the total hours scheduled by Individual Schools for supplemental discipline instruction (Section VI-2-a,b define minimums required), Supplemental Discipline Instructors must be present with the student during no less than 75% of that total scheduled time.

### C. DOCUMENTATION OF INSTRUCTION

Student instruction in all primary and supplemental course materials must be documented for each class presentation and must include:

- a. Name of instructor

- b. Method of material presentation, i.e., by primary instructor, by guest instructor, by video taped presentation, etc.;
- c. Nature of material presented;
- d. Actual time spent instructing.

VI. POLYGRAPH BASIC COURSE AND INTERNSHIP REQUIREMENTS

A. Each polygraph school basic training course shall consist of a minimum of 260 classroom/instruction hours to include formal classroom instruction and in-house supervised instrument time, and shall be divided as follows:

- 1. PRIMARY COURSE WORK INSTRUCTION: POLYGRAPH TECHNIQUES, METHODOLOGY AND INSTRUMENTATION
  - a. THE HISTORY AND DEVELOPMENT OF THE POLYGRAPH IN THE DETECTION OF DECEPTION (4 hours)
  - b. MECHANICS OF INSTRUMENT OPERATION (24 hours) - Includes mechanics and functioning of the instrument components; includes basic procedures for instrument activation and operation, chart marking, etc.
  - c. TEST QUESTION CONSTRUCTION (30 hours) - Includes training in Semantics and test question construction.
  - d. POLYGRAPH TECHNIQUES (50 hours) - Includes instruction for understanding the use of multi-technique procedures. Must include instruction for understanding the use of control question techniques; relevant-irrelevant techniques; peak of tension procedures; and others. Major and minor emphasis may be taught depending upon the orientation and philosophy of each respective school; however, all students must acquire at least an introductory knowledge of different examination procedures prominently in use by examiners in the field today.
  - e. CHART ANALYSIS (45 hours) - Includes skill development in chart analysis for the student. The instruction must provide the student with at least an introductory knowledge of different chart analysis procedures prominently in use by examiners today, i.e., Global Procedures, Numerical Scoring Procedures, etc. Emphasis may be on major technique procedures taught.
  - f. INSTRUMENT MAINTENANCE AND CALIBRATION (8 hours) - Includes maintenance and calibration of instruments. Student charts to be maintained in their files must document the student's calibration skills.
  - g. POLYGRAPH RESEARCH & RESEARCH METHODS (4 hours) - Includes an explanation of validity, reliability and

polygraph research procedures. As well, includes a literature survey to familiarize students with published, scientific polygraph research data and journals.

- h. INTERVIEWING PROCEDURES (24 hours) - Includes skills development in pre and post-test interview methods and procedures.
- i. ETHICS (2 hours) - Includes a thorough understanding of the ethical obligations of the examiner to the polygraph examinee, to the examiner; and to the polygraph profession. Additionally, students must be familiarized with the APA and other national and state polygraph associations that are concerned with the development of and the ethics within the polygraph profession.
- j. DEVELOPMENT OF STUDENT POLYGRAPH SKILLS (21 hours) - Involves the development of the students proficiency in chart work. Includes the student producing sixty (60) minutes of charts to be maintained in the student files; not to include calibration charts and instrument maintenance time described under paragraph f.

## 2. INSTRUCTION IN THE SUPPLEMENTAL DISCIPLINES

- a. LEGAL ISSUES AND POLYGRAPH (8 hours) - Includes instruction in the basic legal matters pertinent to the practice of polygraphy; local, state and federal regulations applicable; admissibility issues, courtroom testimony, and others.
- b. PSYCHOLOGICAL AND PHYSIOLOGICAL ISSUES AND POLYGRAPHY (40 hours) - Includes the basic psychological, physiological, and psychophysiological issues forming the foundation of the science of polygraphy.

## B. INTERNSHIP PROGRAM REQUIREMENTS

Each basic polygraph training course shall be followed by and/or combined with an Internship Program during which the intern must conduct not less than twenty-five (25) actual polygraph cases under the close supervision of an Intern Trainer. A Polygraph School Primary Instructor may serve as the intern trainer.

- 1. The Intern Trainer must be a Member of the APA or must meet or exceed the requirements established for APA Membership.
- 2. The Intern Trainer must schedule time to be available for consultation with the intern, to assist the intern toward skills development in all phases of conducting the polygraph examinations.
- 3. The Intern Trainer must certify the progress of the intern by submitting at least bi-monthly reports to the polygraph school.

C. CERTIFICATION OF INTERNSHIP COMPLETION

Certificates of final completion of polygraph training will not be awarded to the intern until the polygraph school has documented, from the examination of all charts and reports, including all bi-monthly reports by the Intern Trainer, that the intern has completed at least twenty-five (25) actual polygraph cases to the satisfaction of the polygraph school.

For Federal and Military Examiner Interns, polygraph charts to satisfy the internship requirements need not be submitted to the polygraph school; however, the bi-monthly reports must be submitted by the Intern Trainer to the polygraph school.

D. FORMAL CLASSROOM ATTENDANCE/INTERNSHIP COMPLETION REQUIREMENTS

1. SUCCESSFUL COMPLETION OF BASIC POLYGRAPH SCHOOL REQUIREMENTS

Successful completion of the polygraph schools' required basic course instruction will be interpreted to mean that:

- a. The student was physically present at the facilities of the polygraph school not less than thirty-five (35) instruction days during which time the required number of hours of scheduled course work (not less than 260) was offered to the student;
- b. The student was credited with completing not more than eight (8) instruction hours within any instruction day (any consecutive 24 hour period of time);
- c. The student was credited with completing not more than six (6) instruction days within any given instruction week (7 consecutive 24 hour days);
- d. The student successfully completed the scheduled required basic instruction hours (not less than 260), within the guidelines listed above, in not more than twelve (12) consecutive calendar months beginning with the date of the student's enrollment in the basic polygraph training program offered by that school.

The above listed guidelines will be applicable to all polygraph training programs applying for APA accreditation whether private, public, or federally sponsored.

2. SUCCESSFUL COMPLETION OF INTERNSHIP REQUIREMENTS

APA Internship requirements may be satisfied in one of the following ways:

- a. After successful completion of the polygraph school's required number of basic course instruction hours (not less than 260), an internship period of not less than four (4) consecutive calendar months will be required, during which time not less than the required twenty-five (25)



internship examinations must be completed to the satisfaction of the polygraph school.

- b. If the individual has been a full-time student in attendance during a consecutive six (6) month polygraph school training program, while in attendance the student must successfully complete not less than the required twenty-five (25) internship examinations to the satisfaction of the polygraph school.
- c. Where applicable, interns attempting to satisfy APA internship requirements, shall at all times be in compliance with the rules and regulations of appropriate governmental and regulatory authorities.

#### VII. POLYGRAPH INSTRUMENTATION REQUIREMENTS

- A. The polygraph school shall be required to have available for all students sufficient polygraph instruments, fully operational and properly calibrated, to reasonably allow all students sufficient instrument time to complete the minimum sixty (60) minutes of total chart time required. As a minimum, one polygraph instrument shall be available for each three students enrolled.
- B. All polygraph instruments assigned by any school for student use shall record visually, permanently, and simultaneously on continuously moving charts at least three (3) physiological tracings - (1) pneumographic, (2) cardiosphygmographic, and (3) galvanic skin response (GSR). This shall not be interpreted to preclude the recording of additional physiological phenomena on the same chart.

#### VIII. SCHOOL RECORD REQUIREMENTS

- A. Each polygraph school shall maintain the following student records permanently:
  - 1. Date of entrance;
  - 2. Date of completion of classroom instruction;
  - 3. Date of completion of internship training, and name of Intern Trainer;
  - 4. Date of final certification of completion of the polygraph training program.
- B. All other records, including charts developed, testing materials and any other items that are necessary for APA inspection, shall be maintained for a period of not less than three (3) years.
- C. Within ten (10) days after a basic course begins; the School Director/Administrator shall forward to the appropriate Regional Director of the Standards and Ethics Committee a notice that the Basic Course began, appropriate beginning and ending dates for that course and the number of students enrolled.

IX. PHYSICAL PLANT AND FACILITIES

A. EVALUATION OF THE FACILITIES HOUSING THE POLYGRAPH SCHOOL

Polygraph School facilities must reflect that the school's housing and physical operation are conducive to a proper educational environmental; specifically, these should include:

1. Controlled access to and from the classroom instruction and supervision areas;
2. Adequate and regulated heating, cooling, and lighting, of all classroom/instructional student work areas;
3. Isolated and controlled facilities for student testing;
4. A classroom setting sufficient in size and available space for lectures/demonstrations for all enrolled students.

B. INSTRUCTIONAL AIDES, SUPPLIES AND EQUIPMENT

1. The Polygraph School shall maintain a library with reference sources available to students that include:
  - a. The Polygraph Journal, at least the past two (2) years;
  - b. APA Publications, at least the last two (2) years;
  - c. Research articles and/or journals containing published research that document validity, reliability and procedural data pertinent to the polygraph profession;
  - d. Reference and resource material pertaining to Psychology, Physiology, Psychophysiology, and the law, as it relates to polygraph;
  - e. Polygraph texts and publications recognized within the profession for historical or contemporary contributions.
2. Sufficient teaching aides and supplies must be available on site to effectively present the instructional materials to all students enrolled.

X. THE INSPECTION PROCESS

A. SCHEDULING INSPECTIONS

1. THE INITIAL ACCREDITATION

Polygraph Schools seeking initial APA accreditation shall notify the Chairman, Standards & Ethics Committee, of their desire for an APA Certified Inspection. Upon receipt in writing, the facility will be assigned by the Standards & Ethics Committee Chairman, to the Regional Director of the school's geographic region, who in turn, will initiate

correspondence with the School Director/Administrator and follow-up on the necessary prerequisites to inspection.

## 2. CONTINUING EDUCATION REQUESTS

Within six (6) months of the expiration date, the Regional Director will notify each Polygraph School Director/Administrator within that jurisdiction, that a Renewal Inspection for re-accreditation will be required. No later than 120 days prior to the expiration date, the facility shall notify the Regional Director, in writing, of their desire for a continuing accreditation inspection.

## B. METHOD OF INSPECTION

### 1. THE INSPECTOR

Each facility will be inspected only by an APA Certified Inspector. It will be necessary that all documents, files, etc., pertinent to the inspection of that facility be made available to the inspector upon request. Failure to comply with this request will automatically result in a recommendation that accreditation status be withheld from that facility. Upon completion of the inspection, a written report concerning all phases and aspects of the inspection, will be submitted to that inspector's Regional Director.

### 2. THE REGIONAL DIRECTOR

Upon receipt in writing of the inspection report, the Regional Director will evaluate the school's compliance with the APA Accreditation Standards. Upon completion of that review and evaluation, the Regional Director will recommend to the Standards & Ethics Committee Chairman, in writing, that accreditation status be granted or denied that facility. Where deficiencies in a school's compliance have been noted, the Regional Director is authorized to withhold a final written recommendation to the Committee Chairman for a period not to exceed ninety (90) days following the Regional Director's notification to the school that those deficiencies exist. During that time, the Regional Director will ascertain whether that school has corrected or intends to correct those deficiencies.

### 3. COMMITTEE CHAIRMAN

The Standards & Ethics Committee Chairman, upon receipt of the Regional Director's recommendations, in writing, will make a Chairman's Recommendation to the APA Board of Directors based upon the recommendations of the Regional Director. The Chairman may request further action by the Regional Director prior to submitting the chairman's final recommendation to the Board of Directors.

4. BOARD OF DIRECTORS ACTION

Upon receipt, in writing, of the official recommendation of the Standards & Ethics Committee, the APA Board of Directors will take the necessary voting action. Granting or denying accreditation status is and shall remain the sole authority of the APA Board of Directors. No authority rests with any individual, officer, board member, or Standards & Ethics Committee member, to grant, deny, withhold, or revoke accreditation status.

5. NON-COMPLIANCE WITH ACCREDITATION STANDARDS

When any facility has been found to be deficient in complying with the APA approved accreditation standards, that facility will be notified in writing by the Regional Director of those deficiencies. Following receipt of that letter, the facility will be allowed thirty (30) days to comply or indicate in writing their "intent to comply". When the written "intent to comply" is received, the facility will be allowed until the enrollment date of the next scheduled class to be in compliance. When the appropriate correction or changes are made, if deemed necessary, the Regional Director will schedule a follow-up inspection by a certified inspector. Following that inspection, the Regional Director will submit the appropriate recommendation to the Committee Chairman, who in turn will make final recommendations to the APA Board of Directors. Where no "intent to comply" notice is received, or where the Regional Director is satisfied there is no "intent to comply" with the minimum accreditation standards, the Regional Director will recommend that accreditation status be withheld, revoked, or not granted that facility.

C. GRANTING ACCREDITATION STATUS

1. PERIOD OF ACCREDITATION

Upon final action of the APA Board of Directors to accredit, a polygraph school will be granted accreditation status for a period of eighteen (18) months.

2. MINIMUM CLASSES PER YEAR

In order to maintain accreditation status, it will be necessary that the facility conduct at least one (1) basic polygraph examiners course during each eighteen (18) month period. Where conditions prevail that prevent schools from conducting at least one (1) basic polygraph examiner's course during each eighteen (18) month period, one (1) extension of the accreditation status expiration date may be granted for a period not to exceed six (6) months, upon the recommendation of the Regional Director and consent of the Chairman, Standards & Ethics Committee. This action must be reported to the Board of Directors. Where no basic polygraph examiners course is conducted during the extension period, a

recommendation will be made to the Board of Directors that the facility be considered non-accredited. Following this, where re-accreditation is desired, that facility must follow the guidelines set forth under Section X-A-1 Initial Accreditation Requests.

3. NOTIFICATION OF CHANGES

It is required that major changes in course content, changes in school instructors, administrators or directors, or changes in school location, be brought to the attention, in writing, of the respective Regional Director within thirty (30) days of the effective date of those changes. Failure to so notify may result in a recommendation that action be taken against the facility's accreditation status.

4. EXCEPTIONS TO EXISTING ACCREDITATION STATUS

Where serious deficiencies (non-compliance with any of the herein described minimum standards) are believed to exist, the Regional Directors shall have the authority to investigate such infractions; and, shall be authorized to take whatever action is deemed necessary, in consultation with Polygraph School Directors/Administrators to insure compliance with the established minimum standards.

D. FOLLOWING FINAL ACTION OF THE APA BOARD OF DIRECTORS

1. When final action of the Board of Directors has been taken to grant accreditation to any Polygraph School, the Secretary of the APA Board of Directors shall:
  - a. Publish the final action of the Board of Directors in all appropriate APA publications with appropriate dates where applicable;
  - b. Notify all state licensing and regulatory boards of the final action with appropriate dates where applicable.
2. When final action of the Board of Directors has been taken to deny or revoke the accreditation of any polygraph school, the Secretary of the APA Board of Directors shall:
  - a. Publish that final action in all appropriate APA publications with appropriate dates where applicable;
  - b. Notify all state licensing and regulatory boards of that final action with appropriate dates where applicable.
3. Where a recommendation was made to the APA Board of Directors to grant accreditation or to re-accredit; but, where a major change occurs to any of the standards upon which recommendation was based, it shall be the policy to recommend that the Board of Directors grant accreditation status to approved classes conducted prior to the date of the change(s). Upon

receipt of notification of such a change(s), the Regional Director will schedule a re-inspection during the next scheduled basic course to insure continued compliance with standards herein defined. When APA initial accreditation is granted to a polygraph school, that accreditation status will be retroactive to the class in session, during which inspection was made, and upon which the recommendation for accreditation was based.

#### INSPECTION PROCEDURES

Polygraph School Accreditation Standards adopted between January and May 1983 require that each polygraph training facility requesting APA accreditation be subjected to inspection at least once each 18 months in order to insure compliance with the Standards. The purpose of these inspections is to determine whether APA accredited polygraph schools are in fact meeting or exceeding the minimum standards deemed necessary for providing quality polygraph education for polygraph students.

There are two basic types of inspections that will be conducted by certified school inspectors:

1. Initial Inspections
2. Continuing Inspections

Initial Inspections are designed to ascertain whether or not a polygraph training facility has established and instituted operating and training Standards compatible with those minimum Standards required by the American Polygraph Association Accreditation Program.

Continuing Inspections are designed to insure that APA accredited polygraph schools are continuing to abide by all facets of the APA School Accreditation Standards and Program. Initial Inspections differ from Continuing Inspections in that Initial Inspections will not require that internship requirements be verified through checks of school records or interviews of in-house or intern trainees.

Nevertheless, verification that internship requirements are designed and intended to comply with APA standards will be accomplished through interviews of students, intern trainees, faculty and/or checks of records. Additionally, initial inspections require that especially thorough attention be paid to the verification of instructors present during the presentation of course material, verification of course requirements being met, instrumentation issues being met, records, facilities, supplies and equipment being consistent with the Standards, etc., since no previous inspection by the APA has likely ever occurred.

Each inspection, initial or continuing, will result from notification by the Regional Director to the School or Facility Director that an accreditation inspection is due. Prior to the inspection being conducted, the Regional Director will have contacted the polygraph school and will have secured a request for inspection (letter of intent to comply with APA Standards) from the polygraph school. The Regional Director's Instructions

to the Certified Inspectors will include the name and address of the polygraph school(s) to be inspected; the names of directors and other faculty; and, the final date or dates that the inspection should be accomplished by. Also included will be any special instructions. As well, attached to the inspection authorization will be copies of instructor's curriculum vitae and copies of the most recent inspection report for that facility, if any.

It should be noted that the Regional Director and Certified Inspector are to work together as a team, and together will assist each polygraph school in its desire to obtain, or maintain APA accreditation status. The inspection process will not be designed as a "witch hunt" and is not intended to embarrass, humiliate or impose any unnecessary hardship upon the activities of any polygraph training facility. In the event a deficiency is discovered during the course of the inspection, the polygraph school will be afforded a reasonable opportunity to correct that deficiency in accordance with APA Polygraph School Accreditation Standards XB1-5, XC4, XD. It is expected that school inspections will be completed in an objective, competent and professional fashion.

The inspection process itself, will be divided into six (6) phases: (1) Initial Contact (2) Faculty Evaluation (3) Course of Instruction evaluation (4) Internship Program Evaluation (5) Facilities Evaluation and, (6) Student Interviews. Each phase will be incorporated into the final inspection report under the appropriate headings. Additionally, each phase will be separately and thoroughly explored during each inspection to insure total compliance with the Standards. Described below are important considerations, requirements, and guidelines to be followed in order to successfully complete each phase of the inspection:

#### INITIAL CONTACT

Each School Inspector will telephonically contact the polygraph training facility to be inspected at least twenty-four (24) hours prior to the inspection being conducted, to insure that classroom sessions are being held, and that all documents, records, lesson plans and allied material will be available to the Inspector upon his arrival at the polygraph school. School inspections should be scheduled toward the latter stages of each course in order that the facility, lesson plans, course material, student notes and student interviews can be more meaningfully evaluated. Unannounced inspections will not be conducted, unless so directed by the Chairman, Committee on Standards & Ethics, in consultation with the respective Regional Director.

Upon arrival at the polygraph training facility, the Inspector will present an APA School Accreditation Inspection Release to the school director/authorized agent for his/her execution. No school will be inspected without a properly executed APA School Accreditation Release. A copy of the release will be attached to the final inspection report to be forwarded to the appropriate Regional Director.

In localities where state, county and/or municipal licensing is required, or in localities where accreditation of educational/training institutions is required, documentation demonstrating compliance with these requirements must be viewed by the school inspection and must be cited

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in the final inspection report. Also, school admission requirements should be determined and, although no longer considered a criterion for the determination of APA accreditation eligibility, should be noted in the final inspection report to the Regional Director.

### FACULTY EVALUATION

Prior to beginning the school inspection, the Inspector shall have received from the Regional Director a copy of the most recent inspection report for that polygraph training facility. Attached to the inspection report will be the most current curriculum vitae for all instructors on file for that polygraph course. In the event that change occurs with the primary faculty or other instructors utilized by the polygraph school, such changes will be noted in the inspection report. In the event that other instructor(s) are teaching, the Inspector will provide curriculum vitae forms to the school director and instruct the director that these forms must be completed and submitted to the Regional Director within thirty (30) days.

The Inspector should obtain from the school director all information and documents pertinent to and reflective of the course lesson plans and student interviews; and reflecting what faculty members are utilized as primary, supplemental, guest, or visiting instructors. Attention should be given to the requirements outlined in the Polygraph School Accreditation Standards, V-A, B & C.

### COURSE OF INSTRUCTION EVALUATION

From course lesson plans and student notes, a breakdown of the hours of instruction should be documented, and should reflect the name of the faculty member or instructor who provided the instruction in each respective topic. As mentioned in Polygraph School Accreditation Standards VI-A, 1 & 2, there are ten (10) areas of primary course work, and two (2) areas of supplemental disciplines. The Inspector should make every effort to verify that the minimum hours of instruction in each area have or will be offered. Also, reference should be made to Polygraph School Accreditation Standards V-3, a-d and V-4 which establish the presentation requirements for each area of instruction. Discrepancies or inconsistencies which are found to exist must be documented. Actual dates that the course of instruction is presented must be documented. Verification that the instructors were present during the allotted times for presentation of course materials must be documented.

### INTERNSHIP PROGRAM EVALUATION

Verification that the Internship Program meets or exceeds APA Standards will be accomplished by reviewing school records, files, bi-monthly intern trainer reports and other allied documentation to be provided by the school director. Non-compliance or deficiencies must be documented.

As previously indicated, during initial APA school accreditation inspections, it is required only that the Inspector verify that the polygraph training facility has established a program that is intended to and will comply with APA Internship Program Requirements. Only after the Internship Program has become operational does it become necessary to



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further verify that the administration of the program is in compliance with APA Standards.

Reference should be made by the Inspector to Polygraph School Accreditation Standards VI-B, C & D.

### FACILITIES EVALUATION

Referring to Polygraph School Accreditation Standards VII and IX the Inspector will verify that no less than the minimum number of instruments required are available to students and that the educational materials and facilities are conducive to a proper educational atmosphere. The polygraph school library, with reference sources available to students, will also be verified and evaluated by the school inspector. Deficiencies must be documented in detail.

### STUDENT INTERVIEWS

At the conclusion of each school inspection a minimum of two (2) students enrolled in the present polygraph course will be selected at random and interviewed by the Inspector to insure compliance with APA Standards. The Inspector should review each student's class notes to help verify that lesson plans are accurately portraying what is being taught. Faculty attendance as required and reported should be verified. Virtually all aspects of the APA Accreditation Standards should be reviewed carefully during each student interview in order to provide secondary corroboration of compliance. Each interview should be carefully documented, in detail, in the final inspection report to the Regional Director.

### INSPECTION REPORTS

Information necessary to evaluate a polygraph training facility's compliance with APA Accreditation Standards must be completely and accurately recorded. The final inspection report serves as a permanent record of the investigative findings of the Inspector, and serves as the medium to provide information to the Regional Director, the Chairman/Vice Chairman of the Standards & Ethics Committee, and, ultimately to the APA Board of Directors. It has been determined that checklists or survey type reporting, previously utilized by APA Accreditation Inspectors, did not provide sufficient information upon which to base a meaningful evaluation, however uniform these reports appear to have been. As a result, the present APA Standards & Ethics Committee has adopted the narrative style of reporting where strict attention to detail and the application of the accreditation Standards and inspection procedures can be communicated in a more meaningful fashion. Each inspection report should be:

1. Accurate - reflecting exactly what was seen, heard, or done. Assumptions and conclusions will not be made unless so captioned. An opinion or belief expressed by our Inspector must be labeled as such.
2. Complete - each inspection report must cover all of the APA Accreditation Standards, and should not avoid or omit any area or requirement that is set forth in the Polygraph School Accreditation Standards.

3. Relevant - information contained in the final inspection report should have a direct bearing on assessing the polygraph school's compliance with the APA Standards. Extraneous information should be avoided.
4. Clear - reports should be written in a simple, direct, and concise style. Length of the report will be dependent upon the pertinent information developed.
5. Objective - the inspection report must reflect complete impartiality on the part of the Inspector, whether the final inspection report is favorable or unfavorable.

Reports will be organized into six (6) basic categories, as described earlier in this manual: (1) Initial Contact; (2) Faculty Evaluation; (3) Course Material Evaluation; (4) Internship Program Evaluation; (5) Facilities Evaluation and, (6) Student Interviews. Separate pages with the above mentioned headings will be prepared. Narrative style reporting of the pertinent information verifying compliance with APA School Accreditation Standards within each section will be accomplished. Enclosures, including the APA School Inspection Release, will be attached to the report.

A cover page will also be prepared by the school inspector which will contain the following information: (1) Name and full address of the polygraph school inspected; (2) Date of the Inspection; (3) Name of the Inspector; (4) Name of the Regional Director, and the Region served.

The final inspection report, including the cover page, will be typed and submitted by the Inspector to the appropriate Regional Director within fourteen (14) days of the completion of the school inspection.

Upon receipt of the Inspector's Report, the Regional Director will do the necessary evaluation when it has been determined by the Regional Director that all inspections to be conducted have been completed; and, when it has been determined that the facility inspected will or will not receive a recommendation to accredit, the Regional Director will submit a typed Regional Director Report, one each, to the Standards & Ethics Committee Chairman and Vice-Chairman as described in the Standards.

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GUIDE FOR INSPECTOR TRAINING ONLY - NOT FOR ACTUAL USE  
APA POLYGRAPH SCHOOL INSPECTION CHECKLIST

NAME OF SCHOOL: \_\_\_\_\_  
SCHOOL LOCATION: \_\_\_\_\_  
DATE INSPECTED: \_\_\_\_\_ INSPECTOR CANDIDATE \_\_\_\_\_

A. STAFF

1. Is the School Director familiar with the current APA Polygraph School Accreditation Standards?
2. Do all primary instructors meet qualifications listed in paragraph V-A?
3. Are primary instructors present for during no less than 159 hours of presentation of primary course material? (V-A-3a)
4. Are at least 40 hours of primary instruction time being taught by a second qualified primary instructor? (V-A-3b)
5. Do all Supplemental Disciplines Instructors meet qualifications listed in paragraph V-B-1, 2 and 3?
6. Are Supplemental Disciplines Instructors present with students during at least 75% of the time their subject are being taught? (V-B-4)
7. Is instruction documentation maintained as required by paragraph V-C?

B. COURSE CONTENT:

1. Does course consist of at least 260 classroom/instruction hours? (VI-A)
2. Does breakdown of Primary course instruction comply with VI-A1?
3. Does breakdown of Supplemental Disciplines instruction comply with VI-A2?

C. INTERNSHIP:

1. Does school assure student undergoes an internship period that complies with VI-B?
2. Does school document internship activities from intern trainers? (VI-B3)
3. Does school withhold certification of final completion until internship requirements have been met? (VI-C)
4. Do internship requirements include review at the school of at least 25 actual polygraph cases? (VI-C & VI-D2)

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D. ATTENDANCE CRITERIA:

1. Were all students present at the school for not less than 35 instruction days? (VI-D-1a)
2. Was any student credited with more than 8 instruction hours in any 24 hours period? (VI-D-1b)
3. Was any student credited with more than 6 consecutive days instruction? (VI-D-1c)
4. Was any student credited with completion of the course in any period exceeding 12 consecutive months? (VI-D-1d)

E. INSTRUMENTATION:

1. Are all students completing a minimum of 60 minutes chart time in the practical exercises? Do the student files contain these files? (VII-A)
2. Are sufficient instruments available to permit assignment of a minimum of one instrument for each three students? (VII-A)
3. Are instruments utilized fully operational and properly calibrated? (VII-A)

F. RECORDS:

- 1 Does the school maintain permanently the records required by paragraph VIII-A?
2. Are other records required by paragraph VIII-B maintained a minimum of three years?
3. Does the school Director notify the Regional Director of beginning and ending course dates and number of students enrolled within 10 days of the course beginning.

G. FACILITIES:

1. Do the school facilities meet the standards set forth in paragraph IX-A?
2. Does the school maintain a library of reference material readily available to the students? (IX-B1)
3. Are reference materials described in paragraph IX-B1 readily available to the students?
4. Are sufficient teaching aids and supplies available on site to effectively present instruction to all students enrolled? (IX-B2)

H. ADVERTISING:

Does the school indicate in all of their school advertising that completion of an APA accredited basic polygraph program is only one of the necessary prerequisites for membership in the APA? Is the same information provided in writing to each prospective student? (IV)

I. NOTIFICATION OF CHANGES:

Are all major changes in course content, changes in school instructors, administrators or directors, or changes in school location brought to the attention of the Regional Director within 30 days of the effective date of those changes? (X-C-3)

J. STUDENT INTERVIEWS:

If a class is in session, a minimum of two students selected at random by the inspector are to be interviewed in private to inquire of their observations, opinions, and as a double check on whether instruction material detailed by the school was in fact given at the time claimed, and by the instructor claimed.

K. EXIT INTERVIEW:

The inspector will have an exit interview, if possible, with the school Director or other appropriate school administrator. The inspector is encouraged to discuss his findings with that official and elicit comments of the official as to intent to correct obvious discrepancies.

NOTE: Inspectors are to fully explain on a separate page(s) any adverse comments to any of the above material. Likewise, inspectors are encouraged to provide details of exceptional or outstanding areas they observe.

SIGNATURE OF INSPECTOR CANDIDATE: \_\_\_\_\_

AMERICAN POLYGRAPH ASSOCIATION

STANDARDS AND PRINCIPLES OF PRACTICE

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

1. A member shall recognize the fact that his primary responsibility must be to the person who has volunteered for a polygraph examination, regardless of the circumstances which created the need for the examination.
2. (Amended 8/4/82). Recognizing that a polygraph examination cannot be conducted on a person against his will, no member will attempt to conduct an examination when he has reason to believe the examinee has been subjected to coercion or duress.
3. (Amended 6/75-8/76). No member shall initiate an examination on any person unless he uses an instrument which makes a permanent simultaneous recording on a moving chart of at least three (3) physiological tracings, the pneumograph, the cardiosphygmograph and the galvanic skin response. This shall not preclude the recording of additional physiological phenomenon on the same charts. No member shall conduct an examination on an instrument wherein the manufacturer has not supplied information for self-calibration and sensitivity standards for that instrument. Every member shall calibrate his instrument periodically and keep a record of the dates of calibration. No member shall record any psychological or physiological phenomenon with an instrument or any part of an instrument without the subject being aware that their physiological or psychological phenomena are being recorded. The provisions of these paragraphs shall be subject to such additional indices as may be required to comply with any State or Federal licensing regulation.
4. No member shall conduct an examination on any person whom he believes to be physically or psychologically unfit for testing. In case of doubt as to the propriety of administering a test in any given situation, the member shall seek expert guidance from a competent medical or psychological authority prior to testing.
5. (Amended 8/5/81). No member shall render a conclusive verbal or written decision or report based on chart analysis without having collected at least two charts in which each relevant question is asked on each chart.
6. No member shall terminate a polygraph examination without affording the examinee a reasonable opportunity to explain and to eliminate any reactions which are evident on the charts. Further, no member shall accept the explanation of the examinee for a chart response without verification.

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

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17. (Adopted 8/10/78). To protect the privacy of each examinee, no member shall release information obtained during a polygraph examination to any unauthorized person. Authorized persons shall consist of the following:
  - a. The examinee and persons specifically designated in writing by the examinee.
  - b. The person, firm, corporation or governmental agency which requested the examination.
  - c. The Membership and Grievance Committee of the American Polygraph Association or similar committees of other polygraph organizations.
  - d. Members of governmental bodies such as Federal, States, County or Municipal agencies which license, supervise, or control the activities of polygraph examiners.
  - e. Other polygraph examiners in private consultation.
  - f. Others as may be required by due process of law.
18. (Adopted 8/13/80). A member shall not inquire into the sexual conduct or preferences of a person to whom a polygraph examination is being proposed or administered unless pertinent to an alleged crime specifically at issue in the examination, or where such inquiry is directly and demonstrably related to job performance qualification. In such case excepted herein, the areas of inquiry shall be specifically made known and agreed to in advance by the examinee or prospective examinee. A member shall not aid or abet a person in violation of this provision, nor willfully become an accessory to such a violation before or after the fact.
19. (Adopted 8/13/80). A member shall not include in any polygraph examination questions intended to inquire into or develop information on activities, affiliations or beliefs on religion, politics or race; except where there is specific relevancy to an investigation, or where terrorism or subversion is involved.

## AMERICAN POLYGRAPH ASSOCIATION CONSTITUTION AND BY-LAWS

### ARTICLE I - NAME

The name of this organization shall be the American Polygraph Association hereinafter referred to as the APA.

### ARTICLE II - OBJECTIVES OF THE APA

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



ARTICLE III - MEMBERSHIP AND VOTING RIGHTS

- A. There are seven (7) classes of membership: Member, Intern, Associate, Affiliate, Honorary, Life and Corporate. (Amended 1/74-8/75 and 8/77-8/78).

1. MEMBER

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

- a. The applicant must have completed a course of formal instruction in polygraph instrumentation and techniques at a school (civilian, military or governmental) that is fully recognized and accredited by the APA at the time of his/her attendance. (Adopted 8/78).
- b. The applicant must have administered at least 200 polygraph examinations within a three-year period following completion of formal instruction.
- c. The applicant must have demonstrated proficiency in the conduct of polygraph examinations to the satisfaction of the Membership Committee.
- d. The applicant must possess, as a minimum, a degree at the baccalaureate level from a college or university accredited by the Regional Accreditation Board.
- e. The applicant shall have satisfied his financial obligations to the APA, due and payable on or after January first, but no later than the date of the annual seminar of the APA.

2. INTERN

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

- a. (Deleted 8/4/82).
- b. The Intern membership shall not be extended beyond three (3) years from the date of acceptance to Intern membership, except where extenuating circumstances are approved by the Membership Committee.
- c. The Intern applicant has satisfied his annual financial obligation to the APA before the date of the annual APA seminar.
- d. Intern members in good standing shall be eligible to attend and participate in all activities of the APA open to the membership, but shall not represent themselves as being anything but Intern members of the APA.

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- e. Intern members shall have no voting rights in matters before the APA, nor are Intern members eligible for election to office in the APA.

### 3. ASSOCIATE (Adopted 8/75) (Amended 8/5/82).

Applicants for Associate membership shall be active polygraph examiners who do not meet the minimum requirements as described in A-1 above. These applicants may be admitted upon approval of the Membership Committee provided they demonstrate their knowledge and proficiency as polygraph examiners and shall have graduated from a school that is fully recognized and accredited by the APA at the time of his/her attendance.

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

### 4. AFFILIATE (Amended 8/75).

Persons who possess a sincere interest in the polygraph field shall be eligible for membership as Affiliate members of the APA. Applicants for Affiliate membership may include representatives of polygraph instrument manufacturers, personnel involved in the research of polygraph instrumentation and techniques, and any other persons who are approved by the Membership Committee as having a valid or professional interest in the polygraph field.

- a. Affiliate members in good standing must satisfy their financial obligations to the APA before the date of the annual APA seminar.
- b. Affiliate members in good standing shall be eligible to attend and participate in all activities of the APA open to the membership, but shall not represent themselves as being other than Affiliate members of the APA.
- c. Affiliate members shall have no voting rights in matters before the APA, nor are Affiliate members eligible for election to office of the APA.
- d. Persons actively engaged in the conduct of polygraph examinations will not be included in this category. Effective upon passage of this amendment, all active polygraph examiners previously listed in this category will become Associate members.

5. HONORARY

Those persons who shall have been nominated by a two-thirds majority vote of the Board of Directors and approved by a majority vote of the membership of the APA as having made significant and outstanding contributions to the polygraph field may be extended Honorary membership in the APA. Any member in good standing in the APA may suggest a nominee for Honorary membership to the Board of Directors.

- a. Honorary members shall be eligible to attend and participate in all activities of the APA open to its membership, but shall not represent themselves as being other than Honorary members.
- b. Honorary members shall have no voting rights in matters before the APA, nor are they eligible for office in the APA.
- c. Honorary members shall be exempt from all dues and assessments of the APA.

6. LIFE (Adopted 1/74).

Those APA members who shall have been nominated by a two-thirds majority of the Board of Directors and approved by a majority vote of the membership of the APA may be elected to Life membership.

- a. A Life member shall be exempt from all dues, fees and assessments, but shall be entitled to vote in all matters before the APA.
- b. A Life member shall not be eligible for elected office.

7. CORPORATE MEMBERSHIP

Those corporations, associations and organizations who wish to support the APA in its positive programs and its efforts to defend the polygraph profession against its detractors.

- a. Corporate members shall require a two-thirds majority approval of the President and Board of Directors.
- b. Corporate members shall be entitled to be represented at all meetings of the organization. Their representatives shall be entitled to speak at APA meetings and seminars, but shall not be entitled to vote.

B. WAIVER OF MEMBERSHIP REQUIREMENTS (Amended 1/74)

Recognizing that highly capable, renowned, competent, professional, and ethical examiners, currently practicing their profession, may not meet all of the requirements for membership in the APA as outlined in Article III, A, the following provisions are established for a waiver of strict membership standards to be granted by the Membership Committee.

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1. At the time of the establishment of the APA all members in good standing of the merging organizations shall be accepted as members of the APA without regard to the provision of Article III, A.
2. During the period August 1966 through December 1967, the requirements for a degree at the baccalaureate level and for formal instruction at a recognized and approved school may be waived at the discretion of the Membership Committee. Persons granted such a waiver by the Membership Committee shall be required to demonstrate satisfactory proficiency in the conduct of polygraph examinations to the satisfaction of the Membership Committee.
3. During the period 1 January 1968 through 30 June 1970, the requirement for a degree at the baccalaureate level may be waived at the discretion of the Membership Committee, provided that the person meets one of the following educational standards:
  - a. Completion of two (2) years of education at an accredited college or university, representing at a minimum the completion of 60 semester hours of satisfactory work and acceptance to standing in the junior class.
  - b. An associate degree from an accredited junior college representing two (2) years of college work.
  - c. In the case of present or former military personnel who are unable to satisfy the requirements of (a) and (b) above, a Certificate of Equivalency or Evaluation issued by the appropriate military authority, the Department of Defense, or a State Education Authority indicating achievement of second year college level.
4. Following 30 June 1970, applicants for membership shall be required by the Membership Committee to meet all the requirements of Article III, A.
5. (Adopted 6/71) (Amended 1/72).

Upon application by former and present military and police personnel, the Membership Committee may recommend to the Board of Directors for full membership, the names of those individuals who submit proof of 200 certified polygraph examinations in lieu of Educational requirements; provided that:

  - a. Such individuals meet all other requirements for full membership.
  - b. Such individuals shall have attended at least one seminar of the APA during the three (3) year period immediately preceding his application for full membership.
  - c. Such individuals shall personally demonstrate proficiency to the satisfaction of the Membership Committee.

6. (Adopted 1/74).

In individual cases reflecting extenuating circumstances, the Membership Committee may recommend to the Board of Directors that a waiver be granted to one or more of the basic membership requirements set forth in III, A. 1. above. In each such case, the Membership Committee shall:

- a. Conduct a formal and practical examination of the applicant's skill and knowledge as an examiner.
- b. Approve by a three-fourths majority vote a recommendation to grant a waiver to the applicant. Approval of the recommendation by the Membership Committee shall require a three-fourths majority vote by the Board of Directors.

C. DISCIPLINARY PROCEEDINGS (Amended 8/76) (Amended 8/5/81).

A member whose conduct injures or tends to injure the APA, affects adversely its reputation or which is contrary to or destructive of its purposes or objectives shall be subject to disciplinary proceedings as follows:

1. All charges or allegations of misconduct by a member shall be submitted to the Grievance Committee of the APA in writing. The Chairman of the Grievance Committee shall:
  - a. Conduct whatever preliminary investigation he may determine necessary or appropriate.
  - b. Promptly inform the member against whom such charges or allegations of misconduct have been made as to the nature thereof, and request a response thereto from such a member.
  - c. Failure to provide requested information to the and Grievance Committee shall be grounds for probation, suspension or termination of membership.
2. Upon completion of such investigation, the Chairman of the Grievance Committee shall prepare a written report summarizing the charges and allegations, the response of the member thereto, the results of the investigation and the Chairman's recommendation as to whether the charges or allegations are without merit and should be dismissed or whether disciplinary proceedings should be instituted and shall mail a copy thereof to the member against whom the charges or allegations have been made.
3. In the event that the Chairman recommends that disciplinary proceedings should be instituted, the Chairman shall also notify such member in writing of his right to a hearing and if, within 30 days after receiving such report, the member requests a hearing in writing, the Chairman shall set a date and place for a hearing, designate a member of the Grievance Committee as the hearing officer and notify the member thereof as well as all other persons interested in the matter.

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- a. If the member does not request a hearing as provided herein, the Chairman of the Grievance Committee shall send a copy of such report to all of the other members of the Grievance Committee for action as set forth in paragraph 5.
4. At the hearing, the hearing officer shall hear the sworn testimony of witnesses and receive all documents which relate to the issues in the matter and, upon the completion of such hearing, prepare a written summary of such testimony and documents and send copies to all other members of the Grievance Committee and the member against whom the charges or allegations have been made.
5. Each member of the Grievance Committee shall inform the Chairman of the Grievance Committee as to whether or not the matter should be presented to the Board of Directors at its next meeting for disciplinary action and the type of disciplinary action which he recommends. The Chairman shall be governed by the decision of a majority of the Members of the Grievance Committee and shall notify the member against whom the charges or allegations are made of such decision and recommendation.
6. In the event the Grievance Committee decides that the matter should be presented to the Board of Directors for disciplinary action, the Chairman shall send a copy of the hearing officer's written summary to each member of the Board of Directors, together with the decision and recommendation of the Grievance Committee prior to the next Board of Directors meeting.
7. The Board of Directors shall then, by a majority vote, determine what disciplinary action, if any, should be taken against the member and in this regard may terminate such member's membership in the APA, suspend such member's membership for any period of time or may place such member on probation for any period of time. The Chairman of the Board of Directors shall notify the member of the decision of the Board of Directors.
8. The Chairman of the Grievance Committee may from time to time authorize another member of the Grievance Committee to perform any of the duties invested in the Chairman.
9. In cases where a member has been convicted of a felony or a misdemeanor involving moral turpitude, his membership shall be terminated automatically upon the Board of Directors being presented with a certified copy of the court record showing such conviction and no hearing or other proceedings will be required.
10. Members, regardless of type, shall have their membership automatically suspended for non-payment of dues and assessments if not paid within one year after the date due.
11. Any member may resign his membership at any time or may request non-professional status within the Association subject to approval by a majority of the Board of Directors.

12. The provisions of this Article III C shall apply to all classes of membership in the APA.
13. A member whose membership has been terminated or whose resignation has been approved by the Board of Directors may reapply for membership in the APA after five (5) years have elapsed from the date of such termination or resignation. The Board of Directors may consider such application on its merits, and at its discretion, may permit the member to regain his membership provided that the member has produced satisfactory evidence that he ethically and professionally meets the standards of the APA for membership.

D. VOTING RIGHTS

All members meeting the requirements of Article III, A, shall be considered ipso facto voting members of the APA and shall have the right to exercise their right to vote in all elections requiring general membership participation. There shall be no absentee voting nor voting by proxy.

E. REINSTATEMENT INTO MEMBERSHIP

1. Any member who resigned without prejudice from the APA shall be reinstated upon request to the type of membership for which he was qualified at the time of resignation.
2. Any member who was suspended for non-payment of financial obligations may be reinstated upon request to the type of membership for which he was qualified at the time of his suspension; provided, that this request for reinstatement includes payment of all monies due the APA to the date of his suspension.
3. Reinstatement into membership may be accomplished upon recommendation of the Membership Committee and approval of the Board of Directors.

ARTICLE IV. DIVISIONS (Amended 8/73)

- A. Regional divisions may be organized to represent professional or geographical interested within the APA.
- B. Any member of the APA may hold concurrent membership in one or more divisions of the APA. A division may include in its membership those who do not qualify for or do not desire membership in the APA, except that a division shall not permit such members to claim membership in the APA. (Adopted 8/73).
- C. A division shall be established upon approval by a two-thirds majority of the Board of Directors on a petition by a group of examiners, at least one of whom must be a member of the APA.

The petition should certify the following:

1. They represent an active functional or regional interest within the polygraph field.

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2. Their proposed objectives fall within the scope of Article II.
  3. Their membership is not restricted on any other basis than polygraph interests and qualifications.
  4. The establishment of any new divisions is not inimical to the welfare of any other division already established.
  5. All officers of the division must be full members of or eligible for full membership in the APA. (Adopted 8/73).
- D. Divisions when formed from existing societies or organized as new societies may use the APA name, provided they append to it the phrase "A Division of the American Polygraph Association."
- E. A division shall be autonomous in all matters within its field that are not reserved to the APA by the Board of Directors or by this Constitution and By-Laws. It shall elect its officers and determine the qualifications for voting on divisional matters among its membership. It shall draw up its own by-laws and rules of procedures within the framework of these By-Laws and Constitution. A copy of the division by-laws shall be filed with the Secretary of the APA and approved by a majority vote of the Board of Directors. Under no circumstances will the APA assume the financial obligations or legal liabilities of a division unless such was agreed upon and approved by the majority of the Board of Directors in writing.
- F. A division shall be dissolved by the Board of Directors for the following reasons:
1. When the organization fails to meet for twelve months, the APA may notify the last president of record that the APA contemplates withdrawing recognition of the Division because of inactivity. The Board shall offer a hearing upon request by a representative of a Division shall require a two-thirds majority vote of the Board. (Adopted 8/73).
  2. When the division votes to recommend dissolution.
  3. The Board of Directors may also dissolve a division upon presentation of evidence that the division is no longer subscribing to the principles set forth in the APA Constitution, Article II. In such instances the division shall be afforded notice of the allegations against it 30 days in advance of action by the Board of Directors. The Board shall also afford the division an opportunity for a hearing. Dissolution of a division shall require a two-thirds majority vote of the Board of Directors.
- G. In all matters of dispute between functional or regional divisions, the APA Board of Directors shall offer the contending organizations a hearing, and shall make a binding decision. Whenever a new organization petitions for membership which exists



within boundaries of an established organization, the Board of Directors shall decide whether to accept the group. A two-thirds vote of the Board shall be required to recognize a new group from within the boundaries of an established group. (Adopted 8/73).

#### ARTICLE V. OFFICERS

The officers of the APA shall be President, three (3) Vice Presidents, Secretary, Treasurer and Executive Director. All Officers shall be elected annually except the Executive Director, who shall be appointed and approved annually by the Board of Directors.

##### A. PRESIDENT

The President shall be elected for a term of one (1) year and shall be the presiding chairman at all official meetings of the APA. He shall have general supervision over the affairs and administration of the APA and of the duties performed by the Executive Director. He shall perform such other duties as the Board of Directors may properly assign to him or as may be provided by this Constitution and By-Laws. He shall represent the APA at all official functions and have the authority to designate the Executive Director to act in his behalf should the President be unable to present himself. He shall call meetings of the APA or the Board of Directors when required to do so by a majority of the Board of Directors or upon written request by one-half of the voting members in good standing in the APA. He shall appoint all committees except as hereinafter provided.

##### B. VICE PRESIDENTS

There shall be three (3) Vice Presidents elected annually. One Vice President shall be a member representing the Law Enforcement Field. One Vice President shall be a member representing the Private Examiner Field. One Vice President shall be a member representing the Governmental Field. The Vice Presidents will carry out all duties requested of them by the President.

##### C. SECRETARY (Amended 8/73)

It shall be the duty of the Secretary to cause to be entered in the proper books all resolutions, minutes and proceedings of the APA and of the Board of Directors. He shall conduct correspondence relating to the APA, issue notices of all meetings of the APA and of the Board of Directors. He shall keep a current record of the membership and shall perform all duties pertaining to the Office of the Secretary that the APA may from time to time direct. He shall publish annually a list of members of the APA which shall include their last known address and type of membership held. (Adopted 8/73).

##### D. TREASURER

The Treasurer shall be the custodian of all funds and securities of the APA and promptly deposit all funds in designated banks. He shall act as financial advisor to the President and Board of Directors on all budgetary matters and problems of finance. He shall keep accurate

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records of receipts and disbursements and shall pay all bills promptly. His records shall be made available upon request of the Audit Committee and shall be audited by them annually prior to the annual seminar of the APA. He shall make a report to the membership at each regular meeting of the APA and to the Board of Directors as to the status of the treasury when requested to do so. He shall furnish bond in the amount determined by the Board of Directors, the premium for which to be paid by the APA.

### E. EXECUTIVE DIRECTOR (Amended 8/73)

The Executive Director shall be nominated by the newly elected President and such nomination must be approved by the majority of the Board of Directors. The Executive Director's salary as well as general and specific duties as proposed by the President must also be approved by the Board of Directors. The Executive Director will ordinarily be the first line of representation of the Association to the Public, Governmental Agencies and Bodies, as well as other professions. His work and duties will be supervised by the President and subject to a full review at any Board of Directors meeting. He shall be the Executive Officer in charge of APA affairs under the direction of the President and Board of Directors. He shall work in close harmony with all Officers of the APA. Divisions having business dealings with the APA shall make initial contact through the Executive Director. Subject to the approval of the Board of Directors, he shall be responsible for the authoritative statements of APA policy in all matters coming to his attention. He shall be responsible for all public relation matters concerning APA under the guidance of the President and Board of Directors. His records shall be available for audit to the Audit Committee if requested by the Committee. (Adopted 8/73).

### F. DEATH OR RESIGNATION OF OFFICERS

In the even of death or resignation of any Officer of the APA, the President shall be empowered to select a member in good standing to serve the unexpired term of the deceased or resigning Officer. In the event of death or resignation of the President, the immediate past President shall perform the duties of the President until the next annual election. If the immediate past President is deceased or unable to serve, the Board of Directors, by majority vote, will appoint the acting President for the unexpired term.

### . EDITOR IN CHIEF (Adopted 8/4/82).

The Editor in Chief shall be nominated by the newly elected President and approved by a majority of the Board of Directors. The Editor shall be responsible for the preparation, publication and distribution of a newsletter and scholarly journal and any other publications as the President may direct.

A subscription to the newsletter and journal shall be provided to members of the APA. The Editor shall recommend to the President for approval, subscription and sale prices for all publications. The Editor may accept advertising providing it is appropriate to the field. The Editor shall present a budget to the Board of Directors at their first

meeting following the annual meeting. It shall consist of the estimated cost of collecting, preparing, printing and distributing the newsletter, journal and other official publications. The Editor in Chief shall recommend to the President, for approval, the names of other editors and staff members. His records and inventory shall be made available for audit to the Audit Committee, if requested by the Committee.

The Editor in Chief is an ex-officio member of the Board of Directors. He shall attend the Board of Director meetings and participate in the discussions of the board, but he shall not vote.

The Editor in Chief shall also serve as the archivist.

#### ARTICLE VI. BOARD OF DIRECTORS

- A. The Board of Directors shall consist of the President, the three (3) Vice Presidents, the Secretary, the Treasurer, four (4) members elected from the membership, the immediate past President, the Executive Director (without vote) and the General Counsel (without vote). The four (4) members elected from the membership shall serve staggered terms of two (2) years, thus requiring the election of two (2) members each year.
- B. The immediate past President shall serve as Chairman of the Board of Directors and shall exercise his vote only in the case of a tie.
- C. The Board of Directors shall meet annually just prior to the annual convention and shall meet at such other times and places as may be necessary on call of the Chairman of the Board. A quorum of the Board of Directors shall consist of the members of the Board present.
- D. In case of disability, resignation, or death of a member of the Board of Directors, the President shall select a member to fill the unexpired term of the retired, disabled or deceased member.
- E. The Board of Directors shall be the responsible body for the administration of the APA. It must approve the nomination and selected duties of the Executive Director, whose nomination and duties will be proposed by the President. In the interval between annual meetings of the APA, the Board of Directors shall have authority to take such actions as are necessary for the conduct of the APA's business and affairs in accordance with this Constitution and By-Laws. The Board of Directors shall make a report of its transactions at each annual meeting of the APA.

#### ARTICLE VII. NOMINATIONS AND ELECTIONS

- A. At the annual seminar of the APA, prior to the annual business meeting, the President shall name five (5) members, none of whom hold an office or directorship in the APA, to serve as the Nominating Committee.
- B. The Nominating Committee shall meet prior to the annual business meeting of the APA and shall select a nominee for each elected office and each retiring member of the Board of Directors.

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- C. The Nominating Committee shall present its report at the annual business meeting of the APA, at which time the President shall permit additional nominations to be made as may be desired by the membership.
- D. Voting shall be by secret ballot and installation of the newly elected officers shall take place at the annual banquet of the APA.

## ARTICLE VIII STANDING COMMITTEES

- A. The following standing committees shall be appointed annually by the newly elected President.

### 1. Membership Committee (Amended 8/5/81).

A Membership Committee, consisting of at least three (3) members, two of whom do not hold elected office in the APA, shall be appointed annually. The Membership Committee shall be empowered to examine the qualifications of applicants for all types of membership in the APA. It shall perform such investigations as may be required at their discretion to determine the eligibility of membership of such applicants. Names of applicants for membership shall be circulated among the membership of the APA at least 30 days prior to nominating the applicants to the Board of Directors in order to permit the expression of approval or disapproval by members. The Membership Committee shall present its nominations for admission of qualified applicants to the Board of Directors.

### 2. Committee on Standards and Ethics

The President shall appoint annually a Committee on Standards and Ethics, including at least three (3) members who do not hold elected office in the APA. This Committee shall undertake the accreditation of training facilities, polygraph schools and shall examine suggestions for improvement or standardization of polygraph techniques. In addition, this Committee shall devise and hold under continuing review the development of a Code of Ethics of the merging organizations, as well as those embodied in licensing laws of the various State Legislatures.

### 3. Auditing Committee

The President shall appoint annually an Auditing Committee, consisting of at least three (3) members who do not hold elected office in the APA. This Committee shall audit the books and records of the Treasurer and of the Executive Director. It shall make known to the Board of Directors any discrepancies found in the audits of the Treasurer's and Executive Director's records.

### 4. Committee on Research and Instrumentation

The President shall appoint annually a Committee of at least three (3) members or affiliates of the APA, who do not hold elected office, that will be charged with collecting and presenting to the membership any developments in polygraph instrumentation and research. This Committee shall recommend for or against the

acceptance of new instruments with regard to their effectiveness for use in the polygraph field.

5. Seminar Committee

Following the annual seminar of the APA, the President shall appoint a Seminar Committee consisting of at least three (3) members. The President will designate the Chairman of the Committee, who shall be the program Chairman for the next annual Seminar of the general membership, the Seminar Committee will then be charged with all matters concerning the next seminar, including exact dates, meeting rooms, living accommodations and the general seminar program.

6. Legislative Committee (Adopted 8/79).

The President shall appoint annually a Legislative Committee of at least five (5) members, three (3) of whom shall not hold any elective office in the APA during their period of appointment. The Legislative Committee shall be responsible for representing APA interests in connection with proposed or existing Legislation at the State or Federal level which has an impact on the polygraph profession. Actions taken by the Legislative Committee will be within policy guidelines and budgetary limitations established by the President and Board of Directors.

7. Grievance Committee (Adopted 8/5/81).

The President shall appoint annually a Grievance Committee consisting of at least three members, two of whom do not hold elected office in the APA. The Grievance Committee shall receive and investigate complaints or allegations against members whose conduct injures or tends to injure the APA, affects adversely its reputation, or which is contrary to or destructive of its purpose or objectives. The results of such investigations shall be provided to the Board of Directors with appropriate recommendations.

ARTICLE IX. AMENDMENTS

- A. This Constitution may be amended at the annual meeting of the APA by a favorable vote of two-thirds majority of the members present and voting. No amendment will be voted upon unless a copy of the proposed amendment shall have been sent to every member of the APA at least 30 days prior to the annual meeting.
- B. This Constitution may also be amended by mail ballot upon a two-thirds majority vote of the APA membership responding, provided that the proposed amendment has been circulated in writing to the membership and comments therefrom have been published in the following newsletter's publications.
- C. Amendments may be proposed by any member to the Board of Directors and shall be submitted to the general membership either on order of the Board of Directors or on petition signed by any five (5) members in good standing of the APA.

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- D. Amendments shall take effect immediately when approved unless otherwise stated in the amendment.

### ARTICLE X PARLIAMENTARY AUTHORITY

- A. The Parliamentary Authority for the APA shall be Robert's "Rules of Order."

(Revised) in all instances not covered by this Constitution and By-Laws.

### BY-LAWS

1. In order to provide for care and deliberation in the selection of a seminar site, the following procedures are established:
  - A. (Amended 8/5/81). In accordance with a plan submitted by the Executive Director, the geographical and membership distributional areas of the United States and Canada shall be divided into not less than five representative and contiguous geographical regions.
  - B. After consideration of all factors involved, the Board of Directors shall recommend selection of a site at least 30 days in advance of the annual meeting. The site recommended shall be for two (2) years in advance in order to permit proper planning and preparation by the Seminar Committee and the membership. To accomplish this objective, the Board of Directors shall make recommendations for the succeeding two (2) years, at least 30 days prior to the annual meeting in Chicago in August, 1972. Thereafter, the Board of Directors shall make a single recommendation, two (2) years in advance.
  - C. The Board shall consider such factors as the availability of suitable accommodations for members and their families, the existence of nearby education and/or research facilities and the availability for the preparation and presentation of the seminar. In addition to the site recommended, the Board shall advise the membership of any other sites which may have been under consideration.
  - D. The selection of seminar site shall be by majority vote of members present and voting at the annual meeting.
2. The annual seminar and business meeting of the APA shall be held during the months of August or September. Exact dates within the months are to be determined by the Seminar Committee.
3. Membership Fees: (Amended 1/74) (Amended 8/75) (Amended 8/77).
  - A. (Amended 8/5/81). The annual fee for Members, Interns, Associates and Affiliates shall be sixty-five dollars (\$65.00) per annum.
  - B. (Deleted 1/74)  
Polygraph 1983, 12(2)
  - C. (Deleted 1/74).

- D. (Amended 8/73 - 8/76). After a Division has paid \$50.00 as an assessment to become a Division, no annual dues shall be assessed thereafter. The APA Editor may at his discretion, establish special subscription rates for members of the divisions who are not APA members and may establish bulk rates for publications delivered to the Divisions.
  - E. (Amended 8/5/81). Filing fee of twenty dollars (\$20.00) not returnable, for all classes of membership. (Amended 4/8/78).
  - F. Annual fees for Corporate members shall be negotiated by the Executive Director, President and Board of Directors. (Adopted 8/78).
- 4. An APA internal newsletter shall be published on a bi-monthly basis.
  - 5. The monies collected by the APA shall be deposited in a bank designated and approved by the Board of Directors. All expenses shall be paid by check. All checks drawn on APA accounts shall be signed by the Treasurer.
  - 6. All members of the APA shall be entitled to the floor of any meeting, but only members in good standing are eligible to vote upon motions, election of Officers and other business of APA before the membership.
  - 7. Public criticism of one member by another, other than before the Board of Directors, is condemned and expressly forbidden for all members of the APA.
  - 8. The incorporated name of APA and/or the use or reproduction of its seal, shall be limited to the letterheads of members in good standing only. Any other use must be approved by a majority vote of the Board of Directors.
  - 9. Any member, regardless of type of membership, may indicate in an autobiography, biography or in an oral pronouncement that he holds membership in the APA provided that the exact type of membership is stated.
  - 10. Any motion to change or amend By-Laws must be read twice. Once by publication when proposed and once at the annual seminar. A majority vote of members in good standing and in attendance at the annual seminar shall cause the amended or new By-Law to be incorporated into the existing By-Laws and takes effect at once unless otherwise specified. The By-Laws may also be amended by mail ballot upon a majority vote of the APA membership responding, provided that the proposed amendment or changes to the existing By-Law is circulated in writing to the membership and comments therefrom have been published in the following newsletter and the date of the mail vote is specifically noted in the newsletter.

Standards and Ethics Committee

STANDARDS AND ETHICS COMMITTEE  
CHAIR, VICE-CHAIR, AND DIRECTORS

CHAIRMAN:

Eric J. Holden  
Baker Holden & Associates  
5414 Forest Lane  
Dallas, Texas 75234  
214-696-2102 (B)  
214-423-5801 (H)

VICE-CHAIRMAN  
AND DIRECTOR REGION I

Richard S. Weaver  
401 H Hideaway Loop  
Glen Burnie, Maryland 21061  
301-760-7250 (H)

DIRECTOR, REGION II

Theodore "Ted" G. Welch  
Theodore Welch & Associates  
Yahara Professional Building  
Suite D  
4801 Cottage Grove Road  
Madison, Wisconsin 53716  
608-221-3000 (B)

DIRECTOR, REGION III

Bobby J. Daily  
5000 Oak Drive  
Valdosta, Georgia 31601  
912-247-2606 (H)  
912-242-4850 (B)

DIRECTOR, REGION IV

William J. Scheve, Jr.  
789 Fairfax Drive  
Salinas, California 93901  
408-422-2545 (H)  
408-443-3188 (B)

AMERICAN POLYGRAPH ASSOCIATION  
CERTIFIED INSPECTOR APPOINTMENTS  
1983

Following approval of and appointment by President Lynn Marcy, the following fourteen (14) individuals have been appointed to fill the positions of Certified Inspectors for the American Polygraph Association by no later than August 1, 1983.

REGION I

Director:  
Inspectors:

Richard S. Weaver, Glen Burnie, Md.  
Glenn Almas, Staten Island, N.Y.  
Gerard N. Toriello, Hackensack, N.J.  
Lawrence N. Driscoll, Pittsburgh, PA.



## School Inspection Manual

### REGION II

Director:  
Inspectors:

Ted Welch, Madison, Wisconsin  
Richard Paul Thomas, Beloit, Wisconsin  
William A. Miles, Erie, Pennsylvania  
Michael Koll, Mayville, Wisconsin

### REGION III

Director:  
Inspectors:

Bob Daily, Valdosta, Georgia  
Frederick C. Stilson, Marietta, GA  
Daronne Rewis, Jacksonville, Florida  
Virgil H. Simon, Clearwater, Florida  
J. Frank Faulk, Columbia, S.C.

### REGION IV

Director:  
Inspectors:

Bill Scheve, Salinas, California  
Blair Eckert, Los Angeles, California  
Bradley W. Kuhns, Ph.D., Glendale, CA  
Kirk P. Meehan, Aurora, Colorado  
Stanley Abrams, Ph.D., Seattle, Wash.

The above named individuals along with the four (4) Regional Directors Richard S. Weaver, Ted Welch, Bob Daily, and Bill Scheve, as well as Chairman Eric J. Holden, will make a total complement of nineteen (19) certified inspectors who are available currently or will be available no later than August 1, 1983 to conduct future inspections of polygraph school facilities for the American Polygraph Association.

Their availability will be based upon their successful completion of the inspector training program (included herein) to be conducted by the respective regional directors.

### REGIONAL ASSIGNMENTS FOR CURRENTLY EXISTING POLYGRAPH SCHOOLS MAY 1983

Status Code: CA - Current Accreditation  
AA - Application for Accreditation  
NF - New Facility Seeking Accreditation

### REGION I

Regional Director:

Richard S. Weaver

Assignment Facilities:

Harrisburg Area Community College  
Training School, Harrisburg, PA - CA

Polygraph Personnel Research, Inc.  
Philadelphia, PA. - AA

Academy for Scientific Investigative  
Training, Philadelphia, PA. - CA

National Training Center of Polygraph  
Science, New York, N.Y. - AA

New York School of Lie Detection  
New York, New York - CA

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Standards and Ethics Committee

New York Institute of Security and  
Polygraph Sciences, New York, N.Y. - CA

State University of N.Y. Agricultural  
Technical College, Farmingdale, N.Y. -  
CA

Central Intelligence Agency Polygraph  
School, Washington, D.C. - CA

Virginia School of Polygraph  
Norfolk, Virginia - CA

REGION II

Regional Director:

Theodore "Ted" G. Welch

Assigned Facilities:

Reid College of Detection of Deception  
Chicago, Illinois - CA

Keeler Polygraph Institute  
Chicago, Illinois - CA

London House Consultants, Inc.  
Park Ridge, Illinois - AA

American Institute of Polygraph Tech-  
nology & Applied Psychology  
Dearborn, Michigan - CA

Canadian College of Polygraph Training  
Ottawa, Canada - CA

Southern Polygraph Institute  
Louisville, Kentucky - CA

Maryland Institute of Criminal Justice  
Severna Park, Maryland - CA

Robert H. Edwards School of Polygraph  
Science, Chester, Virginia - NF

REGION III

Regional Director:

Bobby J. Daily

Assigned Facilities:

Academy of Forensic Polygraph  
Atlanta, Georgia - CA

Huckabee Institute of Polygraphy  
Atlanta, Georgia - CA

Zonn Institute of Polygraph  
Atlanta, Georgia - CA

## School Inspection Manual

Zonn Institute of Polygraph  
Miami, Florida - CA

U.S. Army Military Police Training  
School, Ft. McClellan, Alabama - CA

National Polygraph Institute  
Miami, Florida - CA

International Academy of Polygraph  
Deception Control, Inc.  
Ft. Lauderdale, Florida - AA

Universal Polygraph Institute  
Columbia, South Carolina - CA

Academy of Polygraph Science and  
Methodology, Charlotte, N.C. - CA

Southern School of Polygraph  
Augusta, Georgia - CA

Carroll Institute of Polygraphy  
Baton Rouge, LA - NF

### REGION IV

Regional Director:

William J. Scheve, Jr.

Assigned Facilities:

Backster School of Lie Detection  
San Diego, California - CA

Gormac Polygraph School  
Arcadia, California - CA

Los Angeles Institute of Polygraph  
Sherman Oaks, California - CA

National Academy of Lie Detection  
Santa Ana, California - CA

Academy of Polygraph Technology  
Las Vegas, Nevada - AA

Spokane Community College Polygraph  
Examiners School, Spokane, WA - CA

University of Houston Downtown Poly-  
graph Program, Houston, TX - CA

Texas A & M University Polygraph  
Examiners School  
College Station, Texas - CA

Standards and Ethics Committee

Rocky Mountain Security Institute  
Wheat Ridge, Colorado - AA

California State University  
Polygraph Program  
Fresno, California - NF

Truth Verifier Systems  
Mandaluyong, Metro  
Manila, Philippines - NF

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Note: For additional copies of the School Inspection Manual, contact Eric J. Holden, Baker Holden & Associates, 5414 Forest Lane, Dallas, Texas 75234.

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## ABSTRACTS

### Plethysmography

Katuo Yamazaki, Noriuoshi Takasawa and Masao Ueda. "Spectral Analysis of Finger Photoelectric Plethysmogram in its Relation to Emotion: Visual Display of Baseline Deflection and Pulse Wave." Japanese Journal of Psychology 53 (2)(1982): 102-106. Text in Japanese, abstract in English.

The present study applied spectral analysis of finger photoelectric plethysmograph (PTG) to describe the emotional factor involved in baseline deflection of PTG. Using 23 normal male students as subjects, PTG was measured under rest, verbal instruction and electric shock condition. PTG spectral analysis via fast Fourier transform was carried out on the consecutive 10X9 ms X1024 points X4(398.64 s) samples in each condition with frequency resolution at 0.0109 Hz. In the analysis of power spectra, two distinct power peaks were observed in all conditions; below 0.3 Hz and around 1.0 Hz. It was confirmed that the former was baseline deflection and the latter was heart beat component. There were no differences in each peak frequency among conditions. Whereas peak power below 0.3 Hz tended to increase all through verbal instruction and electric shock conditions as compared to rest one. These results were discussed in relation to anxiety involved in emotion.

[Author abstract]

### Respiration and Cardiovascular

Paul Frossman. "Respiration, Stress, and Cardiovascular Function." Psychophysiology 20 (3)(1983): 284-300.

The significance of respiratory influence upon cardiovascular functioning has been much neglected in the psychophysiological literature. Various phasic and nonphasic respiratory parameters manifest marked and specific effects upon numerous cardiac and circulatory events. Ventilatory patterns associated with stress responses, furthermore, bring about cardiovascular alterations indicative of dysfunction and risk, even when these ventilatory patterns are voluntarily enacted by normal individuals under nonstressful circumstances. Evidence is presented which suggests that respiratory processes may contribute significantly to cardiovascular competence and dysfunction. The implications of this theoretical approach for psychophysiological research are also discussed.

[Author abstract]

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The greatest homage we can pay to truth is to use it.  
Emerson

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