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TWO ISSUES ON THE VALIDITY OF PERSONNEL SCREENING POLYGRAPH EXAMINATIONS*

By

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Abstract

Polygraph examination validity is influenced both by the decision making system of which the polygraph examination is a part and the number of deceptive people in the population to be screened. Validity can be increased by retesting subjects and/or using information in addition to polygraph test outcome.

Two factors contribute to the confusion in discussions of polygraph validity. First, the same words are often used to describe different phenomena. Second, there frequently is confusion about how polygraph decision making takes place.

There are various types of validity. For the polygraph examination, the important type of validity is that called predictive or concurrent validity. Predictive or concurrent validity refers to how well the polygraph exmaination, or the polygraph examination system, predicts truth or deception. That is, we are interested in the probability a deceptive decision is correct and the probability that a nondeceptive decision is correct.

There are a number of factors influencing how well a polygraph test predicts truth or deception. Polygraph examiners already are familiar with many of the important factors. For example, many examiners believe that one technique is better at predicting truth or deception than another technique. Most everyone thinks examiner experience is an important variable. Undoubtedly, there are many other factors influencing the ability of a polygraph test to predict truth or deception. This paper discusses the influence of two factors that are particularly important because examiners frequently are not aware of their vital role.

A Decision Making System

Examiners first should be aware that their screening polygraph examination is generally part of a complicated decision making system. Whether or not an examinee is hired or not hired generally depends on the decision making system, not on the outcome of one polygraph test. Thus, the

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important polygraph validity question is not the validity of one polygraph test, but the validity of the entire polygraph decision making system.

An example of one applicant screening polygraph system will demonstrate. In this system examinees are administered a set of test questions using the relevant-irrelevant format. If there are no significant reactions to relevant questions, subjects are classified nondeceptive and are passed through the system. If there are consistent significant reactions, or if the charts are erratic the examiner decides either that the examinee is deceptive or the charts are inconclusive. At this point, the examinee is either interrogated or generally questioned. Additional polygraph charts are then administered, the test format depending on the information provided during interrogation or questioning. The additional charts incorporate reworded questions and/or may involve a change in technique. After these additional polygraph charts, the polygraph examiner decides either that the examinee now is nondeceptive (has passed the test) or that the examinee still is deceptive or inconclusive (has not passed the test). If the examinee has not passed the test, the examinee frequently is retested on a subsequent day with a different examiner often using reworded questions and/or a different technique. In some situations, examinees receive multiple retests. The examiner's final decision also may be influenced by a quality control operation or by consultation with a colleague.

This is but one example of a polygraph decision making system. But, it can be seen that how well the polygraph examination predicts truth or deception depends on a number of factors. The ability of the first set of polygraph charts, or even the first polygraph examination to correctly classify people as deceptive or nondeceptive will not accurately reflect the validity of the system. It should be noted that the existing research investigating polygraph validity in situations analogous to personnel screening have not looked at the validity of the polygraph system. Existing research has only investigated the ability of an initial set of polygraph charts (that is, the first set of polygraph charts prior to interrogation) to correctly classify people.

Each polygraph examiner must look at the polygraph decision making system within which the polygraph examination is conducted. This decision making system differs with each setting. For example, federal polygraph screening programs typically have different components than commercial polygraph operations. The important thing to remember is that when a examinee's fate is governed by a complicated decision making process the validity of the complete decision making system must be established.

The Deceptive Population

A second factor influencing polygraph examination validity is the number of deceptive and nondeceptive people in the population prior to the polygraph test. As deception occurs less frequently in a population, the lower the probability that a deceptive decision is correct. At the same time, there will be a higher probability that a nondeceptive decision is correct. It is important for polygraph examiners to understand why the number of deceptive and nondeceptive people influences polygraph examination validity because this is a frequently presented argument against polygraph screening.

An example from a polygraph screening situation will illustrate. Assume that drug abuse while on the job in the population is 10% and that experience has shown that in polygraph examination screening situations, most people with this type of involvement are deceptive about the issue. Thus, if the polygraph examiner is screening a representative sample of people, a reasonable estimate is that 10% of the people are deceptive about this kind of drug involvement. In a population of 1,000, there would be 100 people deceptive about using drugs on the job and 900 people nondeceptive about using drugs on the job. Although there is dispute about the percentage of people correctly classified by polygraph examinations, frequently cited figures are that polygraph examinations correctly classify 90% of the deceptive people and 90% of the nondeceptive people. Thus, of the 900 deceptive people, 810 would be correctly classified as nondeceptive and 90 would be incorrectly classified as deceptive. Of the 100 deceptive people, 90 would be correctly classified as deceptive and 10 would be incorrectly classified as nondeceptive. Of the 180 deceptive decisions, 90 are correct and 90 are incorrect. Of the 820 nondeceptive decisions, 810 are correct and 10 are incorrect. Thus, when an examiner makes a deceptive decision, the validity of the decision or the probability that the decision is correct is 50%. When the examiner makes a nondeceptive decision, the validity or probability the nondeceptive decision is correct is 98.8%. These figures are summarized in Table 1.

TABLE 1. Percentage Correct Deceptive and Nondeceptive Examiner Decisions as a Function of the Probability of Deception Prior to Polygraph Testing.

Assume:

1. Polygraph test correctly classifies 90% of the deceptive people and correctly classifies 90% of the nondeceptive people.
2. 1,000 people to be screening.

Situation 1

100 actually deceptive people
900 actually nondeceptive people

	Examiner Deceptive Decisions	Examiner Nondeceptive Decisions
Correct	90	810
Incorrect	90	10
% Correct	50%	98.8%

Situation 2

500 actually deceptive people
500 actually nondeceptive people

	Examiner Deceptive Decisions	Examiner Nondeceptive Decisions
Correct	450	450
Incorrect	50	50
% Correct	90%	90%

These figures can be compared to those that would be obtained if the frequency of deception is greater than 10%. For example, mere experimentation with illegal drugs occurs much more often in the culture than drug abuse at the place of employment. Thus, we would expect there to be more deceptive people in the population if the people are being screened on total illegal drug usage as opposed to use on the job. Suppose 50% of 1000 people are deceptive about prior drug experimentation; that is, there are 500 deceptive people and 500 nondeceptive people. As in the previous example, the polygraph examination correctly classifies 90% of the deceptive people, 450 would be correctly classified as deceptive and 50 would be incorrectly classified as nondeceptive. Of the 500 nondeceptive people, 450 would be correctly classified as nondeceptive and 50 would be incorrectly classified as deceptive. Thus, there is a 90% probability that the examiner's deceptive decision is correct and a 90% probability that the examiner's nondeceptive decision is correct. Comparison of the two examples demonstrates that, as the number of deceptive people in the population increased from 10% to 50%, the probability the examiner's deceptive decision is correct increased from 50% to 90%.

The previous example compares a 10% deception rate with a 50% deception rate. Examiners should be aware that when the frequency of deception becomes less than 10%, the probability that an examiner's deceptive decision is correct is very low even with the most competent examiner using the best techniques. This is true even for a test that correctly classifies 99% of the deceptive people and 99% of the nondeceptive people.

To illustrate this point, assume a 99% accuracy, a deception rate of 0.1%, and a population of 100,000 to be screened. Large numbers are used in this example to avoid decimal points. In this population assume there are 100 deceptive people and 99,900 nondeceptive people, a 0.1% rate of deception. Since the polygraph test correctly classifies 99% of the deceptive people and 99% of the nondeceptive people, 99 of the 100 deceptive people will be correctly classified and 1 will be incorrectly classified as nondeceptive. Of the 99,900 nondeceptive people, 98,901 will be correctly classified as nondeceptive and 999 will be incorrectly classified as deceptive. Thus, only 9% of the examiner deceptive decisions are correct. If, however, 50% of the population is deceptive, the probability that a deceptive decision is correct is very high. These figures are summarized in Table 2.

The previous examples have illustrated that as deception becomes less frequent in a population the higher the probability that the examiner's deceptive decision is correct. Several points should be stressed. The relationship occurs as long as a polygraph test has some error. The last example used what would be considered a very good polygraph test - one that correctly classified 99% of the deceptive people and 99% of the nondeceptive people. If a polygraph examination correctly classified 100% of the deceptive people and 100% of the nondeceptive people, proportion of deceptive people in the population would not be important. Second, the size of the population to be screened does not influence the results. The same results will be obtained for 10, 100, 1000, 100,000, etc. The important factor is the proportion of deceptive people in the population. Third, although the examples assumed polygraph tests correctly classified the same percentage of deceptive and nondeceptive people for computational

TABLE 2. Percentage Correct Deceptive and Nondeceptive Examiner Decisions as a Function of the Probability of Deception Prior to Polygraph Testing.

Assume:

1. Polygraph test correctly classifies 99% of the deceptive people and corectly classifies 99% of the nondeceptive people.
2. 100,000 people to be screened

Situation 1

100 actually deceptive people
99,900 actually nondeceptive people

	Examiner Deceptive Decisions	Examiner Nondeceptive Decisions
Correct	99	98,901
Incorrect	999	1
% Correct	9%	99.999%

Situation 2

50,000 actually deceptive people
50,000 actually nondeceptive people

	Examiner Deceptive Decisions	Examiner Nondeceptive Decisions
Correct	49,500	49,500
Incorrect	500	500
% Correct	99%	99%

ease, this is not a necessary assumption. The relationship also occurs if polygraph tests correctly classified different percentages of deceptive and nondeceptive people.

Improving the Odds

There are things that can be done to increase the frequency or probability of deception, and thus, increase the validity of a deceptive decision. Other information can be used in conjunction with a polygraph test. For example, prior use of illegal drugs is more common in certain age groups than others. Young adults of the 1960's are more likely to have had involvement with illegal drugs than people of previous generations. Thus, if an examinee responds to a question about illegal drugs and was a young adult in the 1960's, the probability is higher that the examinee is being deceptive to the question than if the examinee responds to the question and is from an older age group. Previous access to classified information provides another example. If an examinee has had previous access to classified information and responds to a divulgence of classified information question, the probability is higher that the examinee is deceptive than if the examinee responds to the question and never

has had access to classified information. This is because deception about divulgence occurs more frequently for people who have had previous access to classified information than those who have not.

Another method of increasing the probability of an examiner's deceptive decision is to use behavior or certain examinee characteristics during the pretest interview (assuming there are behaviors associated with deception) in conjunction with polygraph outcome. That is, if deceptive examinees are more likely than nondeceptive examinees to engage in certain behaviors, the occurrence of these behaviors in conjunction with a deceptive polygraph decision increases the probability that the deceptive polygraph decision is correct.

A third method to increase the validity of a deceptive polygraph decision is to retest the examinees classified as deceptive. This will increase the validity of a deceptive decision, as long as the polygraph test is correctly classifying individuals at greater than chance levels, because the number of deceptive people in the population will increase with each retest. For example, suppose the 180 people classified deceptive by the examiner in Table 1, Situation 1 were retested. Ninety of these people are actually deceptive and 90 are actually nondeceptive. Also assume that the accuracy of the polygraph test does not change with retest (that is, 90% of the deceptive people are 90% of the nondeceptive people are correctly classified).

Eighty-one of the deceptive people would be correctly classified deceptive and 9 would be incorrectly classified as nondeceptive. Of the nondeceptive people, 81 would be correctly classified and 9 would be incorrectly classified. Thus, there now are 81 deceptive people correctly classified deceptive and 9 nondeceptive people incorrectly classified deceptive. The percentage of correct deceptive decisions has increased from 50% (before retest) to 90% (after retest). The percentage of correct nondeceptive decisions essentially does not change. Since none of the people classified nondeceptive on Test 1 were retested, the number of nondeceptive decisions on Test 1 have to be combined with nondeceptive decisions on Test 2. That is, there were 810 correct nondeceptive decisions on Test 1 and 81 on Test 2 making a total of 891 correct nondeceptive decisions. There were 10 incorrect nondeceptive decisions on Test 1 and 9 on Test 2 or 19 total incorrect nondeceptive decisions. Thus, the percentage of correct nondeceptive decisions shows a trivial decrease from 98.8% on Test 1 to 97.9% on Test 2. These figures are summarized in Table 3.

Although this paper focuses on personnel security screening, the frequency or probability of deception prior to the polygraph examination also is important in criminal polygraph testing. In criminal testing, the list of suspects should be narrowed as much as possible prior to polygraph testing. The polygraph examination should be one of the last steps in the investigative process.

There also are certain situations peculiar to criminal testing where it is important to consider the probability of deception before an individual takes a polygraph test. For example, many criminal suspects are privately tested and are only submitted for police testing if they are nondeceptive on the private test. In such a situation, few deceptive people

TABLE 3. Percentage Correct Deceptive and Nondeceptive Examiner Decisions when Examinees Classified Deceptive Are Retested.

Assume:

1. 180 people classified as deceptive in Table 1, Situation 1 are retested.
2. Polygraph test correctly classifies 90% of the deceptive people and correctly classifies 90% of the nondeceptive people.

	Examiner Deceptive Decisions	Examiner Nondeceptive Decisions
Correct	81	810 + 81 = 891
Incorrect	9	10 + 9 = 19
% Correct	90%	97.9%

will be submitted for police testing, making the probability of deception prior to the second polygraph test low. Thus, the probability that a deceptive decision on the second polygraph test is correct, is low. This is to be contrasted with a situation where investigation has narrowed the field to two suspects and only one can be guilty. In this case, there is a high probability that the examiner's deceptive decision is correct because the probability the examinee is deceptive prior to the polygraph test is 50%.

However, despite all efforts to the contrary, there will be situations where confidence in a deceptive outcome remains low. In the first example (Situation 1 in Table 1) there was only a 50% chance that a polygraph examiner's deceptive decision was correct. Polygraph critics have maintained that the test should not be used in such situations. However, this is not necessarily true. It first should be recognized that the polygraph test has provided a great deal of information. In the first example there was only a 10% chance the examinee was deceptive about drug use on the job before the polygraph test. After the polygraph test there was a 50% chance the subject is deceptive. This point will perhaps more clearly be seen with a medical example. If medical tests increased the probability a person had cancer from 10% to 50%, the medical testing would have conveyed a great deal of information. A person would be much more concerned about the possibility of cancer after the testing than before. There still is a high probability of error, but much more is known. In such situations, however, the consequences should be appropriate for the confidence that can be had in a deceptive outcome. That is, no decision generally should be made from the polygraph test alone, and information from other sources is warranted. If no decision is made from the polygraph test alone, it can be very useful in narrowing the focus of investigation. Moreover, in certain critical national security areas it may be appropriate to make a decision even if the confidence in a deceptive decision is low.

The previous discussion focused on methods to increase the probability that an examiner's deceptive decision is correct. It should be recognized that some of these procedures will decrease the probability that an

examiner's nondeceptive decision is correct. For example, it can be seen in Table 1 that as the percentage of deceptive people increased from 10% to 50%, the probability that the examiner nondeceptive decision is correct decreased from 99% to 90%. It also should be recognized that if nondeception is rare in a population, the probability that a nondeceptive examiner decision is correct will be low. If nondeception is rare and the decision maker is interested in increasing confidence in a nondeceptive decision, procedures similar to those already outlined should be used for people classified nondeceptive.

There are various methods an examiner may use to obtain an estimate of the probability of deception prior to polygraph testing. Confession rates provide a minimum estimate of the probability of deception. The estimate is a minimum because all deceptive people will not confess. Thus, in screening situations it would be useful to keep statistics on after chart admissions for each screening topic. It would be useful to keep these statistics for any identifiable population. Police examiners might obtain confession estimates by case type. Surveys provide another means to obtain a rough estimate of the probability of deception. There are numerous surveys that estimate the occurrence of various crimes, the incidence of mental disorders, etc. for specific populations. It also should be noted that in the multiple issue situation typical of screening, the deception rate differs for each of the issues and, thus, the probability that the examiner's deceptive and nondeceptive decisions are correct vary for each topic.

Summary

Polygraph examiners should be aware that the probability or frequency of deception in the population they are testing influences the probability that their decision is correct. If deception is rare in the population, the probability the examiner's deceptive decision is correct will be low even with the most competent examiner using the best technique. Certain practical procedures can be used to improve the probability that the examiner's deceptive decision is correct. Other information can be used in conjunction with the polygraph test. Examinees can be retested. Decision makers also must look at the amount of information provided by the polygraph test. If the probability of deception before the test is 10% and the polygraph increases the probability of deception to 50%, information has been provided. Thus, in such circumstances the polygraph can be a useful tool if the action taken from polygraph test outcome is appropriate to the probability that the examiner's decision is correct.

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POLYGRAPH FIELD VALIDITY*

By

Eitan Elaad and Esther Schahar

Abstract

The accuracy of the results of polygraph tests conducted during the years 1973-1974 at the Scientific Interrogation Unit of the Israel Police, were evaluated. The criteria for evaluation were subsequent confessions or convictions of the subjects and/or others who cleared the subjects from involvement. Out of 2540 polygraph examinations conducted during this period there was definite feedback concerning the innocence or guilt of the subject for only 184 (7%). When these 184 cases are considered, in 10 (5%) the polygraph results were inconclusive. The remaining 174 cases consisted of 145 (79%) conclusive results without any reservation, [143 (78%) correct and 2 (1%) incorrect], and 29 (16%) polygraph results with reservation [25 (14%) correct and 4 (2%) incorrect]. Five of the errors were false negatives and one false positive. This suggests that there was a tendency to clear the suspect when in doubt. However, these data should be considered cautiously, since the validation criteria, i.e., ultimate confessions and convictions, could have been influenced by polygraph results. Furthermore, confessions and convictions are not infallible, false confessions and convictions could occur.

The question of polygraph validity is of vital importance to polygraph examiners and users alike. A clear indication could facilitate utilization of polygraph results in the investigative and judicial processes and assist applied research in efforts to improve the polygraph system.

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Part of the information concerning polygraph validity in actual cases originates from reports of examiners on the number of errors discovered over a given period. These reports seem to indicate a very high validity in detection of deception. Chatham (1953) reported a proved error rate of less than one percent over more than 100,000 examinations with less than two percent uninterpretable records. Here, the number of errors was divided by the total number of examinations carried out during the period considered. This procedure is open to the criticism that a great portion of polygraph results can not be verified. Barland (1972) has suggested determining polygraph accuracy by a comparison between the number of errors discovered and the number of verified correct decisions. It should be noted, however, that the sample of verified results may be biased and unrepresentative of the population of polygraph examinations because their verification depends entirely on the confession and/or conviction of an involved person. The population of confessors may possess unique characteristics which may facilitiate the confession, and the act of confession may depend directly or indirectly on the population results. The danger becomes considerable when the population of verified decision is very small in relation to the total number of examinations conducted. Therefore, one must be careful when drawing definite conclusions concerning the polygraph accuracy solely on the basis of the verified sample.

Armed with this cautious approach we would like to present the results of a continuing effort to gather and analyze feedback from the investigative units regarding the guilt or innocence of suspects who had undergone polygraph examinations in the Israel Police Department.

METHOD

The results of all polygraph examinations conducted in the Scientific Interrogation Unit between the years 1973-1974 were reviewed. The validity criterion were those generally accepted in field reports:

1. Confession of a person suspected of commission of the crime. The confession binds the confessor to the crime and may free others from suspicion.

2.* Conviction of the suspect in a court of law. Here again the conviction of one person may free others from involvement.

The polygraph examinations conducted in the above-mentioned period utilized the standard control question methods (Reid and Inbau, 1966; Backster, 1969).

RESULTS

I. Polygraph Examinations in 1973-1974

In the years 1973-1974, 2540 polygraph examinations were conducted in connection with 1241 criminal events (average of 2.05 examinations per

*The polygraph is not legally accepted in the Israeli court. Therefore, the polygraph results could not influence the trial decisions.

event). The outcomes of the polygraph examinations vary in direction: Deceptive, truthful, inconclusive, and indecisiveness: With reservation* or without. Table 1 shows that the frequency of outcomes indicating no deception is double the frequency of deceptive outcomes (x squared = 24.83, df = 1, $p < .001$). There is also a clear tendency to more decisiveness in diagnoses of truthful subjects in comparison with deceptive (x squared = 25.4, df = 1, $p < .001$). 85% of the diagnoses in which no deception was indicated were unequivocal as opposed to 77% for diagnoses indicating deception.

TABLE 1

Outcomes of Polygraph Examinations Conducted in 1973-1974

Direction of Outcomes		Decisiveness of Outcomes: Without Reservation	With Reservation	Total
Truthful	N	1292	225	1517
	%	51	9	60
Deceptive	N	595	181	776
	%	23	7	30
Total	N	1887	406	2540**
	%	74	16	100

** The total includes 247 (10%) inconclusive outcomes.
N = Number of observations
% = Percent of observations

II. Verified Polygraph Results

In 184 (7%) out of the total number of examinations conducted, there was definite feedback concerning the innocence or guilt of the subject. The feedback was based upon at least one of the two criteria of confession or conviction.

Comparison of Tables 1 and 2 shows, that the percent of deceptive outcomes in the verified sample is higher than that in the overall population, while the opposite is the case for the truthful outcomes (x squared = 12.45, df = 4, $p < .05$). This means that the verified outcomes do not represent the overall population of polygraph results in the studied period.

*Reserved outcomes were given when the chart indicated a direction but the differences between responses to the relevant and control questions were not great.

TABLE 2

Distribution of Verified Polygraph Outcomes

Direction of Outcomes		Decisiveness of Outcomes: Without Reservation Correct	Without Reservation Incorrect	With Reservation Correct	With Reservation Incorrect	Total Correct	Total Incorrect	Total
Truthful	N	83	2	12	3	95	5	100
	%	45	1	7	1.5	52	2.5	54.5
Deceptive	N	60	0	13	1	73	1	74
	%	33	0	7	0.5	40	0.5	40.5
Total	N	143	2	25	4	168	6	184*
	%	78	1	14	2	92	3	100

* The total includes 10 inconclusive outcomes.
N = Number of observations
% = Percent of observations

Table 2 displays a considerable disparity between the number of correct outcomes and the number of errors discovered (x squared = 5-.8, df = 1, $p < .001$), at a level of probability which compensates to a certain degree for the fact that the assumption of independence is lacking. A distinction should be made between the two possible types of errors: false diagnosis in deceptive subject (false negative), and false diagnosis of truthful subjects (false positive). As Table 2 shows, the frequency of false negative errors is five fold than that of false positives.

III. Validity Criteria: Confessions and Convictions

Errors of both types, false negative and false positive, were distributed evenly between the two validity criteria: confessions and convictions. Two false negative errors and one false positive were uncovered by confessions, and three false negative were determined by trial convictions. Similarly, of the two errors in reserved outcomes, one was revealed by confession and the other was the result of conviction by trial.

Table 3, which relates exclusively to verified results, shows that the preponderance of verifications result from confessions and a minority from court convictions.

TABLE 3

Distribution of Polygraph Outcomes According to Criteria

Direction of Outcomes		Decisiveness of Outcomes: Without Reservation CNF*	Without Reservation CNV	With Reservation CNF	With Reservation CNV	Total CNF	Total CNV	Total CNF + CNV
Truthful	N	63	20	10	2	73	22	95
	%	38	12	6	1	44	13	57
Deceptive	N	48	12	9	4	57	16	73
	%	29	7	5	2	34	9	43
Total	N	111	32	19	6	130	38	168
	%	67	19	11	3	78	22	100

*CNF = Confessions
CNV = Convictions
N = Number of observations
% = Percent of Observations

DISCUSSION

According to Moenssens et al., (1973), 25% of polygraph records are clearly indicative of the outcome to a point that even inexperienced readers can easily make an unequivocal diagnosis. In 65% of the examinations, chart interpretation is more difficult needing experienced examiners to determine the outcome. Even veteran examiners can not make a diagnosis in 10% of the cases.

Assuming that the degree of decisiveness is a function of chart readability, the results of the present report are consistent with Moenssens' conclusion that 10% of polygraph examinations produce inconclusive outcomes. In another 16% of the more difficult records, the examiners were forced to reserve their decision.

The results of this report reveal a conspicuous tendency to leniency when in doubt. It seems that examiners prefer in such cases to decide on a truthful result. This tendency is manifested in two ways: (1) Truthful subjects are determined with a higher degree of decisiveness than are deceptive subjects whose diagnosis are more often reserved. (2) There is a large proportion of false negative errors in relation to false positive errors. This finding is stressed further by the fact that in the sample of verified outcomes the deceptive results have a relatively increased weight.

The tendency to leniency is consistent with the accepted value system which regards the acquittal of a guilty suspect a less serious error than the conviction of an innocent person.

The present report can not serve as a source of unequivocal estimation of the validity of the polygraph in the field. Objective difficulties confronting field validity studies (insufficient feedback concerning the guilty or innocence of the subject, imperfect validity criteria, criteria which may be dependent on polygraphs' results) limit the extent to which one can generalize from the results of the present report.

In theory, it is possible to alleviate the problems of insufficient feedback through the use of a random or representative sample of verified polygraph outcomes. In practice, however, this is impossible. A random sample is one in which it is impossible to predict the results of each observation taken separately. In other words, the various observations should be independent of each other. Validity criteria, such as confession and/or conviction which may free others under the same suspicion, and verifies the polygraph results for the innocent too, can not meet the demand of an independent sample.

A representative sample means that the observed variables found in the population will be found in the same proportion in the studied sample, indicating that the results are independent of the act of sampling. However, in the total population of examinations considered by the present report, 30% resulted in deceptive outcomes and 60% resulted in truthful outcomes. In the sample of verified outcomes 40% indicated deception and 54% indicated truthfulness (see Tables 1 and 2). Under this state, the sample of verifed outcomes cannot be considered representative of the population of examinations conducted during the reported period.

One explanation for the fact that more deceptive outcomes were found in the verified sample is that in many cases a truthful polygraph outcome terminates the investigation, whereupon the case is closed. An outcome indicating deception encourages redoubled investigative activity, increasing the probability of confession and/or bringing the suspect to trial. Another explanation relates to the fact that the verified sample is based on validity criteria that lean on the information given by the guilty party.

For a fuller understanding of polygraph validity in the field, a significant increase of feedback from the investigating units is needed. In that case, the percent of verified outcomes will increase and the verified sample will better represent the population of examinations conducted.

A cautious evaluation of polygraph validity derived from the present findings must serve until such a state is achieved.

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HEARINGS ON H.R. 1524 "POLYGRAPH PROTECTION ACT OF 1985"

STATEMENT OF THE HONORABLE PAT WILLIAMS ON H.R. 1524 "POLYGRAPH PROTECTION ACT OF 1985"

Before the Subcommittee on Employment Opportunities
of the House Subcommittee on Education and Labor

"There is no lie detector; neither machine nor human. People have been deceived by a myth that a metal box in the hands of an investigator can detect truth or falsehood." That was the conclusion of a report by a subcommittee of the House Government Operations Committee more than twenty years ago.

American are today subjected to more than one million polygraph exams every year, and government offers them no protection whatsoever. American courts restrict the use of polygraph test results as evidence in trials. It is sadly ironic that criminals cannot be convicted by a polygraph, but workers can be denied jobs, shamed and branded forever by these same devices. It is hard to understand why we do not give the average employee the same dignity and protection routinely granted an indicted suspect in criminal proceedings. As former Senator Sam Ervin once said: "A 'lie detector' test to innocent citizens simply wanting a job reverses our cherished presumption of innocence. If any employee refuses to submit to the test, he is automatically guilty. If he submits to the test, he is faced with the burden of proving his innocence."

The problem of polygraph testing in the workplace has been treated as a Constitutional issue, a privacy issue, and a civil rights issue. It is all of these--but it is first and foremost an employment opportunities problem. Polygraphs have become vehicles for employee intimidation, and for screening out employees of political or union beliefs different from those of a particular manager.

The greatest number of polygraph tests are administered by private employers, and they are responsible for more polygraph examinations every year than either criminal justice investigators or the Federal Government. According to the American Polygraph Association, one-fourth of all major corporations use the polygraph. And in a survey of four hundred major U.S. corporations, Belt and Holden of the Wichita State University College of Business Administration found that twenty percent of all respondents used the polygraph. Belt and Holden also found that half of the retailers and commercial banks who responded to the survey use polygraphs. The list of businesses that subject their employees to polygraph examinations covers the whole spectrum of American business: Electronic and chemical companies; drug and liquor manufacturers; hospitals and chemical doctors' offices; copper refiners; rubber manufacturers; delivery companies; steel producers; freight movers; meat packers and food and oil processors.

Congressman Williams is author of H.R. 1524 and a Member of the Committee. This statement was read by him on July 30, 1985.

In most workplaces in our country today, employers can polygraph workers for any reason: to verify employment applications; for periodic surveys of employee honesty; to find out why merchandise is missing; or perhaps just for intimidation.

Given the extensive and indiscriminate use of polygraphs by private sector employers, one should question whether these machines can in fact detect lies. And on that question, the weight of serious scientific evidence is against the polygraph, particularly as it is used in the workplace. For example, private employers use polygraphs extensively to screen job applicants and to screen large numbers of employees during investigations of suspected theft. However, the Congressional Office of Technology Assessment (O.T.A.) has determined that the mathematical chance of false positives (that is, incorrectly classifying an innocent person as deceptive) is highest precisely when the polygraph is used for such purposes.

In a comprehensive evaluation of the scientific validity of polygraph testing published in November of 1983, O.T.A. concluded that: "There is very little research or scientific evidence to establish polygraph test validity in screening situations, whether they be pre-employment, pre-clearance, periodic or aperiodic, random, or 'dragnet'". In other words, there is no scientific evidence that the machines work, especially as they are used by employers, and yet people are being denied and losing their livelihoods based on the results of these tests. In fact, it has been estimated that at least 50,000 workers are wrongfully denied employment every year, either because they refuse to take the tests or because of the inherent inaccuracies of the machines and their operators.

We are a society that has become numb to statistics, so it may be easy for some Americans to shrug off the fact that a million of their fellow citizens are polygraphed every year, or that 50,000 workers lose or are denied jobs because of the misuse of polygraphs. But to the individuals who lose their jobs and whose lives are damaged, the cost cannot be shrugged off very easily.

Last week I received a letter from a woman who had lost her job after failing a polygraph test. Let me read to you from her letter:

> "I was as naive as the rest of the world about the test--I took it, in fact, just to prove my innocence. Never occurred to me to think I'd fail it or that the test was fallible.
>
> "The polygrapher, let me emphasize, did everything right by the book. He made sure to get in all the control questions, he made sure I was completely at ease. I was not at all nervous, nor did it ever occur to me that the test would indicate that I was lying. I was flabbergasted when the polygrapher informed me that I was. I persuaded him to re-do the test twice; didn't help--I failed consistently.
>
> "Ironic: I'failed' a polygraph test during which I did not lie; now I must lie for the rest of my career about employment history ... and that, in most cases, can become grounds for termination of my

employment. It's a conscious decision on my part to falsify this part of my employment history--I look at it as the lesser of two evils, the other 'evil' not being considered at all for a job simply because of the fact that I've admitted to 'failing' a polygraph.

"My personal opinion is that the lie-detector will only be banned when enough people have been victimized that by sheer numbers they'll be heard."

That woman asked me not to divulge her name, for fear that the stigma of failing a polygraph test could cause her any further harm.

Even well-meaning employers have been duped into believing that the polygraph is an acceptable, fast, cheap and easy method of checking employment applications or controlling employee theft. The polygraph may be a dreaded machine to American workers, but to their employers it is simply a tool of convenience. It is clearly possible to run a profitable business, even a retail business, without resorting to the polygraph--J.C. Penney and Sears, are among the many businesses which do not use polygraphs. Those companies know it is possible and even preferable to make employment decisions and protect company assets by using less objectionable methods such as good recordkeeping, employee discounts for company products, a healthy organizational climate, good management, and loss prevention systems that do not abuse employees. Likewise, employers can make effective employment decisions with careful interviewing procedures, clearly stated job requirements, and testing for specific job skills and talents.

Twenty-two states and the District of Columbia have limited lie detector examinations in the workplace, and yet the number of employees and job applicants who must submit to these tests continues to grow. State statutes speak eloquently of the desire of state legislators to protect employees, and those who seek employment, from the indignities and dangers of so-called 'lie detectors'. But these state prohibitions and restrictions are inherently inadequate. Many employers skirt state law by simply hiring in a neighboring state with no restrictions, and then 'transferring' the employee into the state which has lie detector restrictions. Chain stores which operate in more than one state find it particularly easy to evade these state laws. This simple circumvention of state laws can only be stopped with Federal legislation. Otherwise, employers who are intent on subjecting their employees and prospective employees to polygraphs and other 'lie detectors' will continue to find it is a simple and inexpensive proposition to evade the law merely by crossing state borders.

Other states have tried to control the abuse of polygraphs in the workplace by licensing the operators of the machines. But licensing laws are counterproductive if the goal of legislators is to protect citizens for abuse at the hand of 'lie detectors'. Licensing requirements cannot ensure the validity of the examinations. The danger and the irony of polygraph licensing is that it legitimizes the machines, their operators, and the entire pseudo-scientific process for 'lie detecting'. In fact, survey reported in Personnel Journal in February 1978, found that more businesses use the polygraph in states with licensing requirements than in

states with no regulation at all. Clearly, licensing statutes thwart the best intentions of their supporters. They begin as efforts to protect people and yet result in even greater abuse.

Three months ago I introduced a bill to prevent the denial of employment opportunities caused by the use and abuse of these so-called 'lie detectors'. That bill, H.R. 1524, has been co-sponsored by a bipartisan group of over 150 members of the House of Representatives.

H.R. 1524 is very straightforward. It would simply prohibit the use of all types of so-called 'lie detectors' by private sector employers involved in interstate commerce, both the pre-employment testing and testing in the course of employment. This bill does not affect the use of polygraphs by any level of government, whether federal, state, county or municipal. So, for example, H.R. 1524 would not in any way impede law enforcement authorities from using the polygraph in the investigation of a crime.

I believe the time has come to ban these machines from America's workplaces. Jobs are too important and too scarce to be lost because of these intrusive, intimidating and inaccurate machines. I look forward to these hearings so that we can hear from people who know about the issue and the problem of polygraphs first hand--from my colleagues who have worked on the polygraph issue for many years; from citizens who have been victimized by the machines; from labor leaders whose members must face these machines every day when they go to work in America's grocery stores, restaurants, factories and offices; from experts who have studied the machines; and from the polygraphers who administer the examinations and the employers who use them.

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TESTIMONY OF THE HONORABLE ROBERT L. LIVINGSTON

Before the Subcommittee on Employment Opportunities
of the House Committee on Education and Labor

I would like to thank the Committee for giving me the opportunity to present my views on H.R. 1524 introduced by Mr. Williams of Montana concerning the use of polygraphs in the private sector. After serving more than six years as a prosecutor in my state of Louisiana, I have extensive experience in using the polygraph exam. It proved to be a valuable investigative tool in my work as Deputy Chief of the Criminal Division in the U.S. Attorney's Office, as Chief Special Prosecutor for the local District Attorney's Office, and as Chief Prosecutor for the Organized Crime Unit of the Louisiana Attorney General's Office.

I voted with 332 of my colleagues in favor of legislation introduced by Bill Young of Florida to expand the use of polygraph testing to assist our federal intelligence gathering agencies in protecting our national security. I believe that it would be a mistake for the House to commend the polygraph for the government's use while condemning it for the private sector. Over the past two decades, the Congress has passed hundreds of bills requiring business and industry to protect the health and welfare of their customers and the communities in which they operate. We require them to accept the responsibility, and we give citizens the right to take them to court if they violate it.

But, it we were to approve H.R. 1524, we would strip many businesses of an important tool they need to protect the public. For example, up to a million doses of legal drugs vanish from pharmaceutical company inventories each year, with the potential to kill or cripple their users. Without the polygraph, this industry loses a valuable tool it needs to help protect its inventories and to ferret out internal theft rings.

There are hundreds of other examples of other businesses that need the polygraph to conduct their own internal investigations and to assist them in hiring honest, trustworthy personnel who will help their employer to carry out its responsibilities to customers.

Child care centers, nuclear facilities, and banks are just a few of the private facilities that entrust their customer's health, welfare, and resources to employees. These businesses need the polygraph to help select appropriate employees and to help find out when thefts and abuses occur.

The business or industrial manager serves as the first line of defense in protecting the public from abuses of products and services. It is in the employer's interest to monitor his or her inventories and personnel to detect and correct problems before they cause more extensive damage. Although we see numerous cases in which employee errors and theft

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The Subcommittee held hearings on H.R. 1524 and H.R. 1924 on two dates, July 30, 1985 and September 18, 1985. This testimony was on September 18th. [Ed.]

cause their companies to be brought before the courts. There are many, many more which never reach the courts because the company management was able to correct the abuse or theft by its own internal investigations. It is best for the company, for the courts, and for the public for the employer to find and correct these problems internally.

The polygraph's accuracy has been shown in study after study to be between 85-95%. This is why we want our intelligence gathering agencies to use it. In Louisiana, there were numerous instances in which we used the polygraph to help us in our criminal investigations. In fact in the space of six years during which I served in law enforcement, I can truthfully say that I never experienced any doubt in the usefulness of the polygraph, and in several instances charges were actually dropped because of a defendant's performance on a polygraph.

Just as polygraph results are inadmissible as evidence in court, I do not believe that employers should use the test results as the sole criterion in making a decision about an employee. I understand that this is also the opinion of most polygraph examiners and of the American Polygraph Association.

It is, of course, in everyone's interest that the polygraph results be as accurate as possible. A number of states, Louisiana among them, have passed legislation which establish guidelines for training and licensing of polygraph examiners, set requirements for the equipment used in the test, and institute protections for the rights of those taking the exam. If the Congress were to pass legislation governing the use of polygraphs in the private sector, it would seem to me to be much more responsible for us to pass legislation modeled on that which I just described than to simply outlaw the use of the polygraph. However, I really fail to see any purpose in the federal government's involvement in this matter at all!

We are going to continue to require the private sector to look after the public's interests, and I believe it is important that business and industry have the tools they need to do this job. The polygraph is one of these tools. I urge the Committee to reject H.R. 1524 and to consider instead passing legislation which requires responsible use of the polygraph in the private sector so that everyone can benefit from its results.

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STATEMENT OF THE NATIONAL WHOLESALE DRUGGISTS' ASSOCIATION

Before the Subcommittee on Employment Opportunities
of the Committee on Education and Labor

Richard D. Paterson

Mr. Chairman and Members of the Subcommittee:

I am Richard D. Paterson, Director of Security for McKesson Corporation. On behalf of the National Wholesale Druggists' Association (NWDA). I am submitting this testimony opposing H.R. 1524 and H.R. 1924 which would prohibit private industry from using polygraph or written examinations.

The NWDA is the national trade association of full-service drug wholesalers. It represents more than 90 percent of the drug wholesale industry by dollar volume. Its active membership is comprised of 106 drug wholesalers which operate more than 340 drug distribution centers nationwide. Through these centers, billions of dollars of controlled substances are distributed annually to drugstores, hospitals, and medical facilities nationwide. NWDA believes that drug distributors must maintain the tightest possible security measures, which include polygraph and written examinations, to prevent the theft of controlled substances from drug warehouses.

It is no secret that drug abuse is a national epidemic with virtually no age, sex, or race discrimination. The National Institute of Drug Abuse estimates that crime, lost productivity, and medical expenses resulting from drug abuse, cost our nation $49.6 billion annually. Given this backdrop of drug abuse, NWDA believes that it makes no sense to say that keeping drug abusers out of drug distribution centers is the same as denying workers job opportunities. Rather than banning use of the polygraph, we believe that employment opportunities can be better preserved through legislation such as H.R. 1792 that would establish strict standards and protections in the administration of polygraph examinations.

Introduction

Most pharmaceuticals are distributed through drug wholesalers in the United States. In fact, 90 percent of all controlled substances, including dangerous narcotics, pass through drug wholesalers. Of the $12.52 billion dollars of wholesaler sales for 1984, it is estimated the $8.98 billion was in pharmaceutical products, $1.65 billion in proprietary products, $1.05 billion in toiletries, and $840 million in sundry and miscellaneous goods.

Mr. Paterson is a past president of the American Polygraph Association and Director of Security for McKesson Corporation. Although invited to testify before the Committee, his appearance was arbitrarily cancelled after he arrived at the hearing room. However, this statement was entered into the record of the Hearing on July 30, 1985. [Ed.]

This huge distribution network stretches across the United States with drug wholesalers physically located in all but two states. Wholesalers select and purchase goods and store them in close proximity to the community and hospital pharmacy customer. They perform a sorting function by concentrating, then dispersing goods in economic quantities, and transporting them to pharmacies.

Drug wholesalers provide other marketing functions including financing in the form of trade credit and value-added services. Among the value-added services provided by drug wholesalers are price and shelf stickers, product movement reports, electronic order-entry, retail accounting services, and pharmacy computer systems. Wholesalers usually offer daily ordering and delivery services. The wholesaler's largest customer is the independent retail pharmacy. They represent more than 53 percent of the total. Nearly 20 percent of drug wholesaler sales are to chain drug stores; 19 percent to hospitals. The balance is divided among chain drug warehouses, clinics, nursing homes, mass merchandisers, and food stores.

On average in 1984, a drug wholesaler's operating expenses were a lean 6.84 percent with gross margins of 9.39 percent and net margins a scant 1.42 percent. At this profit margin, a drug wholesaler must sell $70.42 in merchandise to recoup the cost of $1.00 in stolen goods. Based on a 1985 survey, NWDA found that 80 percent of its members used polygraph examinations. The 20 percent who do not employ polygraph examinations are primarily located in lightly-populated rural areas where family-run businesses and close community ties preclude the need for polygraphs.

Drug Abuse Harms the Workplace

According to a 1982 survey (the most recent available) by the National Institute on Drug Abuse (NIDA), 21 million Americans used prescription drugs for non-medical purposes during 1982. This survey also estimates that nearly 25 million Americans experimented with illicit drugs during the same period. According to DEA's Drug Abuse Warning Network (DAWN) statistics, the most heavily abused drugs are of legitimate origin. Of the top 20 drugs most frequently mentioned for 1980 through 1983, 15 were of a type found normally in the licit market, i.e., in drug wholesale warehouses, pharmacies, and hospitals.

These 15 drugs accounted for approximately 350,000 drug-related injuries and deaths from January 1980 to January 1982, while illicit drugs such as heroin and cocaine accounted for another 150,000 drug deaths and injuries. In terms of injuries and deaths, DAWN statistics clearly indicate that abuse of drugs of a legitimate origin is at least equivalent to those of an illicit nature. Mr. Ronald W. Buzzeo, Deputy Director for the Office of Diverson Control, Drug Enforcement Administration, recently discussed a report of drug abuse in the workplace at a meeting of the Institute of Nuclear Materials Management.* In that report, he noted that as many as six million workers in the United States abuse drugs on a regular

*"Drug Abuse in the Workplace Employment Screening Techniques," International Drug Report, June 1985.

basis. He said that other studies show that as many as three to five percent of the employees in any medium to large-sized plant may be dependent on drugs as a way of life. Experts have also established 19 to 36 years of age as the median age range of employees under the influence of drugs. These are frightening statistics considering that many of the individuals go undetected until they are involved in a total or tragic accident. According to Mr. Buzzeo, the drug dependency of these people contribute significantly to the $80 billion price tag paid by the American economy as a result of lost productivity, absenteeism, poor quality control, injuries, ineffective supervision, destruction of property, and thefts. Compared with the non-drug user, a drug user:

Is at least three times as likely to be involved in an accident;

Has better than two times as many absences lasting eight days or longer;

Receives at least three times the average level of sick benefits;

Is at least five times as likely to file a worker's compensation claim;

Is at least seven times as likely to be the target of garnishment proceedings;

And, functions at about 65 percent of his or her work potential.

Employees who abuse drugs adversely affect the public health and safety. Injuries, pain, and death inflicted on the American public by those who abuse drugs in the workplace must be minimized. The drug distribution warehouse with fast-moving, complex conveyor belt systems, forklifts, and pallet lifting devices is no place for someone whose senses are impaired by drugs. They are a danger to themselves and others.

DEA Reports Employee Theft of Controlled Substances

In this country, any person or firm manufacturing, distributing or dispersing controlled substances, including dangerous narcotics, must register with the Federal Drug Enforcement Administration (DEA) and comply with regulations to assure that controlled substances are not diverted from normal distribution channels. Among the literally thousands of controlled substances are amphetamines and barbiturates ("uppers and downers"), morphine derivatives, and cocaine.

The regulations include specific tight security measures. Despite these measures, employees still manage to circumvent the required controls. For the period July 1982 through July 1983, total thefts reported to the DEA were 6,721. Nine percent were attributed to employee theft. From January 1984 to March 1985, a total of 8,861 drug thefts were reported to DEA; 15 percent attributed to employees. Thus, since 1983, the percentage of theft by employees has increased seven percentage points--nearly doubling their involvement.

The DEA estimates that each year employees steal one million dosage

units of controlled substances from pharmacies. Drug wholesalers take very seriously their legal responsibility to keep dangerous drugs from being diverted for illegal purposes. We know that the controlled substances diverted from our warehouses will be used to feed the habits of those already addicted and to expose others to drugs, many of whom will be young people. As ethical drug wholesalers it is our goal to assure that our employees will not commit drug security breaches.

What Drug Wholesalers Do to Minimize Drug Abuse and Drug Diversions

Drug wholesalers have found that the best way to provide a drug-free work environment and reduce diversion of controlled substances is to establish and implement standard employee screening procedures. Among the measures used by most drug wholesalers are:

Extensive pre-employment interviews and written tests;

Thorough background checks with previous employers; and

Carefully supervised polygraphs by licensed examiners.

The Drug Enforcement Administration considers employee screening vital. Regulations state:

> "1301.90 Employee screening procedures.* It is the position of DEA that the obtaining of certain information by non-practitioners is vital to fairly assess the likelihood of an employee committing a drug security breach. The need to know this information is a matter of business necessity, essential to overall controlled substances security. In this regard, it is believed that conviction of crimes and unauthorized use of controlled substances are activities that are proper subjects for inquiry. It is, therefore, assumed that the following questions will become a part of an employer's comprehensive employee screening program:
>
> Question. Within the past five years, have you been convicted of a felony, or within the past two years, of any misdemeanor or are you presently formally charged with committing a criminal offense? (Do not include any traffic violations, juvenile offenses or military convictions, except by general court-martial.) If the answer is yes, furnish details of conviction, offense, location, date, and sentence.
>
> Question. In the past three years, have you ever knowingly used any narcotics, amphetamines or barbituarates, other than those prescribed to you by a physician? If the answer is yes, furnish details."

In a letter dated July 19, 1985 to NWDA, DEA has reaffirmed its position on the use of polygraph:

> "... It has been DEA's experience that extreme care is necessary on the part of drug firms, both in hiring and monitoring employees who have routine access to controlled substances. These drugs command an

*21 Code of Federal Regulations 1301.90.

illicit price which is many times their legitimate value, thereby, creating an attractive temptation.

The polygraph examination, utilized as one aspect of an employer's comprehensive employee screening, monitoring, and investigatory programs for employees with routine access to controlled substances, has proven to be an effective means of determining criminal background, hsitory of drug use, and knowledge of or partication in the diversion of controlled substances. Information obtained as a result of the polygraph examination should be considered as but one part of an overall evaluation of the person's qualifications or continued employment.

DEA supports the use of the polygraph examination for pre-employment screening and as a subsequent investigatory tool in appropriate cases, provided that it is permitted by state and local laws. Those drug firms which utilize these procedures as part of their comprehensive program to minimize diversion are to be commended."

How Polygraph Helps

The polygraph examination should be used as one phase of pre-employment screening and for internal investigations. When used with other investigative measures previously mentioned, polygraph becomes a vital link in protecting our workplaces and preventing drug diversion. Some examples may help.

A New England drug wholesaler reported that more than 430,000 doses of a very well-known tranquilizer had been stolen from its warehouse by several employees. The drug had been removed in small dosage units over a long period of time to prevent detection. Management eventually detected the loss but was unable to determine who was taking the drug. The state where the drug wholesaler is located had passed a law banning the use of polygraph by private industry.

Although state police were exempted from the polygraph ban, their limited resources slowed the investigation. As a result, controlled substances continued to disappear. When finally administered, the polygraph examination detected a conspiracy and became a vital tool to stop the diversion. Use of polygraph in pre-employment screening would probably have discovered that one of these guilty employees had lied in his application as was determined during the investigation. In another case, a salesman for a drug wholesdaler was cleared of theft charges. A Georgia pharmacist claimed the salesman stole pills from several large pill bottles. In a verbal interview the salesman denied the charge and volunteered to take a polygraph examination. The polygraph confirmed the salesman's innocence.

A third case involving a Tennessee drug wholesaler resulted in the termination of a truck driver who admitted stealing drugs because of pain from dental surgery. The driver first denied the allegations then admitted taking the drugs when he failed a polygraph examination. He also revealed how he stole pills from so-called tamper-proof bottles. The packaging problem was reported to the manufacturer to make necessary changes to prevent further pilferage.

During 1984, one wholesaler administered more than 1,500 polygraph examinations to individuals applying for jobs in its drug distribution operations. About one in four applicants was not recommended for positions based on polygraph examinations in combination with other pre-employment screening tools. In 90 percent of the cases of those not recommended, the prospective employee admitted during the polygraph examination that he or she had lied in their application about their drug habit or criminal record.

Licensing Requirements Rather Than Polygraph Ban

Instead of banning this vital investigative tool now being used by the CIA, FBI, NSA, and -- now as a result of the recent House vote of 331-71 -- the Pentagon, we recommend that the Subcommittee establish standards and protections in the administration of polygraph examinations. We support H.R. 1792 which would prohibit polygraph examiners from inquiring into an individual's religious beliefs, racial background, political or labor affiliations or sexual preferences. These questions are not relevant to the workplace environment or the tendency to commit drug security violations. Any individual who takes a polygraph examination should be provided a copy of the results if they request. The examination results should have very limited disclosure as outlined in H.R. 1792. Further, we support the provision in H.R. 1792 requiring the polygraph examiner to provide the written questions to the individual before the examination and to obtain in writing the consent of the individual to participate in the examination.

Summary

In summary, Mr. Chairman, H.R. 1524 has been cited as the "Polygraph Protection Act of 1985." Ironically, it does not protect drug-free employees who must work side by side with employees who abuse drugs. H.R. 1524 will, in our opinion, facilitate the entry of drug abusers into our distribution centers. Once they are in our distribution centers H.R. 1524 will help them steal and divert narcotics and other controlled substances without detection. All of American society then suffers the terrible financial, physical and emotional harm caused by these diverted drugs as they feed addicts and expose others -- among them young people -- to drugs for the first time.

The key to reducing theft and diversion of narcotics and other controlled substances from drug wholesalers as well as all DEA registrants is thorough screening and background checks on potential employees who may have access to controlled substances. Polygraph plays a vital role.

We hope that Congress will acknowledge the vital role polygraph examinations can play in protecting American society from drug abusers and divertors as it already has acknowledged its importance for the FBI, CIA, and Armed Forces, as well as state and local governments. A ban on polygraph examinations for our industry would undermine the Federal government's aggressive campaign against drug addiction and abuse. Rather than ban polygraph examinations, we hope you will consider enacting legislation that establishes certain standards and protections in the administration of polygraph examinations.

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TESTIMONY OF LAWRENCE W. TALLEY FOR DAYS INNS OF AMERICA

Before the Subcommittee on Employment Opportunities of the House Committee on Education and Labor

My name is Lawrence W. Talley, and I am Vice President of Risk Management for Days Inns of America, which operates 425 hotels and motels nationwide. I also serve as Vice President-Private of the American Polygraph Association. In addition, I am Chairman of the Georgia State Board of Polygraph Examiners which is appointed by the governor. This board regulates polygraph examinations and licenses polygraph examiners in the state. In 1984, I worked closely with members of the Georgia General Assembly in drafting a law which is considered to be a model for the nation.

I have seen countless instances in which the polygraph has been invaluable to both employees and employers. Therefore, I oppose outlawing the use of the polygraph in the private sector, as H.R. 1524 and H.R. 1924 would do, but I do support legislation which would provide strict guidelines for examiners and strong protections for the rights of the examinees.

I believe that guidelines for examiners and protections for examinees are essential to protect both employees and employers. I also believe that it is the responsibility of the states to enact and enforce such legislation. States have the Constitutional right and duty to regulate the businesses and industries that provide goods and services to their citizens. They license doctors and dentists, insurance and real estate brokers, utility companies, and numerous other trade and professional groups. The states are accepting this responsibility and, to date, at least 30 of them have passed legislation regulating the use of polygraph examinations and licensing of polygraph examiners.

The right of the states to govern themselves should be respected. Legislators throughout the country are working to develop legislation which:

Protects the rights of those taking the examinations;

Establishes training and educational guidelines for examiners;

Sets guidelines for the type and quality of equipment used during the examination; and

Restricts the types of questions during the examination. Questions would be prohibited involving political or religious beliefs or affiliations, opinions involving racial matters or sexual preferences, and beliefs, affiliations, or lawful activities regarding unions or labor organizations.

Mr. Talley is Chairman, Georgia State Board of Polygraph Examiners, Vice President of Risk Management, Days Inns of America, Inc., and Vice President-Private, American Polygraph Association. His testimony was on September 18, 1985.

In my professional career, I have had an opportunity to gain extensive experience with the use of the polygraph. I believe it is an important investigative tool. In my opinion, Congress acted correctly when it voted 333-71 to support expanded use of the polygraph in protecting national security. The directors of our government's intelligence agencies, such as the Naval Intelligence Agency and the National Security Agency, have said that the polygraph is a legitimate investigative tool that is valuable in helping them to carry out their mission. American business also needs this tool to carry out its responsibilities to protect the health and welfare of millions of American consumers as well as to protect billions of dollars in company and stockholders assets.

In 1975 in my own company, we were experiencing internal losses which amounted to over $1 million annually. By instituting a loss prevention program which uses the polygraph technique, we have been able to reduce those losses to an average of $115,000 a year. While losses have been reduced to about one-eighth of the 1975 figure, company revenues have tripled. We also have experienced more than $1 million in restitutions made by employees.

At Days Inns, the polygraph has shown such positive results over the last ten years, employees readily volunteer to take a polygraph examination when a question of honesty occurs. The polygraph identifies more honesty than dishonesty, and exonerates honest employees who are wrongly accused of misconduct on the job.

Besides the polygraph's value in protecting employees, customers, and company assets, many American businesses use the polygraph to pre-screen persons they are considering hiring. This helps them to select employees who will have a special responsibility to the public, such as:

Day care centers, who must be especially careful in screening child care personnel;

Banks, where 84% of losses are attributed to internal theft;

Nuclear facilities, whose employees have access to lethal and valuable substances.

In my own industry, the lodging industry, courts across the nation are awarding huge punitive damages against hotels for improperly screening employees who commit crimes against guests.

In addition, the nation's pharmaceutical manufacturers, distributors, and retailers have an important responsibility to protect their products. The Drug Enforcement Administration, which endorses the use of polygraphs, says that half a million to a million doses of legal drugs vanish from inventories each year. These legal drugs can be twice as lethal as illegal drugs. The DEA says that 350,000 Americans are killed or injured each year by legal drugs which are improperly or illegally consumed. This compares with 150,000 who die or are injured each year from using illegal drugs.

From the standpoint of the consumer, the polygraph is an important

tool in controlling prices. The National Association of Chain Drug Stores estimates that consumers pay 10-15% more for goods because of internal theft. The polygraph helps in isolating those few employees who violate their employer's trust, enabling businesses to control losses and therefore costs.

The polygraph also protects the many honest employees who may be accused or implicated in a crime, but who have no other way to prove their innocense than by taking a polygraph examination. I have seen many instances where employees were wrongly accused, often by fellow employees, of crimes that they did not commit. The willingness of these accused employees to take a polygraph to prove their innocence has shown that they, too, respect its value.

Even though the polygraph is considered to have an 85-95% accuracy rate, the polygraph profession strongly discourages employers from using the test results as the sole basis for employment or continued employment. The polygraph is a valuable investigative tool that should be used in conjunction with other methods to gauge an employee's honesty.

The polygraph's value has been demonstrated to me repeatedly, and I hope that I have been able to convey to the committee some of my respect for its usefulness.

Over the past 15 years, at least 100 studies have been conducted by scholars, scientists, and polygraph practitioners concerning the accuracy of the polygraph technique. Based upon a responsible reading of these readings, the polygraph has been shown to have an accuracy rate of 85-95%.

I believe that the Office of Technology Assessment, in its 1983 report, distorted its results by using inaccurate statistical methods. We encourage a repeat of that study to present a more realistic picture of the polygraph's accuracy. In 1984, the Department of Defense released a report entitled "The Accuracy and Utility of Polygraph Testing." We believe this report is more thorough than the OTA study.

Last year, there were widely publicized hearings in the State of Georgia concerning polygraph legislation. At that time, fewer than ten individuals came forward with complaints alleging polygraph abuse in spite of the thousands of polygraph tests that are given every year. At the time of those hearings, I challenged the American Civil Liberties Union to document its claim that the ACLU is inundated with complaints about polygraph abuse. I am still waiting for that documentation.

I appreciate the opportunity to testify today and would be happy to provide the Committee with data supporting any of the points I have made.

Whether protecting customer trust, company assets, or employee integrity, many American businesses have found the polygraph to be a valuable tool. I believe in the accuracy of the polygraph, and I support the right of American business to have the same access to this investigative tool that the Federal government has. Further, I believe that the authority to regulate polygraph examinations and the licensing of examiners should be with the states.

Polygraph

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TESTIMONY OF J. KIRK BAREFOOT FOR THE AMERICAN POLYGRAPH ASSOCIATION

Before the Subcommittee on Employment Opportunities
of the House Committee on Education and Labor

Mr. Chairman and Members of the Subcommittee on Employment Opportunities. My name is J. Kirk Barefoot. I am a Past President of the American Polygraph Association and am appearing before you today as the chief spokesman for the Association. Seated with me is Mr. Charles Marino, General Counsel for the APA, and Dr. Frank Horvath of the Michigan State University. We appreciate the opportunity to appear before your Committee in opposition to H.R. 1524 (and support of H.R. 1792).

It is rather obivous that H.R. 1524, which would adversely impact on companies using the polygraph for screening prospective employees, has been brought about by the report of the Office of Technical Assessment of the Congress of the United States, which was dated 1983.

I feel that we must point out that the OTA report although it is generally supportive of some types of polygraph testing, is, nevertheless, faulty in some of its methodology. In particular, the tendency of the researchers to classify inconclusive examinations as errors greatly distorts the conclusions which were drawn. In treating inconclusive tests as errors, the researchers stray from the real world, as this is never done by the polygraph profession or, to my knowledge, by employers. An inconclusive test can only be considered as the equivalent of a test's not being given, and no conclusion can be drawn from it. Most inconclusive tests simply signal the need for appointment for an additional examination. To draw any other conclusion is faulty. If that error by the researchers had not been made, then the results of the OTA study would have been dramatically higher in favor of polygraph.

Not only does the American Polygraph Association challenge the methodology of the OTA study, but others outside the polygraph field have criticized this as well.

One of these, Dr. Laurence Cranberg, of the organization Accuracy in Academia, has clearly made known his views to Professor Edward S. Katkin, Chairman of the polygraph Advisory Panel for the study. Dr. Cranberg has characterized the procedures as highly informal and has called for a restudy of the whole polygraph issue. His letter to Professor Katkin is made an attachment to these remarks.

Mr. Chairman, and members of the Committee, the American Polygraph Association believes that the utility of such examinations has clearly been shown in a document prepared by the Department of Defense in 1984, entitled "The Accuracy and Utility of Polygraph Testing". I would respectfully request that your committee allow this document to be made part of the record of this hearing. A copy of this report has been submitted along with my prepared remarks.

Mr. Barefoot is a past president of the American Polygraph Association. He testified on July 30, 1985.

Polygraph 1985, 14(3)

For years, the United States government has relied on background investigations to effect top-security clearance for sensitive government positions. The Department of Defense report to which I have reference, clearly shows that polygraph screening examinations are far superior to background investigations conducted by the most expert investigators, when placed side by side.

As I have stated earlier, H.R. 1524 would adversely impact on hundreds of thousands of companies across the United States which depend on polygraph screening to maintain acceptable profit margins so that they may remain in business. If polygraph screening were to be denied to these companies, many of them would eventually be forced out of business due to higher theft rates by employees. Those which would not be forced out of business, would simply have to raise the prices of their products, which would impact on all of us consumers. Even today, most retail stores budget for a certain level of internal theft in the pricing of their goods. Without polygraph screening, this internal theft would increase and, in turn, the cost of the goods would have to rise to the consumer in order for the merchant to maintain an acceptable profit margin. This could easily be referred to as the "Theft Tax." The American Retail Federation, which is composed of 50 state and 30 national associations, and having a collective membership operating in excess of one million stores in the United States, estimates that more than 40 percent of inventory shrinkage is due to employee theft. This amounts to over $10 billion per year.

There is a tendency, especially in the media, to think of the polygraph examination as one being performed by an instrument that makes an absolute decision. Nothing could be further from the truth. The instrument makes no decisions and is nothing more than a diagnostic tool. No bells ring, no lights light, and there is nothing that can be compared to a computer which gives a definitive answer based on the input which is fed into it. In our situation, it is the polygraph examiner himself who, using the instrument as an aid, must make a decision as to truthfulness or falsehood. In the context of screening examinations, the examiner should be thought of as a personnel or interviewing specialist, who simply uses a polygraph to assist him in making decisions.

Without the polygraph, he would still make those decisions, but they simply would not be as reliable and valid as they are with the instrument. For some reason, the media and polygraph opponents wish to hold polygraph examiners' opinions to an unrealistic high standard of accuracy while they readily accept a far lower standard for physicians, psychologists, attorneys, and counselors.

The Committee should keep in mind that all companies have different security standards for different types of jobs. What is acceptable in one industry may not be acceptable in another industry. The Committee should also keep in mind that approximately 90 percent of persons who may be rejected for a particular job as a result of the polygraph interview, are rejected because of admissions which they make prior to any test being given. Most of these admissions are concerned with undetected theft from former employers, unsolved criminal offenses of felony nature, and drug usage on the job or dealing in drugs while working. In this context, I believe that the Committee will hear testimony that the Drug Enforcement

Administration estimates that one million drug dosage units are stolen by employees each year.

The American Polygraph Association takes the position that no personnel screening examination should intrude into the area of race, religion, politics, union activity, or economic status, or any other highly personal area which is not related to the job itself.

The real bottom line on all of this is how the American public itself feels about the test. In survey after survey, persons who had taken the test in connection with a job application, gave it a favorable rating.

One recent report* presented the results of five different studies which included the following questions and the answer range from study to study:

1. Do you think the test was unfair in any way?
   86 to 100 percent answered "No"

2. Did the test or any part of it offend you?
   87 to 98 percent answered "No"

3. Do you think the test was an invasion of your privacy?
   77 to 98 percent answered "No"

Clearly then polygraph screening is no problem for the majority of hundreds of thousands of persons who take these tests. It is only a problem for a certain few who feel they know what is best for the American public.

In seeking to eliminate use of the polygraph in personnel screening, our opponents have consistently failed to even suggest a viable alternative to American business. Perhaps they are unaware of how American business uses and feels about the polygraph.

In one informal survey made by a major polygraph company of 1200 employers (its clients) the following was developed from a 35 percent return:

58 percent have used polygraph for more than five years.
70 percent reported polygraph reduced employee theft by at least 10 percent.
33 percent reported polygraph reduced employee theft by 50 percent.
80 percent reported polygraph provided better quality employees.
90 percent used polygraph in the investigation of specific incidents.
80 percent discontinue investigations if the employee is found to be telling the truth.
72.5 percent reported polygraph to be significantly helpful in over half of all investigations.
80 percent of companies reported they felt the most significant benefit was to clear suspicion from employees who were not involved in a specific incident.

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* "The Polygraph Passes the Test," Richard J. Phannenstill, Security Management Magazine, August 1983.

House Bill 1792 sponsored by Representative Butler Derrick has been assigned to the Judiciary Committee. This will eliminate any abuses which may exist but retain the benefits of polygraph examinations to business and the American consumer. This bill also protects the privacy of employees and job applicants, while permitting employers to protect their businesses and control losses attributable to employee theft. We ask your support to this sensible approach to whatever problem may exist.

* * * * * *

Accuracy in Academic
8001 MacArthur Blvd.
Bethesda, MD 20818

Lawrence Cranberg, Ph.D.
General Secretary
Oct. 22, 1984

Prof. Edward S. Katkin, Chairman
Polygraph Advisory Panel
Department of Psychology
State University of New York at Buffalo
Buffalo, N.Y. 14214

Dear Prof. Katkin,

Please excuse the belatedness of this reply to your letter of Sept. 14, 1984, but I have been out of the country.

By way of response to your comments, I enclose copies of two letters - both, by coincidence, dated Oct. 24, 1983. One is from Prof. Horvath to Dr. Gibbons, and one is from me to Congressman Brooks. Both relate to the OTA study. I also have in my possession a copy of the reply of Dr. Gibbons, which I regret to say does nothing to allay the concerns I have expressed to you, and I doubt that there was much reassurance in it for Prof. Horvath.

I do not doubt that, as you say, the Panel had notable experts on both sides of the issues of polygraph validity and usefulness. But in arriving at a final report, the quality of the findings is critically dependent on the soundness of the procedures by which those with differing views had an opportunity to contribute to the final record. Judging by your letter of Sept. 14, those procedures were highly "informal" - a term which often covers serious sins of omission and commission, and I feel confirmed in my own judgment that a re-study is warranted.

It is true as you say that I am not expert in polygraphy. But those who know Dr. Gibbons and myself would not, I believe, place me below him as an analyst or critic of scientific work. And in my judgment, his satisfaction with the report of the Panel is not warranted, but rather a re-study is indicated, and I hope that you will recommend the same to Congressman Brooks.

Sincerely yours,
Lawrence Cranberg

cc: Congressman Brooks, Prof. Horvath, Lynn Marcy, Chairman, American Polygraph Association

TESTIMONY OF LARRY SHERWOOD FOR JEWELERS OF AMERICA
AND MANUFACTURING JEWELERS & SILVERSMITHS OF AMERICA

Before the Subcommittee on Employment Opportunities
of the House Committee on Education and Labor

Mr. Chairman, members of the Subcommittee and staff, I am Larry Sherwood, Vice President and co-owner of Sherwood Management Company, Bell Gardens, California which operates 24 jewelry stores in the Southern California area, most of them under the trade name of Daniel's Jewelers.

I am here today on behalf of the Jewelers of America, New York, N.Y., a national trade organization comprised of 12,000 retail jewelers, of which my firm is a member, and the Manufacturing Jewelers and Silversmiths of America, Providence, Rhode Island consisting of 2,400 jewelry manufacturers. It is our position that a ban on the private sector use of polygraphs as proposed in H.R. 1524 and H.R. 1924 would have a devastating impact on the jewelry industry.

As a small businessman, I am honored to have the opportunity to appear before this Subcommittee to relate how critical the use of polygraphs is to the jewelry industry. For background, I should state that our family business began in 1952 when my father purchased a single jewelry store. At that time and for several years after, Daniel's Jewelers functioned as a true "mom and pop" operation. As a result of hard work and faithful service to our customers, we began to experience a rate of growth that far exceeded our wildest dreams. It was, however, not all positive. Accompanying the growth and expansion of our business was an alarming rise in inventory shortages. Upon review of our internal security procedures in 1975, we implemented a new policy requesting that prospective and current employees submit to polygraph tests.

Having had the experience of operating with and without the use of polygraphs, I can say without equivocation that in our unique industry it is essential that jewelers have the opportunity to utilize polygraphs to help insure the integrity and stability of their employees. While recognizing that the polygraph is not infallible, it has been my experience and that of many other jewelers that it is the most accurate and efficient means of confirming information included on an employment application.

The potential for gaining useful background information by checking employment references has been substantially minimized in recent years because many employers fear that their oral or written comments to another employer concerning a past worker could lead to a lawsuit for defamation of character. In fact, because of increased litigation in this area, many employers today will verify dates of employment only. Consequently, the significance and value of the polygraph have been enhanced by the corresponding decline in the effectiveness of employment references. Also, using investigative organizations to gather information on a job applicant can be time consuming, expensive and frequently result in the accumulation

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Mr. Sherwood is Vice President of Sherwood Management Corporation. He testified on July 30, 1985.

Polygraph 1985, 14(3)

of prejudiced information. Through the use of polygraphs, we are able to obtain relevant employment information from specific job applicants.

Mr. Chairman, in view of the Committee's deep concern for an individual's right to privacy, I would like to emphasize - relevant employment information. We have no interest in an individual's sexual preference, religious beliefs or affiliation with any labor organizations. These are all matters that we consider private and personal to the individual and frankly irrelevant in determining whether that person would make a good employee.

At this time, I would like to relate a few incidents that demonstrate how a polygraph test can help secure a job for an individual who otherwise would not have been hired, as well as instances which rebut a common misconception that the use of polygraphs suggests an adversarial employee - employer relationship.

About a year ago, a job applicant admitted during her first interview that she used an illicit drug on a rather regular basis. When an applicnt makes such an admission in an interview, an employer's first inclination is to steer away from any possible involvement with that person. However, by being able to polygraph this applicant, we determined that her drug use was confined to smoking marijuana with her husband. The polygraph revealed that she had not used drugs prior to or during work and as a result she did not constitute a security risk. This person was hired and is still with us today. A nearly identical incident occurred about one month ago. Obviously, we do not condone the taking of any illicit drug. I raise these incidents to show that we use polygraphs to help identify security risks and not to invade or make value judgments on an individual's private life.

In all candor, Mr. Chairman, I would state that an overwhelming majority of our employees support the company's polygraph policy. In demonstrating why, I would point to an instance in which one employee accused another worker of stealing thousands of dollars worth of merchandise from us. When we polygraphed the people in the store, the accused individual revealed no deception. The individual making the accusation, however, showed deception when polygraphed and later confessed having stolen merchandise from us.

Similarly, the polygraph has proved instrumental in determining employee honesty when a worker was accused of theft by a customer. One specific example occurred recently when a customer ordered a ring in which to set her diamonds. Two weeks after ordering the ring she came in to see if it had arrived. Informed that it had not, she replied "you still have my diamonds, of course." The employee involved swore that the woman had never given him the diamonds, and the worker requested that we give him a polygraph. The polygraph showed no deception and we were able to inform the customer of these results, blaming the incident on an inexplicable mix-up. The critical thing here is that we were able to preserve the reputation of both the salesperson and company.

You will note in the attachments to my testimony that there are scores of "incident reports" from my company as well as those obtained by

the Jewelers of American from two of the largest retail jewelry firms in this country, the Zale Corporation of Dallas, and Gordon Jewelry Corporation of Houston. A quick review of these reports reveals two key factors present: (1) whether or not a shortage situation is resolved and merchandise recovered, numerous employees who were in a position to be implicated in a theft and possibly fired were cleared of any involvement by use of a polygraph, and (2) many of the losses involved valuable, highly marketable merchandise in the area of $5,000 and up. It does not take too many losses of this nature for a jeweler to face the unenviable choice of "cleaning house" of existing employees or closing a particular store. It is the ease in which a worker can conceal a tiny, valuable item that makes the jewelry industry such a sensitive one.

Recently, following the discovery of an inventory shortage in several store locations in the Southern United States, one major jewelry chain polygraphed several individuals suspected of stealing. The results of those polygraphs led to a discovery of an internal ring within the company. This case in now before a grand jury and I am not at liberty to say more than that seven people have confessed to their involvement in this ring,in which $600,000 worth of merchandise has been recovered.

The use of polygraphs also has an indirect effect on insurance rates and a direct impact on insurance coverage. Because polygraphs have been shown to reduce losses and assist in recovery of stolen items, they have held down escalating insurance costs for many jewelry firms. In the jewelry industry there are basically two types of policies: (1) a "Block Policy" is an all risk policy that covers losses except for employee theft; (jewelers commonly obtain coverage under their block policy for an amount equal to their inventory value), and (2) "Employee Fidelity Policy" which covers losses attributed to employee theft. With respect to an employee fidelity bond claim, a jeweler needs to prove that the merchandise or money was stolen by an employee. In the case of a block claim, a jeweler must prove that the loss was not employee-related. In my experience, I have found the polygraph to be critical in both cases.

As I mentioned with respect to insurance coverage, polygraphs have been shown to limit losses caused by internal theft. The Zale Corporation reports that as a result of the use and availability of polygraphs, the company was able to recover money and merchandise during the past four years valued at just under $2 million.

We in the jewelry industry fully support legislative efforts that would establish federal standards designed to eliminate potential abuses of polygraphs. To this end, we recommend an approach embodied in legislation, H.R. 1792, offered by Rep. Butler Derrick. Along these lines, I have included as an attachment to my testimony a recently passed California state law that regulates all persons who conduct polygraph examinations.

* * * * * *

Appendix by the Zale Corporation

Appendix to statement of Jewelers of America, Inc. and Manufacturing Jewelers and Silversmiths of America. A Submission of the Zale Corporation.

Zale Corporation entrusts to its employees millions of dollars of valuable and highly marketable merchandise. Because of the very nature of its business, the corporation has a duty to its stockholders and employees to assure that its inventory and people are protected against dishonesty. It is the policy of Zale Corporation to polygraph all of its employees who occupy sensitive positions to include: Chairman of the Board, Corporate President, Group President and other corporate officers, those experiencing a discrepancy in the purchase or contracting of goods and services, those having responsibility in the control or movement of inventory, those involved in the direct or indirect handling of cash or like financial incidents, store level personnel and other individuals who may be deemed necessary by senior management.

We feel that as a result of the availability and use of the polygraph, the Zale Corporation was able to recover money and merchandise during the past four years at just under $2 million.

Examples of use of specific polygraph tests in our business are as follows:

In late November, 1984 one of our stores in Irving reported a mysterious loss of a high value diamond ring. A long-term employee who had last shown the ring was suspected of stealing the ring. A staff examiner ran a specific polygraph test on all of the employees and the primary suspect was cleared of the theft. However, further interviewing of an individual who did not clear this particular test resulted in an admission of stealing not only this ring but another piece of jewelry and cash. Thus, the polygraph in this case not only cleared the suspected individual but identified the thief.

In December, 1984 the district manager of our store in Houston called to advise that several payments made to a customer's account in cash was missing. Our staff examiner in Houston began a routine investigation and identified the manager of the store where the account was as the primary suspect. After further interviewing and testing, the manager confessed to taking two payments, as he needed the money to pay for his car. This information and the manager's written confession were provided to the police for prosecution.

Within the past few months at our stores in the Dallas-Fort Worth Airport, cash shortages from three particular drawers were beginning to become a problem. We began an investigation that led to three specific polygraph tests. A person was found to be deceptive concerning the stealing of cash from the corporation, and subsequently admitted taking the monies from all three drawers. Thus, the polygraph assisted in catching the thief and clearing two other individuals from any involvement in the thefts.

An employee of our Insurance and Advisory Replacement Services had worked in a store temporarily to assist customers in replacing their stolen merchandise. During her short tenure at this store, a diamond ring valued at over $15,000 was reported missing. Our investigation and the accusation made by other employees led us to believe she was the primary suspect. She was subsequently tested by one of our in-house examiners in Dallas and cleared her polygraph test relating to that theft. Several weeks later, another employee admitted to stealing that particular ring after being caught stealing another piece of merchandise.

As you can see, the polygraph is not only instrumental as an investigative tool in the identification of primary suspects but it also helps clear other individuals of suspicion from management and fellow employees. The incident reports cited above are just a few of hundreds of similar instances that have occurred within our company over the recent years.

Appendix by The Sherwood Management Company, Inc.

Appendix to statement of Jewelers of America, Inc. and Manufacturing Jewelers and Silversmiths of America. A Submission of Sherwood Management Company, Inc.

The following examples demonstrate how the use of polygraphs in jewelry stores owned by Sherwood Management Company have helped recover stolen cash and merchandise, cleared innocent employees from involvement in a theft, helped identify employees who had stolen cash or merchandise, assisted in the hiring of individuals who would probably not have been hired and helped identify job applicants who would represent a risk to the company.

In this case, an employee managed to steal money from one of our stores in a manner that she believed would cause another employee to be blamed for the loss. It did not concern this employee that another individual could end up losing her job as a result of this person's actions. Without the use of a polygraph, I do not know how we could have cleared the innocent employee and identified the guilty worker.

In this case, an employee admitted during a polygraph to having stolen $2,200 worth of merchandise. As a result of this finding, the California Probation Department required this individual to repay the company as part of probation requirements. Without the polygraph, we would not have been able to clear the innocent employees or recover the value of the stolen merchandise.

In a pre-employment interview, a polygraph of this applicant revealed deception on several questions. When asked about this after the test, she stated that her husband was a burgler who specialized in jewelry stores, and that the ring she was wearing (which contained approximately a 1.5 carat pear shaped diamond) had been stolen by her husband. Again, the polygraph proved instrumental in averting what could have been a disastrous situation.

One of our stores suffered an inventory loss and we brought in a polygraph examiner to interview those employees who had no objection to

being interviewed. During one examination, an employee admitted to having taken things valued in excess of $1,000 from the store. One of the items he had given to his wife as a gift and another he had sold. Without the use of a polygraph, we would not have been able to determine that this person was responsible for these thefts and there is little reason to believe the thefts would not have continued.

During a specific polygraph, an employee admitted that he had stolen numerous items, including a $1,500 ring. Further questioning revealed deception on whether he had told us about all the merchandise he had stolen. Without the use of a polygraph, we would not have been able to identify the guilty individual and clear the other workers from suspicion. In this particular case, we probably would have had to make major changes in staff in an effort to stop the thefts.

In this case, an employee was requested to take a polygraph after suspicion was raised that she had been responsible for the loss of a man's diamond ring from our inventory. The discovery occurred when she took the stolen ring to one of our other stores to get it sized. An employee at the other store began questioning the individual and asking for information about the date of purchase and the price. When the answers did not make sense, the employee alerted our security department. A subsequent polygraph conducted on the suspected employee led to a confession that she had stolen the ring in question.

In this case, one employee accused another of stealing merchandise from us. When we polygraphed employees in the store we were able to determine that the accused was innocent of the charges. However, the polygraph revealed deception with respect to the employee who had made the charges. Later, that employee confessed to stealing merchandise.

On numerous occasions we have been able to hire individuals who we otherwise would not have been able to fire without the use of polygraphs. An example of this occurred when we discovered that a previous employee had stolen $650 in merchandise from us. Through the use of a polygraph we were able to determine the circumstances surrounding the theft and were convinced that it was an isolated incident. As a result, we were able to rehire that individual.

In this incident, we were missing money from a cash sale of a diamond ring. Interestingly, while we were unable to determine what happened to the money, we were able to clear all of the people who were working in the office of any guilt. Again, without the polygraph we probably would have had to terminate those workers who seemed most likely to be involved.

This employee admitted during a polygraph to have taken certain merchandise for which she had not paid. Through proper questioning, we were able to determine that this was the extent of the merchandise she had taken and that it was not her intent to permanently deprive the company of the value of the merchandise. We were also convinced that this did not represent a normal pattern for this employee but rather a one-time situation. Based on the information developed from the polygraph we decided to allow the individual to make restitution and continue as one of our employees. This person is still employed by us.

Polygraph 1985, 14(3)

Appendix by Gordon Jewelry Corporation*

As a principal of the second largest publicly held retail Jewelry Corporation in the United States, I urge you to vote against these two bills and/or any amendment which would restrict the use of polygraph by the private sector.

Each member of the Employment Opportunity Subcommittee and each member of the Full Education and Labor Committee cannot help but be aware of the tremendous cost of white collar crime that is currently sapping taxpaying industry and business throughout this country. Utilizing schooled and licensed professionals, the polygraph has and will play a responsible role for those sensitive industries, both with pre-employment and subsequent audit interviews.

Our documented information over the past 15 years reflects that the polygraph, when used in connection with a pre-employment interview, is the most accurate and efficient method of confirming information contained within the employment application. Conventional methods of using investigative organizations to examine the background of applicants by interviewing neighbors, employers, associates, relatives, and searching records is time-consuming, very expensive and reflects prejudice information and bias opinions. Conversely, the polygraph interview focuses specifically on the applicant, as the information sought concerning experience, habits, integrity, stability, tenure, and attitude, comes directly from the applicant him/herself. The polygraph interview allows the employer to determine the applicant's qualification and acceptability in a matter of hours rather than days or weeks.

If every applicant for employment carefully read and understood the disclosure required by the Fair Credit Reporting Act concerning an employment investigative consumer report and knew that their neighbors, employers, creditors, relatives, and business acquaintances would be interviewed and public records perused in an effort to determine qualifications, credibility, and acceptability, along with the ensuing time lapse, most would unequivocally prefer the immediacy of polygraph.

We are a national company, operating in excess of 650 stores in 44 states and Puerto Rico (36 stores in California), which employs 7,000 regular plus 2,000 seasonal employees. To deny a sensitive industry such as ours, the use of a proven and effective employee assessment tool is ludicrous. Furthermore, in the absence of polygraph the increased cost for security protection from fidelity losses would be exceeded only by the folly of political expedience.

I urge you to take a firm position and vote against any bill or amendment that would restrict the use of polygraph by the private sector.

The following is a compilation of over two dozen 'incident' reports revealing how the use of polygraphs resulted in the recovery of stolen merchandise and money, the identification of guilty parties and the

*Letter of July 19, 1985 to the Honorable Augustus F. Hawkins from Larry T. Hampton, Senior Vice President, Gordon Jewelry Corporation.

clearing of innocent parties from suspicion. It should be noted that most of these cases occurred within the past twelve months and represent only a sampling of our files.

Information indicated that an employee was involved in the internal theft of jewelry. The employee denied guilt and took a polygraph test which showed her deception. The employee then admitted in writing that she had stolen $40,000 in jewelry from her place of employment and had sold the jewelry through the help of an accomplice. The employee was placed under arrest by the police.

Information from an informant who happened to be a sister-in-law of an employee indicated the employee was engaged in extensive jewelry theft from her employer. During pre-polygraph test interview the employee admitted several thousands of dollars worth of jewelry taken and sold out of state. Later admissions to the police resulted in recovery of over $260,000.00 worth of company jewelry. An equal amount in out of state transactions was never recovered.

Informant information indicated company employee was involved in theft of jewelry and her husband was engaged in selling the stolen items. Following polygraph tests which showed the employee deceptive, she made a written statement admitting her guilt and implicating her husband. A police search of the employee's residence revealed approximately $500.00 in stolen jewelry and $20,000.00 in cash which the husband admitted came from the sale of stolen company jewelry. The couple was arrested. Restitution payments were later made by the couple at court order.

During preliminary investigation, a bookkeeper at one of the stores denied that any theft of store monies had occurred. Even when faced with several pieces of evidence, she denied her own guilt. During the pre-polygraph test interview, the bookkeeper admitted her guilt in writing. Within a short period of five months, this trusted employee had stolen nearly $10,000.00 in cash from the store. The bookkeeper agreed to a schedule of restitution in which repayment was made.

Following being found deceptive on his polygraph test, a store manager admitted theft of a half carat diamond ring valued at $2,499.00, which he had swapped for another diamond. After another polygraph test in which he was also found deceptive, the manager admitted additional thefts of both money and jewelry from the store he managed.

Information indicated that merchandise was being stolen from the warehouse. Four temporary Christmas Season employees were polygraph tested along with other warehouse employees. The four were found deceptive on their polygraph tests, and when confronted with the results, admitted their guilt. They cooperated fully in return of cash and merchandise valued at $1,427.00 which they had stolen.

A former employee claimed an expensive watch he had purchased had been stolen from him and planned for his insurance to pay the balance of his account. Informants indicated the former employee was attempting fraud. The former employee took a polygraph test and was found deceptive. Following the polygraph test, he admitted it was just a scheme to collect

insurance, and agreed to immediately pay his outstanding balance of $1,082.00.

Eight employees were polygraph tested and cleared of theft involving a $7,990.00 diamond ring.

Four employees were polygraph tested and cleared in the loss of a $1,395.00 diamong ring from the store. Two weeks later, one of the employees tested found the ring in the clothing she had worn at work. No deliberate theft was involved.

Eight employees were polygraph tested and cleared in the loss of a $1,700 gold chain.

Four employees polygraph tested and cleared in theft involving the loss of two rings valued at $13,199.00.

Six employees polygraph tested and cleared in the switch of a $799.00 diamond ring for a fake diamond ring.

Ten employees were polygraph tested and cleared in the switch of a loose diamond valued at $3,100.00.

Five employees cleared by polygraph examination of theft involving three Concord watches valued at $5,870.00.

The store employee was cleared in a polygraph test of switching a customer's diamond solitaire valued at $5,499.00. The customer refused to be polygraphed.

Three employees were cleared by their polygraph test of theft in the mysterious loss of a diamond watch valued at $1,950.00.

Eight store employees cleared by polygraph test in the switch of a diamond ring valued at $22,500.00 for a fake diamond.

Four employees cleared by polygraph test in theft of jewelry from the display case valued at $9,794.00.

The employee was cleared of stealing the $12,500 jade and diamond ring.

Five employees cleared in the loss of a $275.00 diamond wedding band that was brought into the store by a customer for repair.

Six employees cleared of theft of $11,437.00 in jewelry from display case.

Four employees were polygraph tested and cleared in the loss of a $4,240.00 Rolex watch.

Five employees were polygraph tested and cleared in the theft of $85,857.00 in jewelry merchandise from a display case.

Four store employees cleared polygraph testing in the theft of a diamond ring valued at $1,799.00. During polygraph testing, another employee admitted stealing the ring and selling it for $200.00.

Polygraph testing cleared an employee of stealing or deliberately helping someone else steal two rings valued at $7,520.00 which were lost from the store.

Five store employees cleared a polygraph test in the switch of a diamond solitaire valued at $3,499.00.

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STATEMENT OF WILLIAM L. COLE FOR BORG-WARNER CORPORATION

Before the Subcommittee on Employment Opportunities
of the House Committee on Education and Labor

Mr. Chairman, Members of the Subcommittee, my name is William L. Cole. For over 30 years, I have been involved in the management and administration of the security service industry. For the past 6 years, I have been a security consultant to Wells Fargo Armored Service Corporation, Wells Fargo Guard Services and Burns International Security Services, all wholly owned subsidiaries of the Borg-Warner Corporation.

The companies operate in 44 states and Puerto Rico. They employ over 39,000 people. In the armored business, we operate 1,200 armored trucks and vehicles servicing the Federal Reserve, the Bureau of Engraving, financial institutions, including money room services and automatic teller machines, and commercial/retail establishments. On any given day, Wells Fargo will handle $1 billion through transportation, inventory and storage services.

As custodians of a customer's money and protector of their interests, we have an obligation to do everything in our power to insure that the trust placed in us is not abused. More than 65 percent of total losses in the armored car industry are the result of internal theft. Thus, it is imperative that every measure possible be taken in an attempt to recruit and hire employees whose honesty and integrity is unquestioned.

Our Burns International Security Services Division and Wells Fargo Guard Division are actually required by their customers, in many cases, to perform pre-employment polygraph screening. Burns International, for instance, is a major supplier of guard services to nuclear facilities. This group protects 25 nuclear facilities throughout the country, employing over 3,000 guards in the process.

Burns is contractually required to provide polygraph testing for over 95% of them. Likewise, the Wells Fargo Guard Division is a prime contractor to the Department of Energy. This group provides security to all the

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Mr. Cole testified on July 30, 1985.

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U.S. Government's Strategic Petroleum Reserve sites throughout the country. These guards are highly trained and must have secret clearance. As a contractual requirement imposed by the Department of Energy, all guards assigned to those sites must pass a pre-employment polygraph test.

Borg-Warner shares Congressman Williams' concern that individuals not be denied employment unfairly or have their privacy invaded. We are, however, convinced that a polygraph test is accurate more than 90 percent of the time in cases where trained examiners are able to reach a conclusion about a person's truthfulness. Moreover, we believe that the threat of polygraph testing serves as a deterrent to potentially dishonest employees.

For these reasons, corporate policy allows the use of polygraph examinations in applicant screening, periodic testing, and with reference to specific events. That policy includes rigorous controls, which go beyond state requirements in most instances. At no time does applicant screening involve any question regarding religion, attitude toward unions, political beliefs, sexual behavior, or other personal issues. The test is meant to confirm the accuracy and truthfulness of the applicant's stated background, employment history, and reason for seeking a position with the company. It is only one step in a process which includes interviews, verification of prior employment, and other checks which are necessary prior to offering an applicant a job.

Even when state investigation and approval are required for security guards, pre-employment testing is an efficient screening mechanism to help prevent individuals with criminal arrest records from getting on our payroll. In New York, for instance, all guards must be fingerprinted and complete an application which must then be approved and processed by the state. If this processing discloses a criminal arrest record, the state advises the employer to terminate the employee. The problem is that it takes more than four months to obtain state clearance. Meanwhile, we could have a convicted felon on our payroll, assigned to protect a customer's highly valued assets. In order to adequately protect our customers and insure against what might be a significant liability exposure, we feel it is crucial to have the ability to do pre-employment testing. Once hired, many employees must agree to periodic testing as a condition of continued employment. It is used most commonly in situations where an employee is involved in handling a customer's funds in what we call "an open bag situation," namely a money room or consolidation service, automatic teller machine service, or maintenance of currency inventory for a financial institution. The objective is to insure honesty on the job by having all employees know that they may be subject to an unannounced random polygraph test at any time in the future.

Wells Fargo Armored uses specific polygraph tests only if authorized by a regional general manager and the Director of Security as part of the investigation of a loss of customer funds. In most cases, such an investigation is coordinated with local law enforcement personnel, the FBI, and /or the United States Secret Service. Again, the purpose of the specific polygraph test is to confirm information given by the employee when interviewed regarding the disappearance of funds. Employees are never terminated based on polygraph results alone. In fact, in some cases our employees favor the use of an examination to help establish their credibility.

Borg-Warner is extremely careful in its polygraph testing. We use only qualified, state certified polygraph examiners, preferably members of the American Polygraph Association with prior law enforcement experience. In 1984 we administered approximately 700 tests to applicants for jobs, 50 random tests, and at least 200 specific tests. We are confident that the nature of our business and the demands of our customers warrant such rigorous review of potential employees.

Now that I have described our rationale for using polygraph testing and our strict controls on its use, I would like to comment on a number of recent trends in criminal activity in our business which we believe stem from inside information. These illustrations provide good examples of the types of situations where polygraph examinations can be an effective tool in crime solving and crime prevention.

In 1983 there were multi-million dollar robberies from our West Hartford and Memphis terminals. The FBI solved our Memphis loss with the identification of an employee who was involved with her brother, a former New Orleans Police officer. The West Hartford loss involved an employee who is presently being sought by the FBI as a "Top Ten" fugitive. The Puerto Rican based Matcheteros have taken credit for planting him in our Wells Fargo terminal in Connecticut and are believed to be in possession of the stolen money.

Connecticut law did not allow us to administer applicant polygraphs and, therefore, we were unable to identify a person whose intention was not to seek legitimate employment. Both of these cases point out the connection between employee involvement and major losses in our industry.

Law enforcement officials on several occasions have recovered documents which indicate that terrorists groups in the United States intend to fund their activities by robbing financial institutions and the armored industry. The FBI and the Police Department in Dade County, Florida currently have a joint task force investigating a Marielito gang operating in South Florida. This group which is suspected of the murder of a Wells Fargo employee on June 21, 1985, has plagued the armored industry in Dade County with at least seven successful attacks since 1982. It appears to have contacts inside the armored companies and plan to have additional members seek employment. Without the use of polygraphs to screen applicants, more such attacks will undoubtedly occur.

On April 29, 1985, a well-planned professional assault on our New York terminal resulted in an $8 million loss. Subsequent investigation by federal authorities identified individuals with organized crime connections as those responsible for this major loss. We expect the investigation to show that the criminals involved had inside information.

The well publicized increase in use of cocaine and other drugs in our country is a problem for all employers. We are especially concerned that we identify cocaine users in order to protect the resources of our clients.

The large nubmer of robberies lately has created a new problem for our industry -- the disappearnce of insurance coverage. At this time,

only a few companies are still willing to provide coverage and then at much higher premiums and deductibles. In order to stay in business, we must pass such cost increases on to our customers, who in turn pass them on to the American public.

I believe I have demonstrated how, when properly administered, the polygraph examination can be a useful tool in detecting and preventing criminal activity in our special business. Congress has already recognized situations where the use of polygraph tests are appropriate. By an overwhelming vote, the House recently amended the DoD appropriation bill to require polygraph examinations for individuals whose duties involve access to classified information. Such tests would be required prior to granting access to classified information and periodically thereafter at random. As I stated earlier, we share Mr. Williams' concerns for potential abuses but I believe that for our purposes those abuses are adequately addressed in the guidelines established by Rep. Derrick's bill, H.R. 1792.

In conclusion, we believe that Borg-Warner's current practice fully protects potential employees from abuse by polygraph examiners. In addition, we stand ready to support proposals to strengthen training and licensing requirements if there is a consensus that such are necessary. I would, however, point out that H.R. 1524 would not apply "with respect to any individual who is employed by the United States Government, a state government, a city, or any political subdivision of a state or city." If the United States Government, States, and Municipalities have the right to use polygraph testing to protect themselves from dishonest employees, why should the security industry as well as other employers not have access to the same technology and protection?

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POLYGRAPH TESTING OF VERMONT STATE POLICE APPLICANTS

By

Leroy E. Prior

Abstract

In 1983, there were 181 applicants who were given polygraph examinations by the Vermont State Police. Of those, 75 were passed and 109 were rejected for cause. The largest single cause of rejection was drugs, which accounted for over half of the applicants. The next largest cause was undetected larcenies. By conducting the polygraph examination before the background investigation, the department saved $53,816.00.

Processing

On July 13, 1983, the Polygraph Unit of the Vermont State Police started the preemployment testing program for the 1984 list. There were a total of 206 polygraph examinations scheduled; 19 in June, 46 in August, 51 in September, 36 in October, 38 in November, and 16 in December. There were 19 who did not appear for their examinations and 3 in which polygraph charts were not obtained because it was learned that the applicant's eyesight was of an unacceptable level.

Results

Of the 184 initially eligible, there were 75 who were added to the eligibility list of applicants for further processing after all of the polygraph examinations were completed. There were only 10 of those who made no admissions and passed the examination. There were 11 who were deceptive during the examination, but were cleared with post-test admissions and follow-up testing. There were 54 who made admissions during the pre-test phase who were not deceptive, whose admissions were considered insufficient for rejection.

There were 109 applicants who were rejected for employment. All but one of those who were rejected made admissions during the polygraph examination of behavior that was considered unacceptable. There were two major reasons for rejection. Drug admissions by 57 accounted for the major reason for over half of the applicants being rejected. There were 38 who admitted to undetected larcenies, plus other criminal admissions which were disqualifying. There were 4 who admitted breaking and entering, 3 admitted to deliberately writing bad checks, 2 admitted committing insurance fraud, 3 admitted possession of stolen property, 3 admitted to income tax violations, and 3 admitted to acts of vandalism. In addition, 11 were rejected after admitting to arrests that they did not

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The author, a Sergeant in the Vermont State Police, is a member of the APA and Chairman of the 1986 APA Seminar which will be held in Smuggler's Notch, Vermont.

list on their applications. There were 13 who were rejected after they admitted to physical problems that were not listed on their applications, one was rejected after admitting to suicidal tendencies, 10 were rejected for drinking problems, 21 for abnormal sexual practices, 5 for immature acts, 3 for cheating on examinations, and 4 for driving while intoxicated or impaired. There were 26 who were rejected for deliberately omitting employment from which they were fired plus 8 who admitted that they had lied about other significant items on their applications. There were among the applicants some who had police experience, and 5 of those admitted to acts of police brutality. There were 8 who admitted to perjury. In addition, there were others who were rejected for miscellaneous reasons: 5 for poor military records, 1 for careless use of firearms, 2 for acts indicating a bad temper, 1 for marriage problems, and 4 for excessive indebtedness.

Financial Savings

The Vermont State Police estimate that it costs $480.50 to conduct a background investigation on an applicant. The estimate is based on an investigator's salary of $110 per day for three days, lodging at $30.00 per night for two nights, meals at $23.50 per day for three days, and $20.00 for miscellaneous expenses. The cost of a vehicle is not included in the estimate. If the 187 applicants had been investigated before the polygraph examinations, or there were no polygraph examinations, the State of Vermont would have spent $89,853.50 for investigations. Because 112 applicants were rejected before the background investigation, of which 109 were directly attributable to polygraph results, the state spent only $36,037.50 to investigate the 75 remaining applicants. There was a direct savings of $53,816.00 to the state in expenditures. It is also probable that the use of the polygraph provided additional savings to the state in future liability by assuring that a significant number of persons who were drug abusers, criminals, and otherwise unsuitable persons did not become state policemen, whose faults might not have been disclosed during the investigations.

The average daily cost of a polygraph examiner is $112.85 and each examiner does two applicant polygraph examinations per day, so the expense of running 181 applicants is $10,213.83. A background investigation on the same 181 applicants at $480.50 each is $86,970.50, a difference of $76,756.67. A preemployment polygraph examination enables a police department to research an applicant's background more thoroughly in two hours than an experienced background investigator can do in three days. In addition, the majority of rejectionable offenses would not, in most circumstances, be uncovered during a background investigation. Additionally, polygraph examinations sometimes identify potential problem areas in an applicant's background, which may then be thoroughly developed by the background investigator.

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MAXIMIZING PSYCHOLOGICAL SET BY EFFECTIVE USE OF THE PERSONAL HISTORY SHEET*

By

Robert Bryant Bates, M.A.

Even though some of the approximately 25 nationally recognized professional polygraph training programs disagree in some areas of theory and practice, they all tend to agree as to the basics. For example, basic to most programs is the theory of "psychological set," according to which a subject will turn his or her psychological attention to that issue which is of greatest concern into physiological changes from the norm which can be recorded and analyzed by a trained examiner, who can then judge the subject as attempting deception or not.

Again, common to professional schools is instruction in conducting a "pre-test" interview, prior to activating the instrument under test conditions. A number of justifications have been given for this interview. On one hand, it allows the examiner to judge whether or not the subject is a fit subject, psychologically and physically, for testing. On the other, it allows the examiner to establish rapport. Again, it affords the subject an opportunity to tell his or her side of the story or to clarify his or her involvement or knowledge of the instant case. Another benefit of the pre-test is that it is the time set aside for the construction and review of the actual test questions to be asked during the examination. All of these justifications are valid.

Students at the various schools study these principles such as the theory of psychological set and the pre-test interview and upon examination can recite them back letter for letter. However, in doing so, they sometimes miss the "big picture," for the theory of psychological set and the pre-test interview are more than just isolated procedures. They are the heart of the polygraph examination and are closely bound to one another. The pre-test interview is more than merely a place where the examiner can establish rapport with the subject, or even to find out the facts of the case. It is the place that psychological set is established. It is with the proper establishment of psychological set that allows the examination to succeed or fail, as without a proper set the result could be flat and unresponsive charts open to incorrect interpretation.

The Personal History Sheet & the Pre-Test Information Network

The vehicle through which the task of establishing a proper psychological set most effectively might be termed the "Pre-Test Information Network" and includes all the information available to the examiner concerning the crime and subject. The most important aspects of this background information are the personal history sheet and the subject's version of his or her knowledge of the crime, in addition to the police report.

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Of course, when a subject tells his or her version of the crime, that person knows in his or her own heart and mind whether or not he or she is telling the complete truth. As such, the establishment of psychological set is begun. However, the job is not complete if the examiner stops at this point, without making full use of the personal history sheet.

Most schools teach the use of some variety of the personal history sheet. It might be called a "biographical data sheet" (National Academy of Lie Detection); or a "pre-test interview subject background data" form (Backster); but the basic approach is the same. Included normally are various questions regarding the subject's personal background such as employment history, military service, educational background, medical record, and so on.

Again, most schools require the polygraph student to learn how to complete the form as part of the pre-test interview. However, some students fail to appreciate its full value beyond rapport. Its purpose is more than getting to know the subject so the examiner can, for example, correctly phrase the test questions so the subject can clearly understand them. It is more than insuring that the subject is fit for testing.

The personal history sheet is a key part of the total pre-test information network, as is the case facts, and it is through it that the examiner can learn facts which can help guide him or her through the investigation. From the personal history form the examiner can learn facts that not only help reinforce psychological set, but also disclose circumstances, life styles, mores, values, and possible motives which could aid the examiner in understanding both the subject and crime. Such an understanding will greatly enhance the chances of a successful examination. As such, the personal history form is the heart of the pre-test interview. If an examiner can learn the values or life circumstances of the subject such knowledge can prove useful in understanding possible motives behind why this person may have committed this crime, or in establishing a climate for effective interrogation. For a truthful person, such information is useful in developing control material. As such, the effective polygraph examiner should strive to stress a full and complete discussion of the information contained in the personal history sheet during a specific issue pre-test interview. Examples of information valuable to the examiner which might be disclosed during such an interview might include: the fact that said subject has been unemployed for a period of time and in need of money, that he is religious, that the spouse has a special medical condition. Such information could well be the key to solving the case at hand.

Example: Child Abuse Case

An example might clarify the point further. In a recent child abuse case, the hospital staff of a local emergency room became suspicious regarding the injuries to a three-month-old child brought in by the father. The local police were called and a preliminary investigation conducted. The father admitted that he had caused injuries, burns on the body and bruises about the face, "accidentally." Obviously, he advised, no loving father such as he would deliberately harm his daughter, especially one that young. Further explanation was as follows: He advised that the

bruises were caused when the baby stopped breathing and not knowing how to do CPR on babies, but wanting to do something to help, slapped her on the face attempting to revive her, which he was successful in doing. Regarding the burns, he advised that he was removing the baby from the bath while smoking a cigarette and that the cigarette fell from his mouth and landed on the baby before he could grab it. The initial investigating officer did not believe this story and requested a polygraph.

For the examiner to go into the actual examination from the above information, without further reinforcement of psychological set would not have achieved maximum results and may have resulted in false positives or inconclusive charts. Through use of the personal history form the examiner learned additional interesting facts which helped guide him through the investigation. For example, he learned that the subject had recently been discharged from the United States Army, where he had studied CPR, although he claimed not for babies. He learned that the subject had been looking, although unsuccessfully, for work. He learned that as a matter of fact, the subject had recently taken the local police department examination and was in fact on the eligibility list. He learned that he was married, and the wife was still in the military and was currently away in the field, leaving him with the children. He learned that the injured child had a twin sister, who hadn't received any injuries. He learned that the injured child had been sickly from birth and was suffering from some kind of medical problem. The other twin was in excellent health.

Armed with this information, the examiner was able to suggest to the father a motive and a reason for his actions: He had been left alone with two small children, one of which was sickly, without a job or enough money. That set of circumstances would cause stress to anyone, causing them to do something they normally would not do.

The subject still continued to deny deliberately harming the baby, and after determining that he was a fit subject and constructing suitable questions, the actual examination was begun. Beginning the actual examination at this point appeared to be an effective time as the examiner was armed with sufficient case and background information from the police report and the pre-test information network to produce excellent psychological set.

It might be noted also that the examination conducted was a control question examination and as such, during the pre-test interview, adequate time was also spent in preparing and reviewing those questions, which dealt with the issue as whether or not he had ever deliberately harmed anyone.

The Pre-Test Charts

The procedure followed by the examiner in this case was as follows: The first chart was a calibration chart to insure that the instrument, an all-electronic, four-channel Lafayette, was operating properly. Secondly, a chart of 30 to 60 seconds was run without asking any questions, but merely with the components activated. This was followed by a series of three or four reviewed neutral questions (e.g., Backster #13, 14, or 15). The purpose of these charts is to allow the subject to experience a sample

testing procedure so as to know what to expect, as well as to establish a "norm" for the subject under test conditions. (The latter anticipates the frequent excuse of deceptive subjects "I always react that way, I'm such a nervous person ...") After this, a stimulation chart was conducted. In this case the subject was shown a series of numbers with colored bars under each number. He was adivsed that he was going to be asked questions about the color of the bar under the numbers (e.g., Is the color under #1 "green"?) To assist in the proper adjustment of the instrument to the subject's particular response capabilities under lie conditions, the subject is asked to make a mistake on a predetermined number. After the stimulation chart, then the actual charts were run, in this case, Backster "You" phase.

With this particular subject, the examiner noted large reactions to the neutral questions dealing with his name and place of birth. When questioned about this the subject advised that while the name he gave the examiner was his true given name, he actually didn't use it but used an entirely different name he hadn't mentioned before. Regarding the question with reference to the state in which he was born, he advised that he actually was born in that state, but soon moved to another state which he really thought of as "home." Armed with this information, the examiner reinforced psychological set by advising the subject that these examples showed how sensitive the polygraph was and how important it was to tell the complete truth in answer to each question. When asked if he had been in fact completely truthful in his original statement, he advised that he had been.

Up to this point, the subject's response patterns were as expected and well within normal limits, even at responsive questions.

The Test Begins

However, when the first actual relevant chart was begun, massive changes from the previously established norms were noted. From the previous Pre-Test "Norm" Charts, the examiner knew that the subject didn't "always" react that way. The changes were particularly great in the GSR, and were so great and fast that the examiner wondered whether or not the instrument was operating properly, even though it had just been calibrated minutes before. Wide, fast plunging fluctuations in the GSR were impossible to center. Movements on the part of the subject further complicated matters. After only announcing that the examination was beginning and the first neutral (Backster #13), the test was stopped and the instrument checked and the GSR recalibrated. Again, the instrument was found to be operating well within normal limits.

A second attempt was made to run the first actual relevant chart. Again, the same fast, plunbing GSR reactions were noted, as on the first chart. Movements on the part of the subject were also widely evident. However, this chart was continued to the end.

At the conclusion of the first actual chart, the subject was advised by the examiner that he thought that there was definitely something wrong, and that he suspected that he was not completely truthful in his original statement. He was shown the charts and asked to compare for himself the

pre-test charts with the actual charts. In the end, the subject confessed that he had in fact lied and that he had deliberately battered and burned the child with cigarettes. He advised that the scenario suggested by the examiner was close to the truth.

Summary

Careful attention to the subject's personal history,[1] in addition to the police report and the subject's version of the case facts, during the pre-test interview should lead to a proper psychological set and hence clear-cut responses to either the relevant or control questions. The subject's attention should be directed during the interview that in the background relevant to the specific issue which is of greatest concern. The subject has to be brought about to say to himself or herself "This examiner knows what happened" or "How could he have known about that?" "He must know that I am a liar." This just doesn't "happen," but must be carefully developed and worked at. If this is done properly by effective use of the personal history sheet, the subject will think to himself or herself "I'm going to be caught!" And it will come to pass.

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[1] A word of caution. An examiner should exercise caution to tailor the background questioning in such a manner that is relevant to the issue and so not to raise unnecessary outside (black zone) issues that dampen out the central relevant issue.

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THE IMPACT OF CASE LAW AND PRIVACY LAW ON THE FEDERAL EMPLOYEE LOYALTY-SECURITY PROGRAM

By

Richard Ehlke

The federal loyalty-security program, under which employees and applicants for employment are subjected to loyalty qualifications to insure that their employment poses no danger to national security, began as a systematic program after World War II. Loyalty qualifications (at both the state and federal level) usually took the form of loyalty oaths and background investigation and screening of employees and applicants.[1] This memorandum briefly discusses the charges of critics that the federal program has been rendered ineffective by court decisions and restrictive privacy and information disclosure laws. It is limited to a discussion of case law and statutes that have been cited as having undermined the program. Other factors have also been identified as contributing to the present state of the loyalty-security program. These have been surveyed in the critical literature and are not treated here.[2] Finally, this memorandum focuses on the loyalty aspect of the program. The rubric "loyalty-security" has come to be an umbrella term embracing not only what is traditionally viewed as loyalty but also general employment suitability factors such as competence, criminal history and character deficiencies.

I.

The cases most prominently discussed in the loyalty-security context are those that have enunciated the permissible scope of inquiry into an employment applicant's political beliefs. The test that has emerged is that the government "may not subject a person to a civil disability for mere membership in a particular organization; at most, it may do so for membership in a subversive organization with knowledge of its unlawful purposes and specific intent to further those purposes." Cummings v. Hampton, 485 F.2d 1153, 1154 (9th Cir. 1973); see also, Baird v. State Bar of Arizona, 401 U.S. 1 (1971). Furthermore, "the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." Brandenburg v. Ohio, 395 U.S. 444, 447 (1969). Thus, courts have struck down inquiries into mere membership in assertedly subversive organizations or employment restrictions linked solely to membership without the specific intent to further the illegal aims of the organization. United States v. Robel, 389 U.S. 258 (1967); Keyishian v. Board of Regents, 385 U.S. 589 (1967); Stewart v. Washington, 301 F.Supp. 610 (D.D.C. 1969)(holding 5 U.S.C. 7311's restrictions on federal and D.C. employment based on advocacy and organization membership unconstitutional); Cummings v. Hampton, supra (Veterans

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*The author is a specialist in American public law, American Law Division, the Congressional Research Service, The Library of Congress. This paper was prepared for the Senate Permanent Subcommittee on Investigations on November 2, 1984.

Administration employment questionnaire struck down); Shapiro v. Roudebush, 413 F.Supp. 1177 (D. Mass. 1976)(similar CSC questions invalidated); Ozonoff v. Berzak, No. 83-1850 (1st Cir. Sept. 21, 1984)(loyalty provisions in E.O. 10422 governing employment of Americans in international organizations struck down). The Court in Cole v. Young, 351 U.S. 536 (1956) also invalidated summary suspension and unreviewable termination of federal employees under a system that proscribed mere knowing membership in certain organizations and included advocacy of abstract doctrine as a basis for termination.

Precision of regulation has been demanded in this area touching on protected First Amendment activity. Restrictions on using mere associational membership as a criterion for employability and proscribing advocacy removed from an imminent lawless result have been intended to insure that persons will not be put to the task of restricting their political conduct to that which is unquestionably safe. See, Bagget v. Bullit, 377 U.S. 360 (1964). Thus, vague or overbroad loyalty oaths may not be employed.[3] Broad inquiries into associational ties unrelated to the nature of the membership also may pose constitutional problems.

The line of cases from Cole v. Young to the recent Court of Appeals decision in Ozonoff has, however, recognized that the question of overbreadth of inquiry into the activities of applicants for employment must, in the words of the Ozonoff court, be "measured in light of whatever special job-related security requirements that governmental security or foreign policy needs may reasonably dictate ..." Thus, the Court in Cole struck down the extension of summary suspension and unreviewable termination procedures to employees in nonsensitive positions while at the same time recognizing:

> There is an obvious justificiation for the summary suspension power where the employee occupies a "sensitive" position in which he could cause serious damage to the national security during the delay incident to an investigation and the preparation of charges. Likewise, there is a reasonable basis for the view that an agency head must bear the responsibility for the protection of classified information committed to his custody should have the final say in deciding whether to repose his trust in an employee who has access to such information. 351 U.S. at 546.

Similarly, the Court in United States v. Robel, in striking down a provision that made it unlawful for a member of a Communist-action organization to be employed in any defense facility, noted that the prohibition sweeps all forms of membership and is not limited to sensitive positions in a defense facility. 389 U.S. at 266. Justice Brennan, concurring in the result in Robel seemed to concede that "there may be 'defense facilities' so essential to our national security that Congress could constitutionally exclude all Party members from employment in them." Id. at 272. Finally, the cases invalidating loyalty oaths and associational inqury have involved applicants for nonsensitive positions, a factor noted by the courts. Ozonoff, Stewart, Shapiro, Cummings, supra. See also, Law Students Research Council v. Wadmond, in which the Court upheld inquiry into organizational affiliations as a preliminary to further inquiry into the

nature of the association, noting that "[s]urely a State is constitutionally entitled to make such an inquiry of an applicant for admission to a profession dedicated to the peaceful and reasoned settlement of disputes between men, and between a man and his government." 401 U.S. 154, 166 (1971).

Thus, a balancing test seems to have emerged with a wider leeway possibly being permitted in the investigation of applicants for employment in sensitive positions. The compelling governmental interest in protecting the National security has also been recognized in cases upholding restrictions on employee activities in situations involving intelligence or national security. Snepp v. United States, 444 U.S. 507 (1980)(upholding CIA secrecy agreement); Haig v. Agee, 453 U.S. 280 (1981) (validating revocation of passport of CIA critic); McGehee v. Casey, 718 F.2d 1137 (D.C. Cir. 1983)(upholding CIA classification and censorship program).

II.

The Privacy Act of 1974, 5 U.S.C. 552a, is also cited as contributing to the demise of an effective federal loyalty security program.[4] Critics point to sections (e)(6) and (e)(7) of the Act and the difficulty in protecting confidential sources of information under both the Privacy Act and the Freedom of Information Act (5 U.S.C. 552) as primary impediments.

The Privacy Act imposes requirements on federal agencies with respect to the collection, maintenance and dissemination of personally identifiable records. Subsection (e)(6) of the Act requires an agency to, "prior to disseminating any record about an individual to any person other than an agency ..., make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes." Subsection (e)(5) contains a similar requirement with respect to records used in "making any determination about any individual." Subsection (e)(7) provides that an agency shall "maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity."

Doubtless these and other provisions of the Privacy Act have imposed greater administrative burdens on agencies that collect and maintain background information on employees and applicants for employment. The provisions noted above, however, contain exceptions and have in some cases been interpreted by the courts in such a manner as to diminish their apparent stringency. For instance, the (e)(6) requirement that the record be accurate, relevant, timely and complete, is triggered only if the record is to be disseminated to a non-agency. Furthermore, both (e)(6) and (e)(5) require that the agency make only reasonable efforts to comply.

The (e)(7) prohibition on maintenance of records relating to the First Amendment activities of persons has also been construed to permit various record maintenance practices as being "pertinent to and within the scope of an authorized law enforcement activity." Thus, an investigation with respect to First Amendment activity is permissible under the Act if

it is "relevant to an authorized criminal investigation or to an authorized intelligence or administrative one." Jabara v. Webster, 691 F.2d 272, 279-80 (6th Cir. 1982). An employer's maintenance of records on employee job performance and data designed to prevent employee conflicts of interest have also been held to come within the law enforcement exception to (e)(7). Nagel v. Dept. of HEW, 725 F.2d 1438 (D.C. Cir. 1984); American Federation of Govt. Employees v. Schlesinger, 443 F.Supp. 431, 435 (D.D.C. 1978). Thus, at least in the context of the employer-employee relationship, subsection (e)(7) would seem to permit a wide range of records maintenance by agencies.[5]

There has been relatively little case law on the Privacy Act. The Act contains remedial limitations and numerous exceptions and provisos that make its enforcement by private litigants difficult.[6] Nevertheless, its provisions demand greater vigilance on the part of agencies in collecting, maintaining, and disseminating individually identifiable records.

It is also asserted that both the Privacy Act and the Freedom of Information Act (FOIA) have made sources of information fearful that confidential information supplied to government agencies is not secure. Both Acts on their face permit the withholding of information that could lead to the identification of confidential sources of information. 5 U.S.C. 552(b)(7); 552 a(k)(5). The case law has also uniformly upheld use of these exemptions to protect confidential sources, both individual and institutional sources (such as state and local law enforcement agencies). Despite these safeguards, law enforcement agencies primarily have argued that the mere existence of the disclosure laws and the possibility of human error have created a perception on the part of would-be sources that information confided to the government may not be secure. It is this perception problem that has motivated some of the proposed amendments to the FOIA designed to place beyond the purview of the Act certain classes of records and strengthen existing exemptions in the law. See, S. Rept. 98-221, Freedom of Information Reform Act, 98th Cong., 1st Sess. 22-25 (1983). The very nature of the problem -- flowing as it does not from the actual operation of the law but from perceived dangers in the law -- makes it difficult to ascribe particular problems in an information-gathering program such as a loyalty-security program to specific statutory provisions and recommend concrete remedies short of repeal of the Acts.

The decision in Doe v. United States Civil Service Commission, 483 F.Supp. 539 (S.D.N.Y. 1980) is also cited as damaging the loyalty-security program. There, an applicant (Doe) was denied a White House Fellowship because of derogatory information contained in a CSC background investigation report. The court held that the CSC unconstitutionally deprived Doe of a liberty interest by disclosing the derogatory information to the selecting agency without offering her an opportunity to rebut the charges. Such due process procedures are necessary, in the court's view, when a person is deprived of government employment and the alleged defamatory grounds are disclosed in a manner that forecloses other job opportunities. 483 F.Supp. at 569. The court also indicated that in light of the rebuttal evidence offered by Doe, the CSC, if it refused to delete the derogatory information, must permit Doe to question the sources of the information.[7] The court faulted the agency for not investigating the validity

of the derogatory information despite substantial contrary evidence and not providing Doe an opportunity for rebuttal before placing the information in her file and disclosing it to another agency.

The precise deleterious impact, if any, on CSC procedures (and the ability to operate an effective loyalty-security program) posed by Doe is not entirely clear. The procedures of notice and hearing mandated by the court were apparently those normally followed by CSC in competitive service background investigations; they were not followed in this case of a non-competitive service position. See, 483 F.Supp. at 573. The agency also modified its procedures as a result of Doe.[8] Furthermore, the Doe case itself was settled before revelation of the confidential sources became necessary and it has not appeared to spawn similar holdings. While the case holds out the possibility of compelled disclosure of confidential sources under some circumstances, the court itself noted that the cases would be "relatively infrequent ..., where, because an allegation impugns a candidate's character so severely as to foreclose future employment opportunities, due process requires notice and a chance to be heard." 483 F.Supp. at 573 n. 30. As with the Privacy Act and the FOIA, however, the perception of the problem posed by cases such as Doe may be more severe than any actual impact of the case itself.

III.

The foregoing has been an overview of critics' charges regarding the impact of certain cases and statutes on the federal loyalty-security program. While the cases and privacy laws have necessitated refinements in the collection and maintenance of information on individuals and have likely increased administrative burdens, there seems to be agreement that they alone have not caused what is seen as the demise of the loyalty-security program nor can they be pointed to as making impossible a program geared to the legitimate needs of national security.[9] Other factors such as public aversion to certain information collection activities, the professionalism of those conducting background investigations and budgetary restraints have played a large role in the present state of the loyalty-security program.[10] There is no doubt that judicial decisions and privacy legislation have made it more difficult to amass and disseminate data on the beliefs, associations and activities of individuals. Whether such data is necessary for an effective loyalty-security program and whether the current state of the program is an ineluctable result of such developments are issues that can be addressed in conjunction with an examination of the merits of the present state of case and statutory law.

Footnotes

[1] See generally, Dwoskin, The Rights of the Public Employee 165-213 (1978); Emerson, Haber, Dorsen, Political and Civil Rights in the United States, vol. 1, 202 (1976).

[2] For discussion of the cases and statutes that have had an impact on the program as well as other factors affecting the program see, Lewy, The Federal Loyalty-Security Program -- The Need for Reform (American Enterprise Institute, 1983); Martin, The Erosion of the Federal Employee Security Program: A Critique, printed in Hearing on Government Files:

Retention or Destruction Before a Subcommittee of Senate Judiciary Comm., 97th Cong., 1st Sess. 49 (1981); Committee Print, The Erosion of Law Enforcement Intelligence and Its Impact on the Public Security, Senate Judiciary Comm., 95 Cong., 2d Sess. 124 (1978). See also, Hearing on Federal Personnel Security Background Investigations Before a Subcomm. of House Post Office and Civil Service Comm., 96th Cong., 2d Sess. (1980).

[3] The Court has upheld a loyalty oath for public employment in which the oath taker swears to uphold and defend the Constitution and oppose the overthrow of the government by illegal means. Cole v. Richardson, 405 U.S. 676 (1972).

[4] See, Lewy, supra note 2 at 48-57; Martin, supra note 2 at 85.

[5] The decision in Gang v. Civil Service Commission (1977), has been cited as representing the consequences that attach to agency maintenance of First Amendment records. See Lewy, supra note 2 at 33-4; Letter from Alan Campbell, CSC Chairman, to Senator Thurmond, reprinted in Hearings on the Erosion of Law Enforcement Intelligence and Its Impact on the Public Security Before a Subcomm. of the Senate Judiciary Comm. 95th Cong., 1st Sess. 232-3. The unreported case is reprinted at id., 233-6. However, later case law on (e)(7), supra, would seem to cast doubt on the Gang court's interpretation of that provision as prohibiting the maintenance of the type of employee security investigatory material at issue in the case. Of course, the relevance and timeliness of the data in Gang was also at issue thereby implicating other provisions of the Act in addition to (e)(7).

[6] See, Litigation Trends Under the Privacy Act, reprinted in Hearings on Oversight of the Privacy Act Before a Subcomm. of House Government Operations Comm., 98th Cong., 1st Sess. 437 (1983).

[7] The court did hold, however, that Doe could not obtain the names of the sources under the Privacy Act, citing 5 U.S.C. 552a(k)(5). 483 F.Supp. at 576.

[8] See, Hearing on Government Files: Retention or Destruction Before a Subcomm. of Senate Judiciary Comm., 97th Cong., 1st Sess. 441 (1981).

[9] See, Lewy, supra note 2 at 42; 81-2; Committee Print, The Erosion of Law Enforcement Intelligence and Its Impact on the Public Safety, supra note 2 at 131.

[10] Lewy, supra note 2 at chap. 5, 6; Martin, supra note 2 at 98, 124.

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STATEMENT OF L. BRITT SNIDER
PRINCIPAL DIRECTOR, COUNTERINTELLIGENCE AND SECURITY POLICY
OFFICE OF THE SECRETARY OF DEFENSE
DEPARTMENT OF DEFENSE
BEFORE
THE SUBCOMMITTEE ON MANPOWER AND PERSONNEL
COMMITTEE ON ARMED SERVICES
U.S. SENATE

June 26, 1985

Mr. Chairman, it is a pleasure to appear before this Subcommittee this afternoon. I have been asked to describe the programs the Defense Department has ongoing to prevent and detect hostile intelligence activities undertaken against our employees and contractors, and to comment upon the provisions of S. 1301, now pending before the Subcommittee.

Accompanying me are Mr. Jack Donnelly, who is Director for Counterintelligence and Investigative Programs, and Mr. Maynard Anderson, who is Director for Security Plans and Programs, both of our office. By way of introduction, we all work for the Under Secretary of Defense for Policy within the Office of the Secretary of Defense, who has overall policy responsibility for the Department's counterintelligence and security programs.

Let me begin by describing in quantitative terms the enormity of the security problem faced by the Department. As of the first of April, we had a total of 4.3 million persons cleared for some form of access to classified information. Of these, 2.9 million were civilian or military employees of the Department, and 1.4 million were employees of the more than 14,000 defense contractors with some form of security clearance, while by far most of these cleared persons are physically within the United States, DoD has some form of official presence within 120 countries around the world.

Last year these cleared personnel created and handled an estimated 16 million classified documents, of varying degrees of sensitivity.

DoD personnel, installations, and contractors have long been targets of espionage efforts as well as other types of technical collection efforts undertaken by our adversaries. For the most part, our people and our contractors are rather easily identified by hostile intelligence both in terms of where they work and the sorts of activities in which they are likely to be engaged. We receive in the neighborhood of 6500 reports annually of possible contacts of hostile intelligence services with DoD personnel. All, I might add, are reviewed and investigated as appropriate.

Unfortunately, we must also recognize that not all espionage is instigated by the other side. We have occasional instances where Defense Department employees and contractors initiate the contacts themselves, offering to sell classified information to which they have access. When weighed against the vast numbers of cleared people, however, the number who agree to participate in, or initiate, espionage activities is

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infinitesimally small. But it is equally true that one person with the right access may be capable of compromising military systems that cost the U.S. literally millions, if not billions, of dollars to develop and produce. This may lead to actions to counter the latest U.S. military hardware or the latest U.S. strategy. And so, from our standpoint, even one case is too many.

So, what do we do to prevent and detect these efforts? There are defense directives and regulations which address this subject that would literally reach from the floor to the ceiling of this hearing room. They cover virtually every aspect one can imagine to protect classified information from unauthorized disclosure. Without attempting to describe them in detail, let me identify conceptually the sorts of programs encompassed here.

First, there are policies governing the classification of information in the interests of national security. These are set forth in Executive Order 12356 which applies to all departments and agencies of the Executive Branch, as well as its contractors. Flowing from this basic document are rules which apply to the marking, handling, reproduction, accountability, transmission, storage, and destruction of such information. These policies encompass not only requirements to lock classified information in safes, as one might expect, they also cover such things as the kinds of telephones that one might use to discuss classified information; how electronic equipment processing classified information must be shielded to prevent emanations leaving the area; what methods are acceptable for destroying classified information; how information to be released to the public must be screened for classified information; whose permission must you have before you can classify or reproduce a classified document; what you have to do before you can share classified information with an allied government; when you have to have areas swept electronically to determine the presence of listening devices. In short, virtually every circumstance one can think of, in terms of precluding the possible exposure of classified information to unauthorized persons, is treated in the regulations of the Department.

The second major area of policy--apart from how classified information is identified and physically protected--governs who shall have access to it. In general, access can be granted to someone whom the Department has determined to be trustworthy and has a security clearance, and who has a "need-to-know" information classified at a particular level in connection with his employment with DoD, or his performance on a DoD contract.

A clearance is normally requested by the employing office of a DoD component, or by a cleared defense contractor, who must certify that the individual involved has a need to access classified information at the level of the clearance being requested. The request for investigation goes to the Defense Investigative Service, whose 1555 investigators carry out all background checks for the Department of Defense.

The checks performed in a particular case depend upon the level of clearance requested. In general, persons receiving a top secret clearance, and those requiring special intelligence accesses are subjected to a full field investigation, while secret and confidential clearances are

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based upon a so-called "national agency check", which amounts to a check of pertinent federal agency files, including the FBI, for indications of derogatory information concerning the subject.

Once the field investigation or national agency check has been completed, the results are provided to the requesting DoD component, or in the case of defense contractors, the Defense Industrial Security Clearance Office, for a decision whether a clearance should be issued the individual.

The process does not end there, however. Since 1983, comprehensive reinvestigations are being done for those with top secret and special intelligence accesses. For the last two years, DIS has done roughly 40,000 of these. Supervisors of cleared employees both in DoD and in industry also have a continuing responsibility to identify and report facts that become known to them concerning their cleared employees which may have security significance. All such reports are investigated by DIS or the military services, as may be appropriate.

There are also requirements in DoD and in defense industry for periodic security awareness briefings, when cleared employees are advised of the threat posed by hostile intelligence collection and what to do should they be contacted. Approximately 1.3 million persons were reached by such briefings last year. They were supplemented in defense industry by FBI briefings, as well.

In addition to these measures which have general applicability to all classified programs, we also have rules that apply to especially sensitive classified information protected within so-called "special access programs." Executive Order 12356 authorizes the Secretary of Defense and the Secretaries of the Military Departments to create special security compartments to protect unusually sensitive classified information. At a minimum, only persons who have been specifically designated for the particular information are eligible for access. In essence, the special access program is a way of institutionalizing the "need-to-know" principle. Additional security measures not otherwise required with respect to "normal" classified information are typically required, tailored to meet the particular needs of the program in question.

I should also mention with respect to these special access programs that DoD is currently implementing a test program utilizing a limited polygraph examination as a condition of access to such programs. As you know, Congress authorized DoD to conduct such a test of the polygraph--limited to 3500 persons--as part of last year's Defense Authorization Act. This test was extended in the FY 86 authorization bill, passed by the Senate, to the end of FY 86.

The third major area of policy deals with enforcement of the rules. I have already mentioned the fact that the system itself has a built-in self-policing aspect. All supervisors of cleared personnel are charged with the responsibility for identifying and reporting information of security significance concerning their employees. Security violations also may be reported on an anonymous basis over the Dod hotline, established and operated by the DoD Inspector General. Reports made in accordance

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with both procedures are investigated by the Defense Investigative Service, or the military services as may be appropriate.

There are also a voluminous number of security inspections which periodically occur. 26,000 were done within DoD in 1984. In addition, all defense contractors who hold security clearances are periodically inspected by the Defense Investigative Service to determine compliance with DoD policy.

With respect to detecting actual instances of espionage, each of the military departments has a counterintelligence investigative agency responsible for their particular branch of service. In the Army, the responsibility rests with the Army Intelligence and Security Command; in Navy, with the Naval Investigative Service; and in the Air Force, with the Air Force Office of Special Investigations. Each of these agencies conducts counterintelligence investigations and operations designed to detect spies within their ranks. In the United States, all of these activities are undertaken jointly with the FBI. Overseas, they are coordinated with the CIA. The Subcommittee should also recognize that our investigative jurisdiction in these matters is limited to military personnel. The FBI has primary investigative jurisdiction over all Defense Department civilian personnel and contractors, and they coordinate such activities with my office.

Finally, we receive critical support from the FBI, and, occasionally from other agencies, in terms of identifying DoD personnel who may be involved in espionage. It is very much a cooperative effort.

Unfortunately, despite all of this, we have people who decide to commit espionage and manage to escape detection for some period of time. What can be done to prevent this?

Secretary Weinberger recently established a Senior DoD Commission, to be chaired by recently retired Deputy Under Secretary of Defense for Policy, General Richard G. Stilwell, to examine what might be learned from the Walker Case and develop recommendations for the Secretary.

There are obviously things that might be done to reduce the exposure of classified information in general. Reducing the number of people with clearances, as the Secretary has already directed, is one such action and we are pursuing the goal of further reductions. Obviously the object is to accomplish the Defense mission with as few cleared people as necessary.

Bringing a greater degree of discipline to the classification system is another. We are now developing new procedures to reduce the numbers of classified documents being created - particularly in the higher classification categories - and in return accomplish better protection.

We are also looking at ways to improve the investigations done on those who require clearances, including, as I mentioned, how the polygraph should be used to supplement such investigations. The Department is now urging Congress to provide statutory authority for our investigators doing background investigations, to obtain criminal history data from state and

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local jurisdictions where such access is presently denied them.

There is also more that can be done to improve the odds that espionage will be detected. An increased awareness on the part of supervisors and fellow employees to indicators of espionage would, in my view, produce particular dividends. Perhaps, if nothing else, the Walker Case and what we know of it to date, will demonstrate to our employees that no office or no activity is immune from this threat.

The resources devoted to the counterintelligence efforts of the government also clearly impact the problem. These resources have increased substantially in recent years, and at the same time we have been catching more people who are involved, or attempting to become involved. In espionage, still, the assignment of the U.S. counterintelligence community to keep track of the activities of known or suspected intelligence operatives within the U.S. is a formidable one. Not only are resources important in this regard, but the legal confines in which hostile intelligence agents must carry out their activities within the U.S. are an equally important part of the equation. That environment, fortunately, became more restrictive in recent years, and several proposals are currently pending in Congress to limit the capabilities of hostile intelligence within the United States still further.

Which brings me to S. 1301, itself a proposal to improve DoD counterintelligence capabilities. Mr. Cox has covered the provisions of the bill relating to new penalties for espionage under the Uniform Code of Military Justice; I will confine my comments to the other provisions.

I can quickly dispense with sections three and four of the bill, which require the Secretary to submit reports within 180 days to the Congress regarding (1) the capabilities of the military departments and the Office of the Secretary of Defense to conduct counterintelligence operations; and (2) his plans for reducing the numbers of security clearances within the Department. We have no objections to these requirements.

Section six of the bill does raise the issue, however, of how broadly the polygraph will be used in determining the access of DoD employees and contractors to classified information. Subsection (A) would mandate a limited polygraph examination as a condition of obtaining access to sensitive compartmented information, (which is a euphemism for information revealing intelligence sources and methods), and require such examinations to be given "aperiodically" thereafter. Subsection (B) would provide the Secretary with discretionary authority to require limited polygraph examinations as a condition of access to other categories of classified information, and to utilize such examinations aperiodically thereafter to determine continued access.

If these two subsections of the bill were adopted, they would appear to mark a change of course over what this Committee and the Congress had previously authorized. Without recounting the two years of discussions that went into working out a concensus on the issue, let me simply remind the Subcommittee that in the FY 85 DoD Authorization Act, this Committee inserted a provision that authorized the Department to undertake a test program utilizing a limited counterintelligence polygraph examination for

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persons who required access to highly classified information protected within so-called special access programs. The test was initially to have run through September of this year, and would be limited to 3500 persons. At the end of the test, we were to report the results and decide the shape of any future program. Several weeks ago, this Committee voted to extend the test program at the same 3500 level through to September 1986. This extension was agreed to by the Department, and it was included in the bill which recently passed the Senate.

All of this came before the Walker Case, however, and there have been a great many people, both inside the Department and outside the Department, urging that we should make greater use of the polygraph in our security programs.

And so, the issues posed by S. 1301 are whether the test program approach be modified, and if so, how?

On the first issue, we must defer to the Committee. The Department accepted the Committee's proposal for such a test program, and we are prepared to see it through. If, on the other hand, the Congress now wants us to conduct additional examinations covering additional categories of cleared personnel, or, at the conclusion of the test, begin implementing such a program, we are prepared to adopt this course.

As a practical matter, whatever course is taken, the number of polygraph examinations that are administered before the end of FY 1986 are not likely to exceed 3500. We simply do not have enough trained polygraph operators and polygraph instruments to implement such a program on a more expanded scale at this time. Moreover, our capability to train and equip such operators is at this juncture relatively limited. Our training facilities must be considerably expanded and our inventory of polygraph instruments considerably increased before any large-scale use of polygraph examinations will be feasible.

If the committee decides that DoD should be authorized now, or at the conclusion of the test program, to implement a polygraph program on a broader scale, then it should also consider whether the "broader scale" set forth in S. 1301 is the best alternative. As you recall, S. 1301 would require mandatory polygraphs for SCI access, and permit the Secretary discretionary authority to use such examinations as a condition of access to other types of classified information. Our problem with this formulation is that since there are over 100,000 people in Defense with SCI access, and polygraph examinations would be required by law for such persons, it would take us several years, given our limited number of trained operators, before we could consider using the polygraph in other programs of equal, if not greater, sensitivity. We would, therefore, prefer a greater degree of discretion in terms of how limited polygraphs will be employed.

As an alternative, as to how we should proceed from here we would suggest you consider the following approach:

1. DoD would continue to implement and complete the already authorized test program, and report its results to the Congress as directed;

2. DoD would expand its training facilities and equipment in FY 86 necessary for a continuation of the program after FY 86;

3. At the end of the test program, DoD, in consultation with the Committee, would adjust its program for the future based upon its experience with the 3500-person test, and the recommendations of the Stilwell Commission;

4. At the conclusion of the test, however, the Committee would permit the Secretary to develop and operate the program from that point in the manner in which he determined provided the greatest degree of deterrence and protection, given the number of trained operators then available. This would be done with whatever degree of Committee involvement you wished to have, but we would not be tied to a statutory requirement to polygraph large numbers of persons within specific categories, at particular times, such as set forth in S. 1301;

5. Close and continuing Congressional oversight would be involved in monitoring the program as it develops over time.

I believe this approach offers many advantages without upsetting what has already been carefully worked out. In particular, it would mean there are the necessary resources available to implement the program at the time the test has run. It would also leave the Secretary in a position to apply such resources where he felt they would do the most good. And, it would allow us to factor in both the test experience and the recommendations of the Stilwell Commission, into any future program.

In conclusion, let me say we appreciate the concerns of this Subcommittee that we do all within our power to prevent and detect espionage undertaken against the Department and the United States. Obviously we share those concerns. We also appreciate the desire of Senator Gramm and others in Congress who want to give the Secretary what he needs to do this job. The polygraph is one technique which clearly merits use within the overall program. There is, however, no panacea, whatever we may do there will be other cases--perhaps not as many, perhaps not as serious, hopefully not as drawn out. It is the challenge for all of us involved in this area to minimize their occurrence within the limits of our resources and consistent with the values and principles of a free society.

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