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S. HRG. 100-185

TO POLYGRAPHS IN THE WORKPLACE :v

HEARING

BEFORE THE

U.S. Congress. ~~Senate~~ COMMITTEE ON
LABOR AND HUMAN RESOURCES .
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

REVIEWING THE USE AND ABUSE OF POLYGRAPH TESTING IN THE
WORKPLACE

JUNE 19, 1987 . J



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POLYGRAPHS IN THE WORKPLACE

FRIDAY, JUNE 19, 1987

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, DC.

The Committee met, pursuant to notice, at 10:15 a.m., in room SD-430, Dirksen Senate Office Building, Senator Edward M. Kennedy (Chairman of the Committee) presiding.

Present: Senators Kennedy, Thurmond, and Humphrey.

OPENING STATEMENT OF SENATOR KENNEDY

The CHAIRMAN. The hearing will come to order with some television footage from WDBM, Channel 9 in Washington, NBC TV; WCAU TV, Channel 10 in Philadelphia; and "60 Minutes" of CBS. I think the video clip speaks volumes about the problem we are facing in the workplace today.

The use and abuse of the so-called lie detectors has reached truly alarming proportions. Experts project that over 2 million of these tests are administered annually. The vast majority of these tests are not being administered to criminals, or even spies. The vast bulk of the polygraph testing today is being done by private employers testing ordinary workers.

This testing is being conducted despite the overwhelming consensus in the scientific community that there is no physiological response indicative either of truth or deception.

We have known this for some time. A House Government Affairs Subcommittee found over 20 years ago:

There is no lie detector, neither machine or human. People have been deceived by a myth that a metal box in the hands of an investigator can detect truth from deception.

In 1983 the Office of Technology Assessment concluded:

While there is some evidence for the validity of polygraph testing as an adjunct to criminal investigations, there is very little research or scientific evidence to establish polygraph test validity in screening situations, whether they be preemployment, preclearance, periodic or aperiodic, random or dragnet.

Last year the House passed Congressman Pat Williams' Polygraph Prohibition Act by a convincing margin. The Senate Labor Committee reported out similar legislation introduced by Senator Hatch and myself by an 11-5 bipartisan vote.

Time ran out last year on us in the Senate, but it will not slip by this year. Legislation protecting the millions of Americans subjected to what the late Sam Ervin referred to as the "twentieth century witch craft" is necessary now more than ever.

Today we will hear from both proponents and opponents of polygraphs, from the users, the practitioners, law enforcement, employee representatives, and the scientific community. Hopefully the testimony we hear today, coupled with the hearing on this issue last year, will guide the Committee as we craft a legislative solution to this national employment disgrace.

We will move ahead now with the video presentation.

[Video presentation.]

The CHAIRMAN. We are delighted to welcome to our hearing this morning our first panel, the distinguished Attorney General from New York, Bob Abrams; Mr. Ernest DuBester of the AFL-CIO, and Dr. John Beary on behalf of the American Medical Association. Welcome, gentlemen.

I want to say, it is a special pleasure to see the Attorney General, Bob Abrams, who I have had the great pleasure of knowing for a number of years and working on a number of different matters as a member of the Judiciary Committee. We know of his very distinguished service as the Attorney General of New York.

We are glad to have you back. We know how active you have been on this issue and we look forward to your testimony. We will start with you, Attorney General Abrams.

STATEMENTS OF ROBERT ABRAMS, ATTORNEY GENERAL, STATE OF NEW YORK; ERNEST DUBESTER, AFL-CIO, WASHINGTON, DC; AND DR. JOHN S. BEARY III, AMERICAN MEDICAL ASSOCIATION, WASHINGTON, DC

Mr. ABRAMS. Thank you very much, Senator Kennedy. I am delighted to receive your invitation to be here today. Accompanying me is Assistant Attorney General Jane Laver Barker, who is the person in charge of our Labor Bureau that has been supervising a lot of the reports and investigations that we have had on this issue.

To testify today about the need for Federal legislation banning employers from using lie detector tests to screen job applicants and to interrogate employees is an important responsibility of mine and I thank you, Senator Kennedy, and the members of your Committee for allowing me and my fellow panelists to focus on this very important issue.

Almost two million American employees are subjected to polygraph testing each year as a condition of employment. The jobs and the reputations of these people thus rest on the use of a device which I and many others believe is little better than tea leaf reading or crystal ball gazing. The list of authorities condemning the polygraph as unreliable and inaccurate is daunting.

The Federal Office of Technology Assessment in a comprehensive study issued three and a half years ago, which you made reference to in your own opening statement, found no evidence to establish the scientific validity of polygraphs when used for personnel screening. The American Medical Association has condemned as unscientific the use of the polygraph test in the employment setting.

The Defense Department's top physician has recommended against its use for defense employees. Federal courts have disapproved of the use of polygraph test results in criminal cases be-

cause the device lacks scientific credibility. The Office of Technology Assessment found that even in the narrowest and most focused type of inquiry a criminal investigation of a specific incident, polygraph tests incorrectly label as liars an average of 19 percent of truthful people.

The error rate is far greater when the polygraph is used for personnel screening. However, even when using the conservative 19 percent estimate of the nearly 2 million employees and the applicants for employment tested last year, we therefore have a minimum of 400,000 honest people who were unfairly branded as liars and will have had their lives scarred.

These mistakes occur because the machine does not and cannot actually distinguish true statements from false ones. A polygraph merely charts changes in a person's breathing, perspiration and blood pressure as he or she responds to various questions. Since the interpretation of these charts by the polygraph operator is, of necessity, a subjective process, the operator's prejudices, moods and feelings can strongly influence and even determine the outcome of the test.

For example, we have received complaints about a polygraph operator who consistently fails a much higher percentage of black subjects than white subjects.

Now, whether a person passes or fails the test also often depends on the state of his or her health. People with breathing or heart problems can show false reactions to questions and then fail the test. In one case a long-time department store employee in my own native city of New York who had a speech and breathing problem was told by his doctor that his disability would render polygraph measurements meaningless. Although the polygraph examiner was informed of the doctor's opinion, the employee was forced to take the test. He failed it and was fired despite an excellent employment record.

Not only are so-called lie detectors shockingly inaccurate, their use constitutes one of the most significant threats to the fundamental right of privacy that we as Americans enjoy. President Carter's privacy protection study of 1977 concluded that the polygraph is an unreasonable invasion of the personal privacy that should be proscribed. Those who take the test suffer the indignity of being attached to a machine that scrutinizes their bodily functions and are often then asked offensive questions about personal aspects of their lives which are none of their employers' business.

We have had complaints from people who have been interrogated at length about their sexual habits, their religions, their relationships with their spouses and families, their debts, their medical and psychiatric histories, and other highly sensitive topics. Many applicants and employees report that during polygraph examinations they are asked questions about their marital status, arrest records, and medical histories.

Employers may not legally ask these questions, because of State and Federal civil rights and employment discrimination laws, and courts in New York have taken the position that polygraph operators are agents of employers. Yet, many polygraph operators routinely elicit this information from test subjects and then pass it on to employers where it results in precisely the kind of discrimina-

tion against the applicant or employee that these laws were passed in the first place to eliminate.

There are other further abuses associated with polygraph tests. The machine can be used as an instrument of coercion, as in the case reported to my office of the employer who threatened Spanish speaking employees with punishment by the Immigration Service and the police unless they took the test or admitted to acts that they did not in fact commit.

In one notorious case, 11 women were sexually abused and harassed while taking polygraph examinations in connection with jobs in western New York in a convenience store chain. In another case, a 16-year-old girl was hooked up to the machine for two and a half hours in the basement of her workplace, sexually harassed, and finally intimidated into confessing that she stole money from the store where she worked when, in fact, no money was missing at all.

The abuses inherent in this practice are compounded by the refusal of many employers and examiners to tell the employees why they failed the test. In order to protect the pseudo-scientific aura surrounding their occupation, examiners are extremely secretive about the test process and often refuse to disclose the areas in which they claim an employee is lying. Thus employees are powerless to clear their names because they do not know the nature of the accusation against them and they cannot confront their accusers.

Instead, the polygraph is therefore a judge and jury and there is no appeal from its verdict.

For example, two women came to my office who had been fired from a major department store where one had worked for 12½ years and the other for 23 years. They had sterling records. They received many bonuses and merit increases. They were highly regarded by their supervisors. Nevertheless, one day they were called to the personnel office without any prior warning and they were forced to take polygraph tests right on the spot or they were told they would be dismissed.

There had been no thefts in their departments, but they were selected at random to take the polygraph as a control measure. Due to their extreme nervousness and tension under the circumstances, both failed the test and they were fired. These women do not know why they failed, since the store refused to release the report it received and to identify the polygrapher who performed the tests.

Both women are older workers who found it difficult to obtain other employment, particularly since the store shares employee information with other stores and they were fired under a cloud of suspicion, even though there had been no incident or theft.

Being unjustly branded a liar by this gadget is a stigma that clings. It never lets go. It brands you forever. Whenever a person who has failed the test applies for a job, it is likely that he or she will be asked whether or not they ever failed or refused a lie detector test, or to take such a test. Paradoxically, a truthful answer to that question may end any chance that that individual has for employment.

We get many calls from frantic parents whose children failed polygraph exams and were fired from their very first jobs. Even

where the test were given at random and there was no evidence of employee theft, these children may be branded as thieves for the rest of their lives.

Federal legislation, therefore, is needed to stop this abuse. The current State-by-State patchwork of laws and regulations has not only permitted this practice to continue in all too many States, such as my own, but has made it difficult if not impossible for States which seek to prohibit the practice to enforce their laws.

For example, in New Jersey it is a crime for an employer to require an employee to take a lie detector test. But employers evade New Jersey's law by sending employees to New York to be polygraphed. While the New Jersey Attorney General's Office has prosecuted six such cases in the last 2 years, in many more instances the practice continues undetected or is difficult to prove beyond a reasonable doubt.

Employers with operations in both States will hire in New York, supposedly for New York jobs, and then quickly transfer the new employees to a New Jersey office or a New Jersey store.

The Connecticut Attorney General's Office reports similar problems in enforcing Connecticut's polygraph prohibitions. Polygraph testing by employers is an appalling practice which must end. While no one denies that the problem of inventory loss facing American employers, the wholesale use of this device is no solution. It simply gives employers a false sense of security while depriving hundreds of thousands of honest Americans of their livelihoods each year. I call upon you to protect the jobs and reputations of millions of Americans by banning the use of this dangerous and damaging pseudo-technology by employers.

The CHAIRMAN. Thank you very much, Attorney General Abrams. We know you have been active in this field for many, many years so we give special credence to your testimony.

We will continue with the panel and then come back to questions.

Mr. DuBester.

Mr. DuBester. Thank you, Mr. Chairman.

I appreciate the opportunity this morning to present the views of the AFL-CIO on the use of polygraphs. This is one of today's fastest growing vehicles for employee intimidation and discrimination. As you are well aware, Mr. Chairman, Congress has been considering bills on polygraph use going back at least to the 93d Congress.

Unfortunately, absent Congressional action on this subject, the uses and abuses of polygraphs has been increasing alarmingly. In the last 10 years the use of polygraphs has quadrupled four-fold, and as you have acknowledged and Mr. Abrams has acknowledged, the number of polygraph tests administered per year now numbers about 2 million.

The vast majority of those tests, Mr. Chairman, are administered to workers and job applicants by private employers, a number larger than that administered by law enforcement agencies and Government agencies combined.

While polygraphs are degrading and intimidating, the worst feature about them, of course, is that they just do not work. Even supporters of polygraphs admit that they are wrong at least 10 percent of the time. Giving them the benefit of the doubt, therefore, under

ideal conditions, as Mr. Abrams also has acknowledged, hundreds of thousands of Americans either lose their jobs or are denied employment opportunities not because of their work record but because of inaccurate tests.

These statistics are even more disturbing when you take into consideration the large number of polygraph tests that are administered in the screening context of large numbers of people. Again, Mr. Abrams has referred to the study by the nonpartisan Congressional Office of Technology Assessment, which has indicated that polygraph use is particularly inaccurate when polygraphs are used for screening purposes.

Even the FBI does not believe that large-scale screening is an appropriate use of the polygraph test and they have regulations restricting the use of polygraphs for the screening of large numbers of suspects.

You may recall last year, Mr. Chairman, that even polygraph advocates such as F. Lee Bailey acknowledged that polygraphs were never intended to be used for preemployment screening. The shot-gun-type questions that are asked during a typical preemployment polygraph examination provoke responses that are beyond the polygraph examiners ability to interpret.

But regardless of how one judges the merits of polygraphs as an employment tool, one factor is clear, and that is coercion, whether explicit or implied, is always a factor. Polygraphs may not be able to distinguish truth from lies, but they certainly scare and intimidate people. As one polygrapher characterized them, they are the best confession getters since the cattle prod. Employees and job applicants know that the refusal to volunteer for a test can cost them their jobs.

One major reason we are told by proponents of polygraphs and many employers that we should accept these abuses is to control internal theft, which is, obviously, a serious and legitimate concern. But unfortunately, Mr. Chairman, there is little reliable data that the use of polygraphs can decrease theft. The Office of Technology Assessment, again, indicates that there does not appear to be any formal cost-benefit analysis which shows that the use of polygraphs reduces employee crime.

What is clear, however, is that profitable businesses can be run without resorting to polygraphs. Many of the largest successful companies do. In 21 States, including your State of Massachusetts, Mr. Chairman, which already ban or restrict polygraph use there is no comparative data to indicate that employers are unable to run profitable businesses in those States.

In addition, I would refer you to a 1982 study commissioned by the U.S. Department of Justice's National Institute of Justice which concluded that assessing previous theft activity outside of the working place through the use of polygraphs has little relevance to future workplace behavior. However, checking on one's previous pattern of employment history and dedication to former employers are probably better indicators.

I would add, Mr. Chairman, that that study also noted that corporate kickbacks, embezzlement and securities fraud, and insurance fraud cost businesses three times more than employee theft. And shoplifting also represents more than half of the losses attrib-

utable to employee theft. Now, I daresay that there is not much use of the polygraph in corporate board rooms, nor of customers.

I might add that I would not be suggesting that such uses be made. This is a serious problem, but I think the best solution is to have employers and workers combat the problem together and I think the best tool that employers could use are good and effective employment practices, and I would submit that polygraph testing, Mr. Chairman, is not a good nor proper employment practice by any definition.

The second major argument we hear from proponents of the polygraph use is that this is a matter that is best left to the States to address and regulate. As you know, over 40 States and the District of Columbia have passed some kind of legislation affecting the use of polygraph machines. But nonetheless, the incidence and abuses of testing are escalating and increasing. As Mr. Abrams noted, the results of State efforts are a confusing patchwork of easily evaded restrictions, prohibitions, regulations and other licensing requirements.

Again, as Mr. Abrams illustrated, many employers can simply skirt even the best of State laws by sending employees and job applicants to take tests in neighboring States with no restrictions. So it is clear, Mr. Chairman, States are not protecting workers and job seekers from the dangers of abusive and inaccurate lie detector testing, and jobs are too important in today's economy and often times too scarce to allow an inaccurate machine to dictate the employment fate of hundreds of thousands of Americans.

The time is long overdue for Congress to prohibit these inaccurate and intrusive machines in the workplace. Only when that is done will workers regain the dignity and self respect they deserve. So I would join with Mr. Abrams, Mr. Chairman, in urging you and this Committee to move expeditiously in reporting out a bill on polygraph use and moving on to the Senate Floor.

Again, I thank you for this opportunity.

[The prepared statement of Mr. DuBester follows:]

TESTIMONY OF ERNEST DuBESTER, LEGISLATIVE REPRESENTATIVE
AMERICAN FEDERATION OF LABOR & CONGRESS OF INDUSTRIAL ORGANIZATIONS
BEFORE THE COMMITTEE ON LABOR AND HUMAN RESOURCES, U.S. SENATE
ON THE ABUSE OF "LIE DETECTORS" IN EMPLOYMENT

June 19, 1987

Mr. Chairman, I appreciate this opportunity to present the views of the AFL-CIO on the abuse of polygraphs and other so-called "lie detectors" in America's workplaces.

Although the Constitution and the courts protect American citizens from polygraphs in the hands of law enforcement officials, American workers have no Federal protection whatsoever from "lie detectors" in the hands of private employers. As a result, employers administer over two million polygraph examinations every year -- more than all police forces and intelligence agencies combined.

To honest workers who just want to get or keep their jobs, a polygraph test can be frightening and humiliating. Electrodes are attached to the worker's fingers, a blood pressure cuff is wrapped around one arm, and a pneumatic tube is strapped around the chest.

In some cases, a tube may be stretched around the worker's throat to gauge swallowing and voice-muscle tension. Some of the most "sophisticated" polygraphs are connected to chairs wired to detect muscle pressure and body movements. Meanwhile, the polygraph examiner stands behind the chair, with the worker's future, reputation and job in his hands.

Is it any wonder that one examiner called his polygraph "the best confession-getter since the cattle prod"?

Once strapped to a polygraph, workers and job applicants are frequently asked about family problems, levels of job satisfaction, sexual preferences, personal finances, drinking habits, sexual activities, political beliefs, marital relations, and union activities. Polygraphs have also been used to force employees to inform on their fellow workers and to discriminate against some workers on the basis of race and gender. Unfortunately, many workers and job seekers feel compelled to answer all of the polygrapher's questions, because they know that refusal to answer (or refusal to submit to the examination at all) can mean the loss of a job.

"Lie detector" tests are frightening and degrading. But worst of all, they don't work! The Congressional Office of Technology Assessment, the American Psychological Association, the American Medical Association and all objective investigators of polygraph validity agree: "Lie detectors" cannot detect lies. And the result is lost jobs for hundreds of thousands of honest workers and job applicants.

Even proponents of "lie detector" testing admit that test results can be wrong at least 10 percent of the time. Since more than two million "lie detector" tests are administered in the workplace every year, that means even under ideal conditions at least 200,000 Americans may have their employment opportunities terminated, curtailed or blocked -- not because of their work records, but rather because employers rely on inaccurate "lie detector" tests.

Employers use polygraphs extensively to screen job applicants and to screen large numbers of employees during investigations of suspected theft. Roughly three-quarters of the polygraph tests administered by private employers are preemployment screening tests.

The polygraph is inaccurate under ideal conditions. But it is a farce when used in preemployment screening. The Congressional Office of Technology Assessment concluded in a report published in 1983 that "there is very little research or scientific evidence to establish polygraph test validity in large-scale screening . . . situations, whether they be preemployment, preclearance, periodic or aperiodic, random or 'dragnet.'"

Even the F.B.I., which uses polygraphs to investigate crimes, does not believe large scale screening is an appropriate use of the polygraph. Such use is prohibited by internal F.B.I. regulations.

Polygraphers themselves often admit that the polygraph was never intended to be used for preemployment screening. F. Lee Bailey, a long-time polygraph advocate, was asked by this Committee last year if the typical preemployment polygraph exam, which often lasts no more than fifteen minutes, satisfies the requirements of a proper polygraph exam. He replied that these exams are not polygraph tests, that to call them such is a misnomer, and that the questions in these tests tend to be shotgun and provoke responses which are beyond the polygraph examiner's ability to interpret.

To make matters worse for job applicants, commercial polygraphers have a financial incentive to "fail" honest people: the more job applicants a polygrapher "fails," the more tests he has to give -- and the more money he makes.

Unfortunately, to many employers, the accuracy of the polygraph is not important. What is important is the machine's ability to intimidate and coerce. We have heard of employers who tell polygraphers that if their employees do not come out of the examination room in tears, the polygrapher has not done his job.

"Lie detectors" may not be able to distinguish truth from lies, but they do scare people. Polygraphers report that 90 percent of the information obtained from a "lie detector" interrogation is obtained before the examinee is even hooked up, because examinees are so afraid of the polygraph machine!

All of this is justified, employers tell us, because they have no other way to control internal theft. The Committee has probably heard, and may hear again, astronomical estimates of the losses caused by internal theft. These estimates vary widely, and seem to depend more on the motives of the estimators than on any objective collection and analysis of credible data.

In fact, a study conducted for the Justice Department by the National Institute of Justice in 1982 found that "Despite the fact that employee theft is generally viewed as a problem of significant consequence, little reliable data exist regarding the phenomenon. The economic impact figures . . . seldom go beyond the level of alarmist rhetoric."

The same study went on to break down the nature of business losses. The study estimated that securities fraud, corporate kickbacks, embezzlement, and insurance fraud cost business three times more than employee pilferage. Shoplifting costs business more than half the losses attributable to employee theft.

Needless to say, you do not find many polygraph examinations being conducted in corporate boardrooms. Nor do you find many companies polygraphing their customers. We certainly would not support polygraphing in these instances either! Yet if business losses justify polygraphing workers, they would certainly justify strapping corporate executives, directors, and customers to these machines.

I do not mean to trivialize the seriousness of loss problems facing the business community. Internal theft is a problem. Theft by those within an organization can hurt, even cripple a business. Internal theft cheats honest workers out of the fruits of their labors, and must be combatted by workers and management together, with all reasonable means. But polygraphing workers is neither the proper nor the best way for employers to reduce internal losses.

There are effective ways to protect company assets and make personnel decisions without subjecting workers to intrusive, intimidating and inaccurate "lie detector" tests. Employers can protect company assets through a variety of means, including:

- good recordkeeping;
- attractive employee discounts for company products;
- a healthy organizational climate;
- loss prevention systems that protect assets without abusing employees;
- good management; and
- senior management that is honest in its dealings with both employees and customers.

Likewise, employers can make effective employment decisions with careful interviewing procedures, clearly stated job requirements, and testing for specific job skills and talents. Polygraphs are not necessary. They are simply convenient.

In an article published by Arthur Young and the National Mass Retailing Institute, David J. Cherrington and J. Owen Cherrington of Brigham Young University recommend several common-sense and non-abusive steps to combat internal theft, such as:

- developing a code of ethics;
- involving employees in group discussions regarding ethical conduct;
- reviewing company policies and practices to identify unethical procedures;
- carefully designing a system of internal accounting controls; and
- developing a discipline and grievance system that provides "due process."

The National Institute of Justice study suggests that factors such as fairness in employer-employee relations, ethical behavior by higher management, adequacy of communication, recognition of quality performance, and competence of supervisors may reduce theft among employees.

The study concluded that: "we found that applying the law enforcement model to theft does not work very well. For example, assessing previous theft activity outside the work setting (by using polygraph exams) has little relevance to future workplace behavior. However, checking on one's previous pattern of employment history

and dedication to a former employer are probably much better indicators."

Twenty-two states already either ban "lie detectors" from the workplace completely or forbid employers to require the tests -- yet businesses still operate profitably in those states. And despite requests from the House Subcommittee on Employment Opportunities, industries seeking exemptions from federal polygraph legislation introduced by Representative Pat Williams of Montana have not produced any evidence that internal theft rates are higher in states which forbid "lie detector" tests.

In short, the best way to control internal losses is through good employment practices. We believe polygraph testing is not a good employment practice, by any definition.

Mr. Chairman, the states have tried and failed to control the abuse of "lie detectors" in the workplace. Over forty states and the District of Columbia have passed legislation affecting the use of these machines. Yet the incidence of testing and reports of abuse continue to rise. In just the past ten years, the number of polygraph tests administered in the workplace has increased fourfold.

The result of state efforts to deal with the epidemic of "lie detector" testing in employment is a confusing and easily evaded patchwork of restrictions, prohibitions, regulations and licensing requirements. Many employers skirt state law by simply sending employees and job applicants to take tests in neighboring states with no "lie detector" restrictions.

"Lie detector" testing is an unscientific and subjective procedure which violates the most fundamental principles of our Constitution: the presumption of innocence, the right of privacy, and the privilege against self incrimination. It is a national scandal which the separate states have been unable to stop.

The harm to honest workers and job applicants from inaccurate and abusive polygraph tests is too severe to allow American workers to continue without effective protection. Incorrect interpretations of polygraph charts can unjustly condemn and stigmatize honest workers for life, rob them of their livelihoods or bar them from just advancement.

The inability of the states to protect workers and job seekers from the dangers of abusive and inaccurate "lie detector" testing shows that national legislation in this area is not only appropriate, but necessary, and long overdue. Mr. Chairman, Congress has a history and duty of establishing basic workplace standards for American workers. I urge the Committee to act expeditiously on this issue, and to proscribe the abuse of "lie detectors" in private sector employment. Thank you.

The CHAIRMAN. Thank you very much.

Dr. Beary, representing the AMA.

Dr. BEARY. Thank you, Mr. Chairman.

I will begin by reporting two facts: Science has not found a cure for the common cold; and science has not found a machine that can accurately detect lies.

I will let the written documents speak for themselves. I will draw your attention to the reprint from the American Family Practice Journal in March 1986 which summarizes the key points, I hope, in a very clear manner.

The CHAIRMAN. We will make that a part of the record.

Dr. BEARY. Yes, and it has been inserted with the AMA testimony this morning. I will make four points.

(1) There is no pinocchio effect. Despite years of looking, decades of looking, there is no body response that is unique to lying.

(2) The polygraph machine itself is basically a blood pressure cuff with a few attachments.

(3) You cannot make decisions based on the polygraph machine. If the theory is unsound and there is no pinocchio effect—and you will not find anybody here today telling you there is, there will not be anybody here next month telling you there is—then I think that is a logical conclusion.

(4) The fourth point which is logical to ask is, if there is no pinocchio effect, why is the polygraph so popular? Why is it in such widespread use? The answer to that is found in that American Family Practice Article as well. It is what I call the "electronic scarecrow" effect, and I think Mr. Abrams brought that out with some of his examples.

You probably have got some of your own. I have had people correspond with me about similar sorts of things. If a scientifically naive subject, a teenager, or others who may not read the newspapers and the journals as much as those in the room do, is hooked up to the machine he may indeed confess something useful. It has nothing to do with whether the polygraph machine is plugged in or not. It is just the fact that it is an electronic scarecrow.

Of course, there is a cost to those confessions from the scarecrow, and that is a human wastage factor from the careers that are destroyed. We have had examples here and we will hear more examples in the future, I am sure. That is more a political issue, while I am speaking only about science. People making policy decisions about using this machine have to decide what amount of human wastage will be tolerated as a tradeoff to the confessions that are gathered.

I will stop at this point and I would be prepared to respond to any questions you may have.

[The prepared statement of Dr. Beary with attachments follow:]

STATEMENT

of the

AMERICAN MEDICAL ASSOCIATION

to the

Committee on Labor and Human Resources
United States Senate

Presented by

John F. Beary III, M.D.

RE: Use of Polygraph Examinations in Employment

June 19, 1987

Mr. Chairman and Members of the Committee:

My name is John F. Beary III, M.D., and I am Assistant Dean for Planning and Development, Georgetown University School of Medicine. With me is David Heidorn of the Association's Department of Federal Legislation.

I am pleased to appear before this Committee to share with you the American Medical Association's concerns about the use of polygraph testing in the employment setting.

Mr. Chairman, the AMA does not support the use of the polygraph for employment purposes in private industry or federal agencies because the polygraph testing and scoring methods currently used in personnel screening have never been shown to be valid tests of truthfulness.

Polygraph testing fails to fulfill scientific principles because it does

Dr. BEARY. Well, it is just thought that national security is a special field by itself and that people who—

Senator THURMOND. Now, it says doctors rely on diagnostic instruments. Should not law enforcement or security officers also have access to diagnostic instruments?

Dr. BEARY. Well, I guess I would answer that by saying that because the pinocchio effect has not been able to be found and that "60 Minutes" tape we saw earlier showed that no camera was stolen, yet three different polygraphers found a crook in each of those investigations, that raises, I think, some questions.

Senator THURMOND. I just have one more question, and thank you very much for your appearance.

Are medical diagnostic techniques infallible and 100 percent reliable?

Dr. BEARY. No, they are not.

Senator THURMOND. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Well, Dr. Beary, we thank you very much. I think you are here to speak to the science of a system which purports to be a medical system. I have my differences with the AMA from time to time on policy questions, but I think with regards to science, their record is an unblemished one. Sometimes we differ in terms of applications of policy and other kinds of issues, but in regards to the science on this, it seems that what the AMA, what the OTA, what the other kinds of science research has demonstrated quite clearly is the same conclusion that you have testified today. So it should not be any surprise.

I want to thank the panel very much. We appreciate your presence. It was good to see you, Bob.

Our next panel is made up of William Scheve, President of the American Polygraph Association, William Zierden of the Circuit City Company on behalf of the U.S. Chamber of Commerce and their polygraph coalition, and Mr. Richard Sullivan of Conrail on behalf of the American Association of Railroads.

Welcome, gentlemen. We will start with Mr. Scheve.

STATEMENTS OF WILLIAM J. SCHEVE, JR., AMERICAN POLYGRAPH ASSOCIATION; WILLIAM ZIERDEN, CIRCUIT CITY STORES, INC., ON BEHALF OF THE CHAMBER OF COMMERCE POLYGRAPH COALITION; AND RICHARD C. SULLIVAN, CONRAIL, VICE PRESIDENT, RESOURCE DEVELOPMENT

Mr. SCHEVE. My name is Bill Scheve and I am President of the American Polygraph Association. I want to thank you on behalf of our organization for the opportunity to present our views on the legislation you are considering.

We understand this Committee's interest in focusing public attention on the potential for the abuse of the polygraph technique. While we share this concern, we do not believe that the solution lies in banning the polygraph in the public sector.

The polygraph has unwittingly been called a "gimmick" and a "gadget" and claims have been made that the polygraph is abusive. It is not the instrument but rather the few unskilled or unethical

examiners who cause isolated instances of polygraph abuse. For a polygraph examination to be valid and reliable, it is essential that the polygraph examiner be highly trained and qualified in using the polygraph technique.

Legislation is needed to establish strict Federal standards for training and proficiency of polygraph examiners. The 99th Congress wisely supported increased polygraph testing through an amendment to the Defense Authorization Bill. It established a temporary testing program for civilian and military personnel who have access to highly classified information. Last month the House considered the 1988 version of the Defense Authorization Bill. Members voted to make the temporary testing program permanent by a margin of 345 to 44.

But the need for polygraph testing to protect valuable information and assets does not end with the Government. The polygraph is also valuable in protecting the customers, employees, inventories and assets of American business and industry. While we believe in the fundamental honesty of Americans, we also believe we must be realistic about protection against deceit. More than half of the crimes that occur in this country go unreported or unsolved. Background checks cannot provide information on a thief, a rapist or a drug pusher who has never been identified or caught.

A recent survey was conducted of more than 1,200 businesses that use polygraph examinations. Employers said that the polygraph provides more information for an accurate assessment of an individual than background or reference checks alone. The experience of a number of law enforcement agencies demonstrates the need to use the polygraph to supplement background checks, psychological tests, interviews and other screening techniques.

For example, the Florida State Police administered polygraph examinations to 2,711 applicants between 1980 and 1985. Sixty percent of them were rejected because of confessions during the examinations about their involvement in criminal activities. Studies have also shown that polygraph examiners for the National Security Agency are twice as effective as skilled investigative interviewers in gaining relevant information from persons seeking classified positions.

Critics say the polygraph should be outlawed in the private sector because it is occasionally fallible. No one claims that the polygraph is infallible, but then few if any investigative or other diagnostic tools are.

Drug tests are not infallible, yet the Senate Commerce Committee by a vote of 19 to 1 has endorsed mandatory drug testing for many employees in the transportation industry. The polygraph serves the same function. These tests give employers information they need to make decisions that protect the public safety and welfare.

Other critics of the polygraph have voiced concern about the 5 percent or so of false positives, referring to individuals who are innocent but appear deceptive on a polygraph test. But the concerns about false positives just do not materialize in actual practice. The Defense Intelligence Agency reports that since 1981 it has tested 13,595 individuals, people in critical intelligence positions with access to secret compartmentalized information. Of this number

only 17 were found to be deceptive, and the majority of them provided significant explanations for their deception.

In addition, the Department of Defense reported that it tested 3,993 people for security breaches in 1985 and 1986—

The CHAIRMAN. Can I just ask you there, why is the rejection rate so much higher, then, among the private testers?

Mr. SCHEVE. I suspect it is not that much higher, Senator Kennedy.

The CHAIRMAN. Well, that completely runs into the face of all the testimony we had. Defense says 0.12 percent, and in 1986 it was 0.3 of 1 percent. You are saying that that is from your organization's routine tests, that that is roughly the same percentage that you are taking?

Mr. SCHEVE. No. Our percentage on the outside would be slightly higher because I do believe the qualifications of the average examiner working for the National Security Agency and the Government is higher than that of the average examiner on the outside. This is one of the reasons why I would like to see legislation requiring higher standards.

The CHAIRMAN. All right. Why do not you proceed.

Mr. SCHEVE. In addition, the Department of Defense reported that it tested 3,993 persons for security breaches in 1985 and 1986 and found only 13 to be deceptive, 8 of whom made admissions of improper disclosures of information.

These studies show that the false positive claims are not the significant problem critics claim. The suggestion has been made that Government examinations should be allowed because of the implication that Government examiners differ from examiners practicing in the private sector.

In many instances this just is not the case. I am one of many examiners who have worked for Federal and State law enforcement agencies as well as for private business and industry. The skills and equipment I use are identical for all my examinations.

The Government itself imposes a heavy security burden on many private business. The Nuclear Regulatory Commission and the Drug Enforcement Administration are just two examples. The NRC requires investigations of all instances of the sale or use of drugs detected on the sites of nuclear power facilities. Power plant operators agree it is impossible to adequately screen workers or to conduct these drug investigations without the use of the polygraph. The DEA endorses the polygraph because it knows that the drug industry needs the polygraph to help protect its inventories, thereby helping to protect the health and even the lives of our citizens.

We believe that the polygraph also serves a function in helping Americans get jobs who otherwise might be disqualified. If the polygraph were removed from the workplace the advantage goes to people who are well-known and have roots in the community. In many cases this could work against Blacks, Hispanics and other minorities. Without the polygraph, jobs are more likely to go to those who have consistent and stable work records and whose backgrounds can more readily be checked. Legislation that works against the underprivileged of our society would be counter to the traditions of this Committee.

The Congress itself relies on the use of polygraph examinations to protect this building and the members and staff who work here. The Capitol Police use the polygraph to screen their applicants and to investigate specific incidents, including suspected drug use. That the Congress itself relies on polygraph is still another testament to its value.

The polygraph is valuable to the business community in helping to combat employee theft and thereby hold down the cost of consumer goods. The Fireman's Fund Insurance Company estimates that one-third of all business failures are caused by employee theft.

Estimates of the cost of economic crime against business, including employee theft, range from \$67 to \$200 billion annually. Further, the National Association of Chain Drug Stores reports that drug store prices have jumped as much as 15 percent because of employee theft.

A number of State courts have held companies liable in matters where customers or other employees were injured or robbed by other employees who were not properly screened. Hotels and motels have been held liable when employees who had access to room keys committed robbery or assaulted guests. Employers must make sure that the people they are hiring are honest and reliable.

Competent polygraph examiners recognize and respect an individual's right to privacy. But we also know that one of the prices we pay for living in a complex society is that we give up some of our privacy for the benefit of society as a whole. We allow ourselves and our luggage to be searched whenever we travel on an airplane, and we must go through a metal detector in order to enter this building.

Regarding public attitudes toward polygraph testing, I would like to cite a recent study by Dr. Frank Horvath of the School of Criminal Justice at Michigan State University. A questionnaire was sent to examinees several months after they took polygraph examinations and they were asked to respond anonymously. The study showed that 70 percent of those who had taken polygraph tests did not find them to be unfair, objectionable or an invasion of their privacy, and about the same number said that they would take the examination again if asked. Of the 30 percent who objected to the exam, the vast majority of them did not meet the employer's standards for employment based upon other criteria.

The approval rates of Dr. Horvath's study mirror almost exactly the results of a recent public attitude poll taken in February of this year by Media General for the Associated Press. The poll showed that two-thirds of all Americans would not object to taking a polygraph examination.

We support the bill H.R. 1536 introduced in the House by Congressman Bill Young of Florida and Buddy Darden of Georgia because we believe it is the most workable polygraph legislation so far presented. It allows continued regulated use of polygraph testing in the private sector and in the public sector. The Young-Darden approach serves the interests of the American people and the needs of American business.

We want to work with this Committee to develop legislation that will ensure the highest standards for polygraph examiners and polygraph testing are instituted and maintained nationwide. What

is needed is a carefully developed body of polygraph law that sets a high standard for all polygraph examinations. We would hope that the Congress would find a way to address the needs of citizens to be protected from the potentials for abuse, but at the same time we believe that Congress should allow business and industry access to an investigative tool they have found so useful.

Federal, State and local governments as well as American businesses have demonstrated through their increasing use and reliance on the polygraph technique that the polygraph technique is needed. It is most often administered in a fair, equitable and non-discriminatory manner, and it works. Responsible legislation is required. Prohibition is not.

Thank you.

[The prepared statement of Mr. Scheve and a response to a question by Senator Kennedy follow:]

William J. Scheve, Jr.

President, American Polygraph Association

Testimony presented to the

Senate Labor and Human Resources Committee

June 19, 1987

My name is William J. Scheve, Jr., and I am president of the American Polygraph Association. I want to thank you on behalf of our organization for the opportunity to present our views on the legislation you are considering.

The APA is a non-profit technical, professional, and educational organization representing thousands of individual and corporate members. The issue you are considering has special urgency for the thousands of employers we serve, for our members and for the polygraph industry.

We understand this committee's interest in focusing public attention on the potential for abuse of the polygraph technique. We share this concern, but we take a different approach to solving the problem. We feel that the answer lies in establishing strict standards for training and proficiency of polygraph examiners and for the accuracy and quality of polygraph examinations. The answer does not lie in banning the use of the polygraph technique in the private or any other sector.

The polygraph has unwittingly been called a "gimmick" and a "gadget" in the course of the public debate on this issue. While we do not use that same terminology, we agree that the polygraph itself is only one of many diagnostic instruments. What is essential to the validity and reliability of a polygraph examination is that the examiner be highly trained and qualified in using the polygraph technique. It is not the polygraph itself that is potentially abusive but the few unskilled or unethical

examiners who cause isolated instances of polygraph abuse.

The American Polygraph Association believes that all polygraph examiners should be required to adhere to strict standards for training, education, and instrumentation. If the Congress were to extend these standards to cover all polygraph examiners, it would address the problem of potential polygraph abuse in a meaningful way.

In my testimony, I would like to address the value of the polygraph technique in both the public and private sectors. Then I will turn to the American Polygraph Association's recommendations for assurance of high quality polygraph examinations and protection of the rights of examinees. I also would like to address several issues which were raised during the debates on the polygraph technique, specifically public attitudes about polygraph testing and accuracy.

Valuable in private and public sectors

For more than 50 years, the polygraph technique has demonstrated its value as an investigative tool. Our equipment and training have become more and more sophisticated over these decades. The accuracy rate has been demonstrated to be in the range of 90 percent when a competent examiner using properly calibrated equipment is able to reach a conclusion based upon chart analysis.

The polygraph technique is employed by all federal agencies with enforcement powers and by state and local governments in investigations that affect public health, safety and national

security. The increasing prevalence of espionage and deceit in our government, such as the recent security breaches by Marine guards on embassy detail, underscore the need for polygraph examinations. Former Navy Secretary John Lehman said he favors random polygraph testing for embassy guards, both for their investigatory and deterrent value.

The 99th Congress wisely supported increased polygraph testing of civilian and military personnel with access to highly classified information through an amendment to the Defense Authorization Bill. During consideration last month of the 1988 version of this legislation, the House voted 345-44 to make permanent the temporary polygraph testing program that was established in the previous year's authorization bill.

The Congress itself relies on the use of polygraph examinations to protect this building and the members and staff who work here. The Capitol Police use the polygraph to screen their applicants and to investigate specific incidents, including suspected drug use. That the Congress relies on the polygraph is still another testament to its value.

The need for polygraph testing to protect lives, property and valuable information does not end here. The polygraph is indispensable in protecting the customers, employees, inventories, and assets of American business and industry as well, and they also are entitled to access to the polygraph. If the polygraph technique is acceptable in protecting national security and other government interests, it should also be

acceptable to protect the interests of business and industry.

During testimony before this committee last year, noted attorney F. Lee Bailey said that as a defense lawyer, he would hate to live in a society where all polygraph examiners work for the government. He said that would be like having the news media controlled by the government.

Businesses now are required to conduct their own investigations of internal theft and other crimes to protect their assets and their customers. If the polygraph were banned in the private sector, more of the burden for conducting those investigations would be shifted to law enforcement agencies which already are overburdened with the caseloads they have.

Protection for employers and employees

Polygraph examinations have been shown to be one of the most valuable, effective, and credible investigative tools available to employers and employees alike. There are countless examples of polygraph examinations playing a key role in protecting innocent employees and customers, in reducing and in some cases even eliminating internal losses, and in helping to create a safe, secure workplace. It also helps clear innocent employees, thereby protecting their jobs and reputations.

We believe that the polygraph also serves a function in helping Americans get jobs who otherwise might be disqualified because they do not have strong personal or family ties in a community. If you remove the polygraph from the workplace, you give the advantage to people with roots in a community and who

are well-known. In many cases, this could work against blacks, hispanics and other minorities. Without the polygraph, jobs are more likely to go to those who have consistent and stable work records and whose backgrounds can more readily be checked. Legislation that works against the underprivileged of our society would be counter to the traditions of this committee.

Consumers also benefit when businesses have access to the polygraph technique to identify employees who abuse their employer's trust and steal from the company. Employers are able to use the polygraph in investigations to ferret out these insider thefts, thereby helping to hold down prices.

In addition, many businesses find the polygraph valuable in helping them to guard the public interest. Day care centers must be able to investigate when child abuse is suspected. Nursing homes must be able to determine if their sick and often helpless patients are being mistreated. Banks, where 84 percent of losses are attributed to employees, must protect their customers' assets from inside schemes like computerized theft. Public utility companies, nuclear and chemical plants, airline companies and others have major public responsibilities and therefore need access to the investigatory tools that they and the government have found useful.

Drug protection

The Drug Enforcement Administration (DEA) estimates that each year employees steal a million dosage units of controlled substances from pharmacies. In addition, the DEA says that

millions more doses of non-controlled drugs are stolen every year, and these legitimate, but improperly used, drugs are among the most heavily abused. Nearly twice as many people are killed or injured from improper or illegal use of licit as opposed to illicit drugs.

The DEA endorses the polygraph because it knows that the drug industry needs the polygraph to help protect its inventories, thereby helping protect the health and even the lives of our citizens.

There are other examples where the polygraph is used in the private sector in response to federal requirements. The Nuclear Regulatory Commission (NRC) requires investigations of all instances of the sale or use of drugs detected on the sites of nuclear power facilities. Power plant operators agree it is impossible to adequately screen workers or to conduct these drug investigations without the use of the polygraph.

These regulations are designed to protect the health and safety of employees as well as the public in general. The polygraph also is used to help protect the public in other ways.

The polygraph is valuable to the business community in helping to combat employee theft and thereby hold down the costs of consumer goods. According to the U.S. Chamber of Commerce, business executives view employee theft as their most serious crime problem. The Fireman's Fund Insurance Co. estimates that one-third of all business failures are caused by employee theft.

Estimates of the cost of economic crime against business,

including employee theft, range from \$67 billion to \$200 billion annually. Further, the National Association of Chain Drug Stores reports that drug store prices have jumped as much as 15 percent because of employee theft.

The most effective deterrents against employee theft include thorough pre-employment screening procedures and the means to identify those who have committed theft in the workplace.

Most Americans approve of the polygraph

Regarding reported public opposition to polygraph testing, I would like to cite a recent study by Dr. Frank Horvath of the School of Criminal Justice at Michigan State University. A questionnaire was sent to examinees several weeks or months after they took polygraph examinations, and they were asked to respond anonymously. The study showed that 70 percent of those who had taken polygraph tests did not find them to be unfair, objectionable, or an invasion of their privacy. And about the same number said they would take the examination again if asked.

Of the 30 percent who objected to the exam, the vast majority of them did not meet the employers' standards for employment based upon other criteria.

The approval rates of Dr. Horvath's study mirror almost exactly the results of a recent public attitude poll taken in February of this year by Media General for the Associated Press. That poll showed that two-thirds of all Americans would not object to taking a polygraph examination. They also approved by wide margins polygraph testing for government employees in

sensitive posts and for court testing of suspects.

The American Polygraph Association believes that the majority of America's workers are honest. We believe that these polls reflect this honesty when they show that most people would willingly take a polygraph examination because they are honest.

But while we believe in the fundamental honesty of Americans, we also believe it is essential to be realistic about protection against deceit. About half of the crime that occurs in this country goes unreported or is unsolved. Background checks cannot provide negative information on a rapist, thief or drug pusher who never has been identified or caught.

Take police applicants, for example. Individuals applying for positions as police officers are well aware that they will be subject to very detailed screening checks before they are hired. Consequently, one would expect that police applicants would constitute an honest, law abiding group of individuals.

Yet in their book Truth and Deception: The Polygraph ('Lie Detector') Technique, Reid and Inbau reported that of 415 police applicants they tested, 234, or more than half were rejected because of confessions during polygraph examinations about their involvement in criminal activities, including felony thefts, burglaries, robberies, and the use and sale of illegal drugs.

Similar results were found by the Florida State Police where 60 percent of the 2,711 applicants tested between 1980 and 1985 were rejected, often because of serious admissions during polygraph examinations. Ohio and Maryland also report high

rejection rates.

What these figures show is that background and credit checks and interviews alone simply cannot produce a comprehensive picture of a person's qualifications for a particular job. Polygraph examinations, in conjunction with other investigative techniques such as background checks, are extremely valuable to employers in both the private and public sectors who need assurances they are hiring trustworthy employees.

In a recent survey of more than 1,200 businesses which use polygraph examinations, employers reported that one of the primary benefits of the polygraph is that it provided more information for an accurate assessment of the individual than background or reference checks alone. There is no better source of information about an individual than that individual. Since the polygraph helps in determining whether or not the individual has been truthful about his or her own activities, it simply stands to reason that more will be discovered than would be the case by relying on outside information alone.

The number of polygraph exams

Concerning the number of polygraph tests given, we have heard many times that two million polygraph tests are conducted each year in the private sector. That number has been attributed to the American Polygraph Association yet we have been unable to find any records in our organization to substantiate that figure. It is impossible for anyone to know how many tests are conducted because there is no central registry for licensing of all

polygraph examiners or for the numbers of tests they conduct.

But even if the number were in that range, it would seem to validate the need for polygraph testing. Employers who are concerned about protecting their employees and property are using a method they find effective.

Examinations provide useful information

Critics say the polygraph should be outlawed in the private sector because it is occasionally fallible. Yet medical tests also are fallible and malpractice suits abound because of the mistakes physicians make. The opinions of psychologists and psychiatrists can be unreliable and sometimes have extreme consequences.

In making a medical diagnosis, there are three elements in the decision making process: the patient's history (such as prior illnesses, treatments, and current symptoms), a clinical assessment (such as the physician's examination of the patient), and laboratory tests. All of these factors must be weighed in reaching a diagnosis, and the final decision does not rely on the laboratory tests alone. Patients expect their physicians to use the test results along with other information to make the best decisions they can. That is exactly what the American Polygraph Association advocates regarding polygraph testing. We do not believe that any decisions should be made about an employee solely on the basis of polygraph results.

No one claims the polygraph is infallible, but then few, if any, investigative or diagnostic tools are. The Senate Commerce

Committee by a vote of 19-1 has endorsed mandatory drug testing for many employees in the transportation industry even though no one claims that drug test are infallible. But they do give employers information that they may be able to use to make decisions that protect the public safety and welfare. The polygraph serves the same function.

Concern over inaccuracy

Some critics of the polygraph have voiced concern about "false positives," referring to individuals who are innocent but appear deceptive on a polygraph test. These critics have said that even with a 95 percent accuracy rate, five percent of those examined will show up as errors, some of them as false positives.

Yet in reality, the Department of Defense reported that it tested 3,993 persons for security breaches in 1985 and 1986 and found only 13 to be deceptive, eight of whom made admissions during the test of improper disclosures of information.

The Defense Intelligence Agency reports that since 1981 it has tested 13,595 individuals in critical intelligence positions and/or who had access to secret compartmentalized information. Of this number, only 17 were found to be deceptive and the majority of them provided significant explanations for their deception.

These studies show that large numbers of false positives simply do not materialize in real life.

Polygraph is increasingly accurate

Advances in equipment and methodology have made the

polygraph increasingly accurate, and consequently both the private and public sectors are relying on it more as a tool in their investigations.

The American Polygraph Association has been a leader in initiating these advances. The APA has strict standards for ethical practice and for the professional backgrounds of examiners, and we promote continuing education for members.

The APA demands the highest standards for polygraph examiners and the equipment they use. We know that only through these standards can we assure the greatest accuracy in our tests. It is a fundamental premise that polygraph test results are only as good as the polygraph examiner. We have developed these strict standards for ourselves over the years because we know that the integrity of our profession depends upon the integrity of individual examiners.

The APA's Code of Ethics and Standards and Principles of Practice demand high moral, ethical, and professional conduct. We consider our primary responsibility to be to the person who is taking the examination. We are required to discharge our duties with complete impartiality, dignity, and respect. We are forbidden from allowing considerations of race, religion, politics, union activity, or economic status to play any part in our examinations. We are pledged to issue an objective and unbiased report and to protect the confidentiality of the examination results.

The APA School Accreditation Committee examines the

curricula and instructional staffs of polygraph schools. It also inspects their physical facilities and equipment at periodic and unannounced intervals to ensure APA standards are being met.

Government and private sector examiners

The suggestion has been made that government examinations should be allowed because of the implication that government examiners differ from examiners practicing in the private sector. That just isn't the case. I am representative of a large number of former federal and state polygraph examiners who now work in the private sector. My qualifications are no different today than when I was conducting examinations for federal and state governments. I use the same kind of equipment, the same techniques, and my standards are identical.

The APA maintains and enforces these high standards for our many members, yet we recognize that a number of practitioners who are not affiliated with organizations such as ours may choose not to follow a competent examiner's standards of practice. We also recognize that in the polygraph profession the potential for abuse exists, as it exists with any profession or by any professional utilizing a diagnostic tool. That is why the American Polygraph Association would welcome action by the Congress to ensure that all examiners follow strict standards. We believe the legislation being offered in the House by Congressmen Bill Young of Florida and Buddy Darden of Georgia would meet this test.

They are proposing a carefully considered body of polygraph

regulations. Their bill provides important protection for the rights of examinees. Examiners would be barred from asking personal questions such as religious, racial, political, or labor union beliefs or affiliations. The bill would require all questions to be presented to the examinee in writing before the polygraph examination begins, and any waiver of these rights would be prohibited. Additionally, it would assure the examinee that the results would be kept confidential.

Most important, no decisions about hiring or firing an employee could be made solely on the basis of a polygraph examiner's opinion.

Further, it would encourage the states to develop their own legislation by adopting the federal standards and adding their own provisions adapted to the particular needs of their citizenry.

Most states already have laws regulating the use of the polygraph. Just this year, the Kansas legislature has approved a new polygraph licensing law, and Missouri currently is considering polygraph legislation. The states have proven that they are willing to take on the issue of the polygraph to develop legislation that is appropriate for their citizenry.

Total ban wouldn't work

We support the Young-Darden bill (H.R. 1536) because we believe it is the most workable polygraph legislation so far presented. Last year's debate on the House floor on polygraph legislation showed how complicated it would be to impose a

private sector ban on polygraph use. Dozens of industries pleaded for exemption from the ban and amendments were adopted granting exemptions to government contractors with defense or national security responsibilities, companies that employ persons who have direct access to controlled substances, power plant operators, public water supply facilities and other utilities, security and armored car companies, and nursing homes and day care centers. The list of industries with solid grounds for exemption could have grown much longer, but the House called a halt to the exemptions.

Granting selected industries exemptions sets up a pattern of arbitrary discrimination among American businesses. There simply are too many private sector industries with a legitimate and convincing need to use the polygraph.

Business needs protection, too

A number of state courts have held companies liable in matters where customers or other employees were injured or robbed by other employees who were not properly screened. Hotels and motels also have been held liable when employees who had access to room keys committed robbery or assaulted guests. Employers must make sure that the people they are hiring are honest and reliable.

Competent polygraph examiners recognize and respect an individual's right to privacy. But we also know that one of the prices we pay for living in a complex society is that we give up some of our privacy for the benefit of society as a whole. We

allow ourselves and our luggage to be searched whenever we travel on an airplane, and we must go through a metal detector in order to enter this building. Companies can ask prospective employees to take physical examinations and drug tests and to allow investigations of their work histories and personal associations.

We recognize that the right to privacy must be balanced with other rights as well. A company has the right to protect itself against individuals who might take actions that destroy a company or its reputation or that cause harm to customers or other employees.

Seeking the best solution

With public attention focused on truth telling, both in the private and public sectors, we encourage the Congress to carefully study the best way to ensure integrity in the workplace. A bill that was approved by this committee last year would unfairly outlaw an investigative tool which has demonstrated its validity and utility. We believe a better approach is to allow continued, regulated use of polygraph testing. The Young-Darden bill serves both the interests of the American people and the needs of American business. We ask that the polygraph not be banned. We are helping American business and industry do what they must to protect themselves and the public.

We want to work with this committee to develop legislation that will ensure that the highest standards for polygraph examiners and polygraph testing are instituted and maintained

nationwide. What is needed is a carefully developed body of polygraph law that sets a high standard for all polygraph examinations. We would hope that the Congress would find a way to balance the needs of citizens to be protected from the potential for abuse at the same time it allows business and industry access to an investigative tool they have found useful.

Federal, state and local governments, as well as American businesses have demonstrated through their increasing use of and reliance on polygraph testing that the polygraph technique is needed, that it is most often administered in a fair, equitable, and non-discriminatory manner, and that it works. Responsible legislation is required. Prohibition is not.



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July 12, 1987

The Honorable Ted Kennedy
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Washington, DC 20510-6300

Dear Chairman Kennedy:

I am remiss in not having written sooner but have been extremely busy. However, I did want to write and thank you for allowing me the opportunity to present the American Polygraph Association's views on pending polygraph legislation. I was very much impressed with the decorum and dignity with which the hearing was conducted.

I would also like to take this opportunity to clarify an issue that came up during my testimony. You asked me why the "rejection" rate was so much higher among private examiners as opposed to government examiners. I suspect I may have misinterpreted what you were really asking. At the time of the question I was addressing the issue of false positives and I related your question to that. In retrospect I think what you were really asking was why more people fail polygraph tests in the private sector than in the government's counterintelligence screening programs.

As you may recall, I stated that : "...The Defense Intelligence Agency reports that since 1981 it has tested 13,595 individuals, people in critical intelligence positions with access to secret compartmentalized information. Of this number only 17 were found to be deceptive, and the majority of them provided significant explanations for their deception. In addition, the Department of Defense reported that it tested 3,993 for security breaches in 1985 and 1986 and found only 13 to be deceptive, 8 of whom made admissions of improper disclosures of information."

It is important to remember that these tests were conducted purely for counterintelligence purposes and all the relevant questions asked pertained only to espionage and sabotage. In a private sector preemployment or periodic examination, the relevant questions are primarily concerned with theft, the use of illicit drugs on the job, and the truthfulness of the examinee's job application. In the private setting more



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people are going to be deceptive than they will be in the government's counter-intelligence screening setting simply because there are more thieves and drug abusers than there are spies in our country. I trust that you will agree with me on this point.

Regarding the discussion that took place at the end of the hearing during which you referred to a report prepared by the ACLU in which they stated that in 21 states representing 2,420 licensed polygraph examiners, only 35 complaints were reported by all these boards. In the same 21 states the ACLU received 999 complaints. You offered to allow me to look at the report and to respond if I wanted to. I still have not seen a copy of the report and would very much like to do so. If you will please send me a copy of it, I will be happy to respond.

To provide a brief answer based on the information you presented, I believe that most state polygraph licensing boards do a good job of policing the profession. But as with any regulatory agency or even our court system, they are not perfect. It would also be a mistake to think that every complaint to a polygraph licensing board, or to the ACLU for that matter, is a valid one. Frivolous complaints and law suits are a common problem in this day and age. As I said above, once I receive a copy of the report in question, I will address its contents more specifically.

As I stated in my testimony, The American Polygraph Association is as concerned about abuses in the polygraph industry as you are. We would be honored and privileged to work with you and your committee in an effort to eliminate such abuses.

Once again, thank you for allowing the American Polygraph Association to be heard. If I or any member of my staff can be of any assistance in any way, please do not hesitate to contact me.

Respectfully,

William J. Scheve, Jr.
WILLIAM J. SCHEVE, JR.
President

The CHAIRMAN. Very good.

Mr. Zierden.

Mr. ZIERDEN. Mr. Chairman, I am William Zierden, Vice President of Human Resources for Circuit City Stores. I am appearing on behalf of the U.S. Chamber of Commerce, the world's largest federation of business companies, chambers of commerce, and trade and professional associations, and the Chamber-sponsored Polygraph Coalition, a group representing business, trade and professional organizations which make use of the polygraph.

The Chamber and the Polygraph Coalition appreciate this opportunity to present their views. Today I am also accompanied by Roger Middleton, counsel for corporate policy with the U.S. Chamber of Commerce.

Crimes against business cost the American economy at least \$40 billion annually with some estimates placing the cost at nearly \$200 billion a year. The National Association of Chain Drug Stores estimates that consumers pay between 10 and 15 percent more per item as a result of employee theft. The accounting firm of Arthur Young & Co. found that internal theft, not shoplifting, is the leading cause of increased retail losses.

These insider thefts literally can be a matter of life or death. An estimated \$1 billion in drugs are stolen from the pharmaceutical industry every year. The Drug Enforcement Administration reports that when these stolen but legally produced drugs reach the black market they injure or kill twice as many people as do illicit drugs.

As you are aware, the banking securities industry also has been increasingly vulnerable to insider crime. The American Bar Association recently stated that business computers are now being used to embezzle money, alter data, and defraud corporate stockholders of up to \$730 million each year. The ABA also stated that employees were responsible for 78 percent of those losses.

American businesses must have continued access to the investigative tools they need to protect their assets and inventories, information, customers, stockholders, and Mr. Chairman, I might add, their other employees.

Polygraph screening is used within the business community for the same basic reasons as other honesty-screening procedures. It cost-effectively reduces losses attributed to internal theft.

Screening procedures to detect high risk employees fall within three major categories. First, background checks, which are generally used only for higher level positions and which are expensive and time consuming. Second, written honesty tests are available. However, I believe the face-to-face interview is far superior to a pencil and paper test. And third, polygraph screening, which is quick and less expensive than the alternatives and which generates information that can predict future behavior more accurately than what could be expected by chance.

The polygraph is an essential tool to an employer, not only for preemployment screening but also as an investigative device when reviewing specific workplace incidents. Daycare centers must be able to investigate when child abuse is suspected. Nursing homes most know if their sick and often helpless patients are being mistreated. Banks must guard customers assets from inside schemes such as computerized theft, and public utilities companies, nuclear