

H 9528

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

BRING HOME OVERSEAS INVESTMENTS AND CREATE JOBS IN AMERICA

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute.)

Mr. TRAFICANT. Mr. Speaker, America's top 100 multinational corporations have assets of \$600 billion overseas.

Their overseas profit alone was \$27 billion in 1985. Think about it. If we could bring home half of that investment, \$300 billion, we would create 5 million new manufacturing jobs.

We could rebuild our factories and start to cut our deficit, but let us face it. As of now, the only program in effect is to provide rustproof paint to empty factories and empty buildings with unemployed Americans in some souplines in the future.

□ 1100

What bothers me is that if you speak out on this issue, you are called a protectionist. I say today that everyone in this House is a protectionist. You are either protecting America or you are protecting workers overseas.

For years now we have been telling our kids that America is the land of opportunity, and unfortunately it is still true, but only for those manufacturing plants in Japan, Taiwan, Korea, Hong Kong, and Singapore. I think America better do something about it.

INTRODUCTION OF RADIOACTIVE MATERIALS TRANSPORTATION ACT

(Mrs. MEYERS of Kansas asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. MEYERS of Kansas. Mr. Speaker, this year there will be about 1,400 shipments of high-level nuclear waste and 2.8 million shipments of low-level waste. In the future, this number will increase as sites are chosen for both high-level and low-level waste disposal. This transportation of nuclear waste across our Nation is fraught with the slim, but very real, potential for catastrophe.

To lessen this risk, we must ensure that nuclear wastes are transported in as safe a manner as possible. Of the safety inspectors employed by the Department of Transportation, only one, that's right one, is a specialist in nuclear matters. Therefore, I am introducing the Radioactive Materials Transportation Act to mandate the hiring of 20 additional safety inspectors by DOT to specialize in the transportation of nuclear waste.

This bill is simple and direct. It is intended to prevent accidents by ensuring that safety regulations are enforced and maintained. We need more inspectors to license commercial drivers, inspect the containment casks, railroad tracks, major signals and determine optimal transport routes.

Every State is affected by this issue. I ask all my colleagues to support the Radioactive Materials Transportation Act.

U.S. CONTRIBUTIONS TO THE UNITED NATIONS

(Mr. WEISS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WEISS. Mr. Speaker, today Congressman JIM LEACH and I will be writing to our distinguished Foreign Affairs Committee chairman, the gentleman from Florida, Mr. DANTE FASCELL, supporting his efforts and urging the conferees on the State Department authorization bill to fully fund the United States required contribution to the United Nations.

Mr. Speaker, this issue transcends the current budgetary situation. The Reagan administration itself has called attention to the fact that the failure to meet our assessed contribution to the United Nations would clearly violate our treaty obligations.

The situation is particularly embarrassing in light of the recent decision by the Soviet Union to pay not only its annual assessment to the United Nations, but all its outstanding debts as well. This leaves the United States as the largest debtor to the United Nations.

For the United States to be in this situation represents a drastic departure from our historical role as a moral leader in the company of law-abiding nations.

Mr. Speaker, there is an urgent need to strengthen respect for international law and the capacity of the United Nations to fulfill its responsibilities.

I urge my colleagues on the Foreign Affairs Committee to join us in supporting Chairman FASCELL in full funding for the United Nations.

QUESTIONS FOR CANDIDATE GEPHARDT

(Mr. GINGRICH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GINGRICH. Mr. Speaker, I simply want to ask all of our friends on the Democratic Party side and particularly those who support DICK GEPHARDT for President to talk with Congressman DAN GLICKMAN about the call-in show we did last night on C-SPAN for an hour, to ask him about the seven out of the nine callers who said they would never vote Democrat again, to ask about the tone of outrage on the part of viewers who watched last Thursday, who were disgusted to see House Members raise their own pay, give away tax breaks to every Member of the Democratic leadership and violate the spirit of the rules of the House.

I would be glad to provide a transcript of the callers to the debate.

I think as the news media pays attention and starts to ask Congressman GEPHARDT what he would do to clean up the House, we will discover that very rapidly it becomes impossible to hide, raise your own pay, violate the spirit of the rules, give away tax breaks to the big boys, and go home and claim you did not mean to do it.

PUT THE TRADE DEFICIT ON THE AGENDA

(Mr. ALEXANDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ALEXANDER. Mr. Speaker, yesterday the dollar plummeted again when traded against foreign currencies, losing several increments in its value in Japan, Germany, and the other major markets around the world. This was another signal to the President and to Members of Congress who are attempting the so-called economic summit that we must put the trade deficit on the agenda.

The budget deficit which has consumed most of the attention is only part of the problem, maybe half the problem. To address the entire problem, one must put the trade deficit on the agenda in order to restore the economic business of America.

EMPLOYEE POLYGRAPH PROTECTION ACT

Mr. WHEAT. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 295 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES 295

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1212) to prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and which shall not exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor, the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Education and Labor now printed in the bill as an original bill for the purpose of amendment under the five-minute rule and each section of said substitute shall be considered as having been read. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9529

ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Missouri [Mr. WHEAT] is recognized for 1 hour.

Mr. WHEAT. Mr. Speaker, for the purpose of debate only, I yield 30 minutes to the gentleman from Missouri [Mr. TAYLOR], pending which I yield myself such time as I may consume.

(Mr. WHEAT asked and was given permission to revise and extend his remarks.)

Mr. WHEAT. Mr. Speaker, House Resolution 295 is an open rule providing for the consideration of H.R. 1212, the Employee Polygraph Protection Act. The resolution provides for 1 hour of general debate to be equally divided and controlled between the chairman and ranking minority member of the Committee on Education and Labor. The rule further makes in order the amendment in the nature of a substitute recommended by the Committee on Education and Labor and now printed in the bill as original text for the purpose of amendment. The substitute shall be considered for amendment under the 5-minute rule and each section shall be considered as having been read.

Finally, Mr. Speaker, the rule provides for one motion to recommit, with or without instructions.

Currently, numerous Americans are being subjected to polygraph examinations as a condition for obtaining and maintaining employment. Studies conducted by the Office of Technology Assessment indicate that these examinations are no better than 85 percent reliable. Thus these tests are unreliable in determining with full accuracy, the honesty or dishonesty of an employee.

H.R. 1212 would prohibit the arbitrary and indiscriminate use of polygraph examinations in preemployment screening or in the conduct of employee relations. It would also prohibit an employer's use of indirect suggestions that an employee submit to a lie detector test as a condition for employment and the bill would make it unlawful for an employer to discriminate against an employee because he or she exercises their rights as provided under this act. Finally, Mr. Speaker, this measure requires that employers post notices informing employees of their rights under this act imposes up to a \$100 per day civil penalty for failure to comply with the posting requirement, and imposes up to a \$10,000 civil penalty for other violations of this act.

Mr. Speaker, H.R. 1212, is a measure which protects the rights of this country's citizens to work in an environment free of indiscriminate questioning. I urge that we adopt the rule so that we may proceed to consideration of this measure.

Mr. TAYLOR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 295 is an open rule under which the House will consider a bill prohibiting the use of lie detector tests by all private employers not involved with intelligence and counterintelligence work for the Government.

The rule makes the Education and Labor Committee amendment for H.R. 1212 in order as original text for the purpose of amendment under the 5-minute rule, and the committee amendment is to be considered by sections.

Last, the rule provides one motion to recommit, with or without instructions.

Mr. Speaker, this bill made in order by the rule is highly controversial. Judging by the number and wide variety of amendments that have already been filed, it is apparent that the House will spend a considerable amount of time perfecting the bill.

Mr. Speaker, I can find no good reason why private sector employers should not be allowed to continue to use polygraph testing when screening potential employees. Polygraph test results are currently used by various government agencies in the most sensitive areas, such as national security and criminal law enforcement.

Last year, when a similar bill was offered, the House voted to permit polygraph testing in the private sector for those that work in the private security, utility, pharmaceutical, day care, and nursing home industries.

Mr. Speaker, under this open rule, we will again have the opportunity to amend the committee bill. I support this rule, and urge its adoption so that the House may proceed to bring up the bill.

Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin [Mr. GUNDERSON].

(Mr. GUNDERSON asked and was given permission to revise and extend his remarks.)

Mr. GUNDERSON. Mr. Speaker, I simply want to rise in support of the rule and the opportunity that it provides for us to have an open consideration of this legislation. As the ranking Republican on the Employment Opportunities Subcommittee which has jurisdiction over this legislation, I have had the opportunity over this session and previous sessions to listen to all the debate regarding this particular piece of legislation as it comes before us.

There is no question, as the gentleman from Missouri said, that there is a great deal of controversy surrounding this legislation. Polygraphs are controversial means by which we question employees and prospective employees in our society today. Forty-one States have recognized that controversy and have passed legislation. As a result and despite that, the legislation before us today seeks to preempt every State law in the land and to determine that we at the top at the Federal level know best how State legislatures, how

local governments, and indeed how private business across this country ought to conduct themselves in this regard.

Some would suggest that we ought to regulate the tests. Some would say we ought to limit the exposure of the tests. The legislation in front of us today seeks to ban totally the use of polygraphs in the private sector, with only a couple exceptions.

I would suggest to my colleagues, Mr. Speaker, that this is a good rule because it allows us a long and open debate on the legislation that is before us. I would call to the attention of my colleagues that it is an open rule which brings to us, however, a very contentious and very controversial piece of legislation.

Mr. TAYLOR. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. WHEAT. Mr. Speaker, it is clear that the rule does provide consideration for a bill over which there is significant disagreement, but the rule provides ample opportunity for disagreement and discussion of all the issues involved.

Mr. Speaker, I have no requests for time and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. Pursuant to House Resolution 295 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 1212.

□ 1114

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1212) to prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce, with Mr. GONZALEZ in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from California [Mr. MARTINEZ] will be recognized for 30 minutes and the gentleman from Wisconsin [Mr. GUNDERSON] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. MARTINEZ].

□ 1115

Mr. MARTINEZ. Mr. Chairman, I yield myself such time as I may consume.

(Mr. MARTINEZ asked and was given permission to revise and extend his remarks.)

Mr. MARTINEZ. Mr. Chairman, as chairman of the Employment Oppor-

H 9530

CONGRESSIONAL RECORD—HOUSE

November 4, 1987

tunities Subcommittee, I rise in support of H.R. 1212 banning the use of lie detectors in the private workplace.

H.R. 1212 came out of my subcommittee and passed the House last year 236-173. This year witnesses from the American Medical Association, the American Psychological Association, and the legal establishment all testified that there is no basis of scientific validity whatsoever that the lie detector works. Last year we heard from the head researcher of the Congressional Office of Technology Assessment study on the issue who thoroughly debunked the validity of the lie detector. Scientifically, the evidence is in, the polygraph is no more effective for discerning truth and dishonesty than a black voodoo box.

Gentleman, I wish that there was a scientifically reliable measure, so that businesses can effectively deter the loss of their property and profits. However, I can only offer some pragmatic advice to employers who face this very real problem: use sound personnel and management methods of thorough background checks and apply narrow audits of inventory and cash. Not only are these methods cheaper but they can more effectively target theft than the cumbersome and time-consuming lie detector machines. In addition, companies will avoid troublesome litigation that are being won more and more by the complaining employees.

The proliferation of polygraph testing in our Nation is affecting 2 to 3 million Americans annually. Even at a 90-percent success rate, which is widely disputed, some 300,000 Americans annually will be falsely accused of crimes and thefts that they did not commit. The sad part is, the chronic thief and experienced liar will be able to beat the lie detector, while hypersensitive innocent workers will fail the test and have their lives ruined.

Mr. Chairman, we need to have control over the rampant abuse of a practice which currently has confused the business community into relying on an instrument and process that is fatally flawed and causes long-term harm to innocent workers. Polygraph use is available now, but it has not effectively deterred or detected the ongoing theft in our workplaces.

Finally, I do want to point out that losses from theft in the workplace should not be attributed solely to the dedicated workers of the company, but often are the result of management level and white-collar pilferage and embezzlement. These management level and white-collar officials are currently exempt from the practice of polygraph testing.

I urge my colleagues to support us on this bill and vote against the weakening amendments offered today.

Mr. GUNDERSON. Mr. Chairman, I yield myself 6 minutes.

(Mr. GUNDERSON asked and was given permission to revise and extend his remarks.)

Mr. GUNDERSON. Mr. Chairman, this is not the most controversial piece of legislation that we will deal with in this Congress, but it is very controversial, and it is not the most important piece of legislation that we will deal with in this Congress, but it is important.

I would like to take a little bit of time today to provide some background on where we are and where I suggest this bill may lead us. First of all, the bill before us, H.R. 1212, is wrong because of its approach. There is no debate that the polygraph has been used improperly across this country in certain cases. So we have various options. We can regulate its use, we can limit its use or we can totally ban it.

Unfortunately, the legislation before us today takes the absolute ultimate extreme of totally banning the use of polygraphs except in two isolated exemptions in the private sector.

Second, in taking this approach it rejects the fact that 41, of the 50 States, plus the District of Columbia, have already taken the initiative to regulate in this area. It is one thing for the Federal Government to act when the States are refusing to do their job. But when 41 States and the District of Columbia have already taken it upon themselves to properly regulate as they see fit for the conduct of business in their State, why do we at the Federal level want to come in and say to 41 State legislatures, 41 Governors, you are all wrong, we at the Federal level know better than you.

That gets into my second concern, which is hypocrisy. This legislation before us today allows the use of the polygraph for the highest national security in our country. We allow it for the Department of Defense, we allow it for the CIA, we say for the most important national concerns in this country it is OK to use the polygraph. But it is not OK for the private sector to use it because it is too unreliable. How does one justify that kind of inconsistency back home to one's constituents?

We tell the Department of Energy in this legislation that they can use it because nuclear power is too risky. But in this legislation we tell every public utility in the country you cannot use it in terms of nuclear power because it is too unreliable. We tell NASA you can use it in terms of high technology, but we tell every private firm and science foundation in the country you cannot use it in terms of protecting the high technology or the biotechnology of your industry because it is so unreliable.

What kind of message do we send here today with that kind of hypocrisy and inconsistency?

The legislation before us today does not learn from what we did last session, it does not build on that. It still prohibits the use of the polygraph in the area of drugs, it prohibits the use of the polygraph in protecting our nursing home residents and our day

care young children, and in the security industries with those gentlemen and women who carry guns in the protection of private business and financial institutions and in employee theft. There is over \$40 billion a year of employee theft in our Nation, and get this, over \$7,125 a minute is stolen by employees from the companies they work with. Yet this legislation says even after that employee is on the job and has the work record, we are not going to allow the polygraph as one of the many investigatory tools to try to get at that kind of employee theft.

Then, as I mentioned earlier, the Drug Enforcement Administration, which supports the use of the polygraph when properly administered, will tell you that over 1 million doses of drugs are stolen each year, and yet this legislation bans testing.

I would hope today during not only the general debate but during the amendment process that we would try to pursue the responsible use of the polygraph, which is and ought to be a proper and legitimate concern for each and every one of us. We should protect against the abuses in testing. However, at the same time we must recognize the findings of the Office of Technology Assessment study of 1983 which said meaningful scientific evidence of the polygraph's validity could be found in the area of investigations of specific criminal incidents.

Earlier this year, on May 11, we accepted an amendment of the gentleman from Florida to establish a permanent polygraph program for national defense by a vote of 345 to 44. On June 16 of this year by a vote of 414 to nothing we accepted an amendment by the gentleman from Florida.

On June 16 of this year by a vote of 414 to nothing we said that we ought to establish a comprehensive embassy and diplomatic security program.

Mr. Chairman, there are reasons to consider regulation. There is no justification to take the extreme in the legislation before us. We ask you to listen and debate, to participate and support the amendments so that if we are going to impose mandates on these 41 State legislatures, we at least do so on a reasonable and consistent basis.

Mr. MARTINEZ. Mr. Chairman, I yield 5 minutes to the gentleman from Georgia (Mr. DARDEN).

(Mr. DARDEN asked and was given permission to revise and extend his remarks.)

Mr. DARDEN. Mr. Chairman, I thank the gentleman from California for yielding me this time.

Mr. Chairman, I rise in strong and adamant opposition to the Polygraph Protection Act, H.R. 1212.

Before I get into my discussion of my opposition to the bill in its present form I want to take a moment to commend my colleague, the gentleman from Montana, Mr. PAT WILLIAMS, my good friend, and the chairman of the Employment Opportunity Sub-

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9531

committee, the gentleman from California [Mr. MARTINEZ], for once again bringing this issue to the floor of the House of Representatives for debate. There is no question that this is a subject that should and must be dealt with by this Congress, and I look forward to the debate. And even though we disagree, Mr. Chairman, on a number of the provisions in the bill, and in fact we even disagree on the approach to be taken, I think special commendation should go to the gentleman from California [Mr. MARTINEZ] and the gentleman from Montana [Mr. WILLIAMS] for the very fair manner in which they have permitted the debate to go forward, especially in the Rules Committee, where we have now received an open rule so that whatever is the result of this House, those of us who oppose the Polygraph Protection Act cannot say we have not had a full and fair hearing.

So it is with this statement that I would like to point out to the chairman of the full committee that the opponents of this bill have been dealt with fairly, and I am most grateful to the gentleman from California [Mr. MARTINEZ], the chairman of the subcommittee, as well as the gentleman from Montana [Mr. WILLIAMS], for giving us a chance to fully and completely debate this very controversial topic.

Mr. Chairman, in the very famous words of Alexander Haig, "This is not an experience I haven't been through before." Or, in correct grammatical terms, we have previously discussed this issue at great length.

This House has gone on record as supporting the use of polygraphs. Last year during debate of the Polygraph Protection Act the House said polygraphs are proper for all employees of government agencies, at all levels of government, for consultants to the national security agencies, for employees of drug-related firms, for security service employees, employees at public utilities, for children's day care center employees and nursing home employees.

Incidentally, I will offer an amendment at a later time to exempt employees of children's day care centers.

Just 6 months ago, Mr. Chairman, 345 Members of this House of Representatives said polygraphs were legitimate tools for ensuring our national security. Just 5 months ago the House voted unanimously to establish a polygraph program for diplomatic and embassy security personnel.

The argument that the polygraph is some type of hocus-pocus, or witchcraft, or a torture machine has firmly been rejected by the Members of this House. We may not want to admit it, but by our previous votes we have legalized this machine. We have, and there is no denying it.

Mr. Chairman, I submit that if the polygraph is a legitimate investigative tool for these few industries and for all government employees, it is a leg-

itimate investigative tool for all private industry.

The gentleman from Florida [Mr. YOUNG] and I will once again offer a substitute amendment which recognizes the inconsistencies in the approach taken by the Committee on Education and Labor. Our substitute takes the necessary steps to correct any abuses that may be occurring while still granting the private sector a decision.

Mr. Chairman, every individual in this Nation is affected by the practices of dishonest employees, just as we would all be affected by individuals in the Department of Defense or in the Department of State who practiced espionage. This House has taken steps to ensure our national security is not jeopardized, yet we are considering eliminating the very tool used by these departments by passage of this legislation.

Why is it acceptable, Mr. Chairman, for the polygraph to be administered to an employee of the Department of Agriculture or the Federal Aviation Administration and yet be disallowed to the local grocery store owner? Why can a city or county employee in my district be polygraphed, but a bank teller or bus driver cannot be polygraphed?

My point, Mr. Chairman, is that we are extremely inconsistent to allow the use of polygraphs in the public sector on the one hand and to disallow them in the private sector on the other hand.

I say, Mr. Chairman, if there are abuses in the system, let us correct the abuses. Let us not eliminate the system.

I urge Members of this body to support the substitute amendment as a reasonable and measured approach to this issue.

Mr. MARTINEZ. Mr. Chairman, I yield 5 minutes to the gentleman from North Carolina [Mr. NEAL].

(Mr. NEAL asked and was given permission to revise and extend his remarks.)

□ 1130

Mr. NEAL. Mr. Chairman, I have several questions concerning the widespread use of polygraph testing and I would like to engage the opponents of this legislation in a little colloquy if I may.

My concerns are on two levels. The first level is this: It seems to me that the widespread use of polygraph devices turns the American system of justice on its head. As we use these in preemployment screening and even in other areas, criminal investigations and so on, it seems to me we are essentially saying to people, "We assume you are guilty and we want you to prove your innocence."

And the other area of concern to me is the wide body of literature indicating that these polygraph gadgets are in fact not lie detectors, that there is no clear indication that these things

do what they say they are going to do. The fact is that polygraph tests are not reliable.

The problem here is an obvious one; that there are ways of fooling these gadgets. So a person skilled in deceiving the gadget might be entrusted with very important information, for instance, in the area of national security or other important security information.

I would welcome the chance to hear an answer to these questions.

But first let me elaborate on this concern: By depending on these gadgets, which Senator Sam Ervin from my State once characterized as "modern day witchcraft," we will be letting people into positions of high responsibility and make available to very clever people our most important national security secrets, and on the other hand, since these things are inherently unreliable we will be convicting a lot of innocent people.

Mr. DELAY. Mr. Chairman, will the gentleman yield?

Mr. NEAL. I yield to the gentleman from Texas [Mr. DELAY].

Mr. DELAY. I thank the gentleman for yielding.

Mr. Chairman, I will attempt to address the position of the gentleman that the polygraph is fallible.

Did the gentleman vote for drug testing? And does the gentleman feel that drug testing is not infallible? Because if drug testing, as we know it, is fallible, then the same idea should be taken by the proponents of this bill that we ought to throw out drug testing because it is not 100 percent accurate.

Mr. NEAL. I do not recall any votes on drug testing at this moment, but if drug testing is not reliable, and I just do not know about that at this point, and that is not the subject under consideration this morning, but if it were not reliable then I certainly would not want to subject people to these unreliable tests.

Let me say one other thing about drug testing: Inasmuch as we use drug testing in a broad way to say to people, "We are assuming you are guilty of some illegal activity and it is up to you to prove your innocence," I would be very leary of it. We have a responsibility here, my friends, no matter what the State legislatures around this country have done, of protecting the Constitution. And the Constitution is clear concerning our system of justice. It is what separates us from the totalitarian systems.

We assume our people to be innocent until proven guilty; under the totalitarian systems people are assumed to be guilty and it is up to them to prove their innocence. That is precisely what I believe the widespread use of lie detectors, so-called lie detector tests, would be doing.

Mr. DELAY. If the gentleman will yield further, does not the polygraph give the opportunity to those employ-

H 9532

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

ees who have been wrongfully accused of stealing or raping or whatever they have been accused of, the opportunity to use this test procedure along with other types of examinations? Does not the polygraph give the opportunity, as it has in this Nation for years, to clear their name, keep them out of jail, keep their jobs and to keep their reputation? I think it should be known that the polygraph can also be used as a tool to prove that you are innocent.

Mr. NEAL. I am not aware of that. Let me ask the gentleman to describe that scenario. Do you mean where an employee requests a lie detector test?

Mr. DeLAY. That is correct.

Mr. NEAL. That is a different question.

Mr. DeLAY. No, the gentleman would destroy any industry that relies on polygraph testing. You would not be able to seek employment with a company that facilitates polygraph testing because there will not be any companies in business.

Mr. NEAL. Well, it is my understanding this legislation prohibits the screening use of the lie detector test.

Mr. GUNDERSON. Mr. Chairman, I yield 4 minutes to the distinguished ranking member of the Committee on Education and Labor, the gentleman from Vermont [Mr. JEFFORDS].

(Mr. JEFFORDS asked and was given permission to revise and extend his remarks.)

Mr. JEFFORDS. I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in strong support of the bill before us. The protections it will provide for workers are long overdue. My only regret is that our colleague, Stew McKinney, is not with us today to add his voice to ours. He was a champion of this cause, and a good friend. We are here today largely due to his hard work over many years.

There will no doubt be a lot of discussion through the course of today, as we debate this bill and the various amendments, but it all really boils down to one simple question. Do polygraphs work—especially in preemployment screening?

My response, and the response of every objective scientific observer, is that they do not work in the employment setting.

We are not here today to debate whether or not there is crime in the workplace. There is crime; by white collar workers as well as blue. But the fact there is crime does not justify the unbridled use of the polygraph.

On just about every other labor bill you will hear the calls to extend the bill's provisions to Congress. I say this not to belittle those efforts, because I happen to be part of them. But the silence on this polygraph issue is deafening. No one seems to want to require preemployment screening of Members of Congress.

This, in fact, is where the vast majority of polygraph tests are administered by private employers. Such

screening amounts to a fishing expedition, and often not a very lengthy one. This bill would prohibit the 10-minute quickie and all other polygraph tests. But the Darden-Young substitute and the various industry exemptions that will be offered do absolutely nothing to prevent the cheap, quick polygraph test.

The substitute, for example, says that no more than one exam can be scheduled per hour. But that language raises more questions than it answers. There is nothing in that language to compel that the test last for an hour, and presumably unscheduled walk-on business could be conducted.

The fact is that you cannot regulate the use of polygraphs. It has been tried by the States, and those efforts have failed. Enforcement is virtually impossible, and employers circumvent the law by testing employees in one State and then transferring them to another. Regulating the polygraph does nothing to redress its inherent flaws. In fact, polygraph usage may actually increase once employers believe the Government, be it State or Federal, has sanctioned its use. The Darden-Young substitute acknowledges the problems with polygraphs, but seeks to perpetuate their use in the private sector.

One of the most troubling things about polygraphs is their perverse impact. The scientific evidence indicates they are more likely to tar an innocent person as guilty than are to identify a thief. An honest person is concerned about telling the truth, a liar is not. The guy on the Isuzu ads would pass a polygraph with flying colors. George Washington might have had trouble.

And the more fundamental question is: Why try to regulate a machine that does not work? The Office of Technology Assessment thoroughly studied the polygraph and found no evidence that it had any validity in the employment setting. Aside from studies by the polygraph industry, no objective scientist has found it to be much more accurate than flipping a coin. That is why both the American Medical Association and the American Psychological Association support the bill.

The scientific theory is backed by our real world experience. Although you will hear statistics on the losses suffered by business—and those losses are very real—the one statistic you will not hear is how much the polygraph reduces those losses. Retail theft is no greater in Vermont, where the polygraph is banned, than it is in Georgia, where it is regulated. Casino losses are no greater in New Jersey, where polygraphs are outlawed, than they are in Nevada, which has few restrictions.

There are clearly better ways to limit theft, from both an employer and an employee's perspective, than by strapping someone into polygraph. At a time when many of us are calling for greater flexibility on the part of labor and increased labor-management cooperation, the growing use of poly-

graphs in the private sector seems to head us in exactly the wrong direction. Indeed, many employers have deliberately banned their use. We do not need polygraphs in a free society like ours. I urge you to join us in supporting H.R. 1212, and rejecting weakening amendments.

The CHAIRMAN. The gentleman from California [Mr. MARTINEZ] has 17 minutes remaining and the gentleman from Wisconsin [Mr. GUNDERSON] has 20 minutes remaining.

Mr. MARTINEZ. Mr. Chairman, I yield 3 minutes and 30 seconds to the gentleman from Texas [Mr. BROOKS].

(Mr. BROOKS asked and was given permission to revise and extend his remarks.)

Mr. BROOKS. I thank the gentleman for yielding.

Mr. Chairman, I rise in strong support of H.R. 1212—the Employee Polygraph Protection Act of 1987. This bill will eliminate the widespread and growing use of so-called lie detector tests as a condition of employment in America. It will not block their use by law enforcement agencies for actual investigations. Rather, it is aimed at stopping the growing abuse of polygraphs used as screening tests for employment. Private employers increasingly are forcing their employees to take such tests as a condition of employment even though they are not suspected of any wrongdoing. This practice is un-American—it assumes everyone to be guilty until they prove their innocence.

My views on polygraphs have been developed over many years, as a member of the House Government Operations Committee. This committee has overseen the Government's polygraph programs since the early 1960's, and has strongly recommended against the use of polygraphs for screening in the Federal Government in four separate reports.

Several years ago, the Office of Technology Assessment surveyed the scientific literature on polygraph validity for the Government Operations Committee. In its report, the OTA concluded that there was no scientifically acceptable study to support the use of polygraphs for screening purposes, and that any validity that the polygraph test may have for specific incident use would likely decrease dramatically in a screening context.

In a recent update, the OTA reached similar conclusions. In fact, they cited new studies which seriously question the validity of polygraph testing. Using figures from a National Security Agency program, polygraphs generated error rates of 27 percent. That is, errors were made nearly one-third of the time. Further, other laboratory research indicates that those trained in simple countermeasures to beat the polygraph are successful in fooling the test or producing an inconclusive result 85 percent of the time.

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9533

Since OTA's studies, many proponents of polygraph use have backed away from their claims of high polygraph validity. Instead, they argue the concept of utility. They point to numerous instances when the polygraph exam, or the threat of the exam, has been useful in eliciting important information or even confessions.

We should not confuse validity with utility. There is no question that the polygraph can be a very intimidating tool and may have some utility in that regard, just as the dunking stool, the rack, and the firing squad have had in past centuries.

That would convince you to confess to damn near anything, would it not, Congressman?

Mr. DARDEN. Mr. Chairman, will the gentleman yield, the distinguished chairman of the Committee on Government Operations?

Mr. BROOKS. I yield to the gentleman from Georgia [Mr. DARDEN].

Mr. DARDEN. I thank the gentleman for yielding.

Mr. Chairman, would the distinguished chairman of the Committee on Government Operations agree that as the chairman of the Committee on Government Operations the chairman has very broad powers and could well have brought legislation in this body if he believed so strongly that the polygraph is witchcraft and torture, to eliminate its use throughout the country, not just in the private sector but for Government employees as well? And why has not the distinguished chairman brought legislation here to abolish the use of this machine to protect Government employees?

Mr. BROOKS. I would in one second. We did not have that jurisdiction. We had jurisdiction to examine what they are doing, but not to pass the legislative authority.

Now the Labor Committee has got it, and Judiciary may be able to get into it by eliminating the production of this kind of junky equipment, as being illegal advertising, you know, holding out that it would do something. I am looking for another way to introduce the bill.

As former President Nixon said about polygraphs on the Watergate tapes, "I don't know how accurate they are, but I do know that they'll scare the hell out of people."

This elaborate con operation should not be allowed to be institutionalized as a feature of our Nation's workplace. It is inherently offensive to American concepts of justice.

Last year, the world's largest association of psychologists condemned the widespread use of polygraph tests for screening purposes. The American Psychological Association concluded that conducting such tests by psychologists could be unethical. The group found the scientific evidence regarding the validity of polygraphing to be "unsatisfactory and particularly poor concerning polygraph use in employment screening." They recognized

the "great damage to the innocent persons who must inevitably be labeled as deceptors" in such screening situations.

Recently, a scientific council of the American Medical Association has also questioned the use of polygraph testing.

We should not allow passing some bogus lie detector test to become a condition of employment in this country. I urge you to vote for H.R. 1212 and against all weakening amendments.

□ 1145

Mr. MARTINEZ. Mr. Chairman, I yield 1 minute to the gentleman from Minnesota [Mr. PENNY].

(Mr. PENNY asked and was given permission to revise and extend his remarks.)

Mr. PENNY. Mr. Chairman, I urge a "yes" vote on H.R. 1212, the Employee Polygraph Protection Act and a "no" vote on the Darden-Young substitute and other amendments.

H.R. 1212 prohibits the use of a polygraph in most employment situations. Currently, 10 States have similar statutes. In addition, 12 States go even further by effectively banning all use of such tests by employers.

Plain and simple—if you believe a polygraph is an imperfect tool and that its results may be unreliable—then you should support H.R. 1212 and oppose amendments.

The Darden-Young substitute allows the use of polygraphs in most instances but institutes a Government regulatory system. Get that—Government regulations! I can't believe the business community prefers this substitute.

The rights of America's workforce are at stake in this vote.

We should make it clear that the polygraph is an inappropriate job screening mechanism.

Vote "no" on the Darden-Young big-government and redtape substitute and vote "yes" on the bill to protect employee rights.

Mr. GUNDERSON. Mr. Chairman, I yield 4 minutes to the distinguished gentleman from Iowa [Mr. GRANDY], a member of our subcommittee.

(Mr. GRANDY asked and was given permission to revise and extend his remarks.)

Mr. GRANDY. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, today the House is considering an issue basic to the American tradition of civil rights. The presumption of innocence until guilt is proven has been a right Americans have long protected. It is a presumption which lies at the very heart of the American legal system. Furthermore, it is a right to which this body is obliged to uphold.

I am sure we are all aware of the many violations of privacy rights which have occurred from the abuse of the polygraph. The lives and reputa-

tions of countless innocent individuals have fallen victim to the harsh realities of an imperfect and perhaps even imperfectable test. The Committee on Education and Labor heard testimony from several organizations which pointed out the explosive use of these tests over the past several years. Although estimates on the validity and accuracy of the tests vary, it can be stated unequivocally that many innocent people have failed the exam. In point of fact, the exam has failed innocent people. Interestingly enough, this exam has also failed by proclaiming certain guilty individuals to be innocent.

Clearly, the time has come for Congress to address this issue. I believe that the amendments that will be offered by the ranking minority member of the Employment Opportunities Subcommittee, the gentleman from Wisconsin [Mr. GUNDERSON] would serve to protect the American worker while maintaining the ability of employers to control workplace crime. The amendment to which I refer would prevent preemployment testing, which has proven to be the most inaccurate type of polygraph test administered today. At the same time, the amendment would allow the use of polygraph testing when it has proven to be an effective tool in uncovering crime, namely, after a specific crime has been committed. By permitting the polygraph to be used in a controlled environment with restrictions on the questions asked, minimum requirements for the length of the test, and by putting the polygraph in proper perspective as only one tool among many, we will likely see a great improvement in the accuracy of polygraph testing.

I urge my colleagues to support the Gunderson amendment and extend to the American worker the rights which criminals already have.

Having said that, Mr. Chairman, I would also have to say that although I support their efforts, I will oppose all exemptions to this bill for obvious reasons. If the test is ineffective for day-care, it will also be ineffective for nursing homes, and if we are going to exempt day care, are we not going to exempt kindergartens?

If we are going to exempt nursing homes, are we not going to exempt nurses or home health care deliverers? In other words, Members have a choice in these exemptions of selecting between a sin of omission and a sin of commission. There is no way to work this bill unless we pass the Gunderson amendment.

Mr. Chairman, let us support accuracy. Let us support the test that does work and reduce the false positives. H.R. 1212 without the Gunderson amendment is unacceptable because it is a mixture of protection for the American worker and punishment for the American businessman.

H 9534

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

Mr. NEAL. Mr. Chairman, will the gentleman yield?

Mr. GRANDY. I yield to the gentleman from North Carolina.

Mr. NEAL. Mr. Chairman, I would like to ask the gentleman how he can support the amendment which encourages an increased use of polygraphs if he says, as he did in his opening statement, that he thinks the polygraph test is inherently inaccurate.

Mr. GRANDY. Mr. Chairman, I thank the gentleman for asking that question because it plays into the data that we received in testimony on the Employment Opportunity Subcommittee which shows specifically that when the test is administered for incidents specific after the fact, the increase in accuracy raises dramatically. So in that case we have perhaps an acceptable gauge to judge crime in the workplace. As a preemployment tool, I probably agree with the gentleman.

Mr. NEAL. Mr. Chairman, let me ask the gentleman this: The accuracy raises to what level?

Mr. GRANDY. Mr. Chairman, I am sorry. Will the gentleman repeat that?

Mr. NEAL. The gentleman said the level of accuracy is raised considerably when the test is not used for preemployment screening but in fact used for crime-specific purposes. What is the level of accuracy?

Mr. GRANDY. Mr. Chairman, I think the gentleman is asking me whether it is a hundred percent, but that clearly is not it. It is higher than the 40 to 60 percent that we have seen as a preemployment figure.

The CHAIRMAN. The time of the gentleman from Iowa [Mr. GRANDY] has expired.

Mr. GUNDERSON. Mr. Chairman, I yield 3 minutes to the gentleman from Florida [Mr. YOUNG].

Mr. YOUNG of Florida. Mr. Chairman, if this bill becomes law in its present form or with additional amendments to exempt certain phase of the economy or with the substitute to be offered by the gentleman from Georgia [Mr. DARDEN] and myself, or if it becomes law just like it is written today, there will be the use of polygraphs throughout America. Let us understand that.

The substitute that the gentleman from Georgia [Mr. DARDEN] and I will offer answers to most of the complaints that we have heard from those Members who support the bill. They are concerned that the polygraph examination will not be given properly or that it will be done hurriedly. The purpose of our substitute is to guarantee that wherever polygraphs are used in America, they will be used by trained professionals with numerous safeguards to the person being examined.

Again I say there is going to be the use of the polygraph under this bill, no matter what form it takes when it is passed. Someone has called it a gadget. Maybe it is. It is a piece of

equipment. Actually, the polygraph is only as good as the examiner.

If the Members allow us to adopt the Darden-Young substitute, we are going to require trained professional examiners who know what they are doing and who have a law to go by when they administer these examinations.

Someone else said there is nothing in the Darden-Young substitute to prevent a quickie polygraph exam. That is not accurate. That speaker has not read the substitute, because we provide in the substitute that the examiner shall set aside a minimum of 1 hour to conduct that examination.

Now, there are those who say that the polygraph does not work and should not be used. In the State of Florida, for the last 20 years polygraph examinations have been used. There were 300,000 last year alone. Before a polygraph examination can be administered in the State of Florida, the examinee must be advised that he has the right to complain if he is not satisfied with the conduct of the examiner, and he is told where to complain and to whom.

There were 300,000 examinations last year in Florida, Mr. Chairman, and there was one complaint. In the year before that there were in excess of 300,000 polygraph tests administered in the State of Florida, and there was one complaint. As a matter of fact, Florida's Secretary of State at the time testified before the other body last year about the polygraph, and I take that information from his statement.

Mr. Chairman, I would like to say something to the Members, in case they missed it about what one of our colleagues said. When our colleague, the gentleman from Texas [Mr. Brooks], took the microphone, he said something very key to this debate. He said that his committee has put out four reports suggesting that the polygraph should be outlawed totally, including for the Government. Let us understand what he is saying, Mr. Chairman. When he says we should exclude them from the Government, he is saying that the Central Intelligence Agency cannot use them, the Defense Department cannot use them, and that none of our national security agencies can use them. He is saying that none of our intelligence secrets can be protected by the use of the polygraph.

The CHAIRMAN. The time of the gentleman from Florida [Mr. YOUNG] has expired.

Mr. MARTINEZ. Mr. Chairman, I yield 2 minutes to the gentleman from Indiana [Mr. VISCLOSKEY].

(Mr. VISCLOSKEY asked and was given permission to revise and extend his remarks.)

Mr. VISCLOSKEY. Mr. Chairman, I rise in strong support of H.R. 1212, the Employee Polygraph Protection Act, and I also rise in strong opposition to

any amendment that might be offered to weaken the bill.

I speak from practical experience. I was the subject of a polygraph examination, if you would, when I was in the Manhattan district attorney's office in New York City during the summer of 1972. Each of us was given a polygraph examination, not as a condition of employment but to inform us of its operation, its use, and its validity or lack thereof.

In our group there were four individuals. We controlled the questions that were asked, and we answered in a negative fashion to each. Two questions were true, two questions were false. In my instance, I flunked that examination because the examiner mispronounced the name of the high school that I graduated from. A woman in our group also flunked the examination because apparently she had a reaction when the examiner mispronounced the place of her birth. So out of that group, in a very controlled circumstance, we had a 50-percent ratio.

I am adamantly opposed to the use of these devices in our society. They do not have a place in our society.

Mr. Chairman, my support for H.R. 1212 is not due exclusively to my anecdotal experience. The hard, uncontested truth is that, in an employment situation, there is no scientific data to validate the use of polygraph machines. All agree that test validity is primarily affected by the examiner, the subject and the setting. The fact remains that no one, regardless of experience, can determine from a polygraph chart why a subject responded in a certain way, whether out of guilt, fear, anger, humiliation, or intimidation. The ironic truth is that lie detector tests have a built-in bias against truthful people. The more honest workers are, the more likely they will fail the polygraph because of their heightened sensitivity to having their honesty challenged.

While polygraphs are unfair to all workers, I am concerned about their impact on minorities. In testimony before the Subcommittee on Employment Opportunities, the Legal Action Center reported that the tests have a substantial discriminatory effect on minority job applicants and employees. There are two reasons for this finding. First of all, the polygraph is a measure of physiological functions, and there is research evidence of ethnic and group differences in physiological reactivity to stress which may affect the polygraph's validity when used on particular groups. Second, the inherent subjectivity of determinations based on the polygraph creates extensive opportunities for conscious or unconscious biases and cultural stereotypes to affect the decisions made by polygraph examiners.

So what do we know about polygraphs? We know that there is no research to validate their "findings." We know that they do not gauge what

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9535

they are perceived to, and we know that there is growing evidence to indicate that they are used in a discriminatory fashion. There are less drastic, more effective ways to deter employee theft and abuse that do not infringe upon an individual's civil rights. I do not understand why criminals are protected from polygraph testing, but American workers are not.

In conclusion, I can only observe with sadness that we are faced with an administration that wants everyone to take a polygraph test to get a job, and take a drug test to keep the job, accept a minimum wage for the job. I urge my colleagues to join with me and support H.R. 1212 and to oppose attempts to weaken it.

Mr. GUNDERSON. Mr. Chairman, will the gentleman yield?

Mr. VISCLOSKY. I am happy to yield to the gentleman from Wisconsin.

Mr. GUNDERSON. Mr. Chairman, is it the gentleman's intent, then, to offer an amendment during the debate today that will prohibit the use of the polygraph for national security purposes or prohibit its use for our foreign policy personal as well?

Mr. VISCLOSKY. It is not, because at this point I do not believe that the majority of my colleagues in this Chamber agree with me on that particular subject. I am disappointed at that, and I regret that disappointment.

Mr. GUNDERSON. Why did the gentleman vote for the Mica amendment?

The CHAIRMAN. The time of the gentleman from Indiana [Mr. Visclosky] has expired.

Mr. GUNDERSON. Mr. Chairman, I yield 2 minutes to the gentleman from Utah [Mr. Nielson].

(Mr. Nielson of Utah asked and was given permission to revise and extend his remarks.)

Mr. NIELSON of Utah. Mr. Chairman, I rise in support of H.R. 1212, the Employee Polygraph Protection Act.

I am committed to protecting the welfare of businesses and the consumers. Many of my colleagues and those in the areas of commerce feel that polygraph testing is necessary for preventive and prosecutorial measures.

As a former professor of statistics, however, I am very concerned with the validity in which the polygraph can accurately detect truth or deception.

Taking information published by the U.S. Congress Office of Technology Assessment, it is surprising how inaccurately these tests have been interpreted. The results can be summarized as follows:

For guilty persons:
Shown to be guilty: 65 percent.
Shown to be innocent: 18 percent.
Those who had inconclusive tests: 17 percent.
For innocent persons:
Shown to be guilty: 19 percent.
Shown to be innocent: 69 percent.

Those who had inconclusive tests: 12 percent.

It is easy to see that polygraph testing acts in a detrimental way for innocent persons.

As an example, assume that 5 percent of the people being screened are actually guilty. Also assume a very high validity rate of 90 percent. In this situation, the polygraph would only have a 33 percent predictive value, since for every person correctly identified as deceptive, two innocent people would be wrongly classified as deceptive. It is a matter of simple mathematics that in order to catch 90 percent of the guilty individuals, 68 percent of the people who fail the polygraph test will have been innocent.

The irony is that by basing more and more important social decisions on the results of polygraph tests, we may be producing an effect opposite to that intended, firing the most honorable police officers, refusing to hire the potentially most reliable employees, while staffing sensitive positions with those lucky or clever enough to know how to beat the polygraph.

I urge my fellow colleagues to vote in favor of H.R. 1212.

□ 1200

Mr. MARTINEZ. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. Brager].

(Mr. Biaggi asked and was given permission to revise and extend his remarks.)

Mr. BIAGGI. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I rise as an original cosponsor and strong supporter of H.R. 1212, the Employee Polygraph Protection Act.

As New York's ranking member on the House Education and Labor Committee, I have heard the testimony about the abuse, misuse and overuse of polygraph testing in the private sector. However, I believe this legislation offers an effective and responsible solution to that problem. Simply put, it provides labor with important and much needed protections.

As a 23-year police veteran, I believe there are certain very specific situations where the polygraph can and should be used to help prevent crimes, and to detect criminals once a crime has been committed. This bill already has some specific allowances for those situations, and I will be supporting efforts later today to ensure that other exemptions are added as well, including one for certain segments of the private security industry.

Those exemptions will provide for the responsible and necessary use of the polygraph, while allowing the remaining provisions in the bill to prevent the abuse, misuse and overuse of the lie detector test. This is a very fair and balanced approach and one that deserves our full support.

Finally, Mr. Chairman, I want to commend the author of the bill, Mr.

WILLIAMS, and the distinguished chairman of the Employment Opportunities Subcommittee, Mr. MARTINEZ, for their untiring efforts on behalf of this important piece of legislation.

Mr. GUNDERSON. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois [Mr. Fawell].

(Mr. Fawell asked and was given permission to revise and extend his remarks.)

Mr. FAWELL. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I rise in opposition to H.R. 1212, which would ban the use of polygraphs in the private sector, and urge my colleagues to support the various amendments which will be offered later today to allow the use of polygraphs under regulated and limited circumstances.

The polygraph is an important tool for deterring employee theft. Employee theft, which amounts to a hidden tax on all products purchased by consumers, is estimated at \$40 billion per year. A 1980 University of Minnesota study concluded that 60 percent of the employees surveyed from nine retail organizations admitted to stealing from their employers.

If anything, the polygraph at least serves as a tool which deters many employees from ever considering to steal from their employers. H.R. 1212, by banning the use of polygraphs altogether in the private sector, takes away this deterrent.

Proponents of H.R. 1212 also question the validity of polygraphs and the accuracy of test results. Yet, the bill's proponents undermine their argument when they allow Federal, State, and local governments to continue to use polygraphs. If the bill's proponents think that the result of polygraphs are not valid in the private sector, how can they possibly be valid in the public sector?

Ironically, the House already this year has recognized the validity of polygraphs when it approved an amendment to the defense authorization bill which would establish a permanent polygraph program for national defense agencies. The House endorsed that amendment, and the validity of polygraphs, by a vote of 345 to 44.

Either polygraph results are valid or they are not? We can't have it both ways.

If there are problems with the way polygraphs are administered in the private sector, H.R. 1212 is the wrong response. Because Congress has already recognized that polygraphs do work in the Federal Government, attempts to ban their use in the private sector is high-handed hypocrisy.

Instead of banning polygraphs altogether, my colleagues should support the Young-Darden substitute amendment. The substitute is a reasonable and responsible alternative which allows private-sector employers to con-

H 9536

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

tinue to use polygraphs under strict guidelines.

The Young-Darden substitute establishes minimum Federal standards for the use of polygraphs in the private sector and does not preempt more restrictive State laws. Individual rights are also protected. An employer could not deny employment, discharge, or discipline an individual based solely on the results of a polygraph exam.

The substitute also places strict requirements on polygraph examiners. Examiners are prohibited from asking questions pertaining to an individual's religious, racial, or political beliefs, union affiliation, of sexual preference. Tougher training standards are required for examiners, and an examiner could not give more than 10 polygraph tests per day.

More importantly, the substitute continues to respect the right of States to regulate the use of polygraphs, whereas H.R. 1212 imposes an outright Federal ban on their use in the private sector.

I urge my colleagues to reject H.R. 1212 as a hypocritical and irrational response to the so-called polygraph problem and, instead, support the Young-Darden substitute as a responsible alternative.

Mr. MARTINEZ. Mr. Chairman, I yield 1½ minutes to the gentleman from Ohio [Mr. TRAFICANT].

(Mr. TRAFICANT asked and was given permission to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I find this debate very interesting. Richard Speck killed eight nurses, and he was not forced to take a polygraph. Neither was Charles Manson or the Son of Sam.

Your 18-year-old daughter going out for her first job, never accused of anything, is going to have to take a polygraph.

Companies that rely on polygraphs have more theft than those that do not. The polygraph will never replace good personnel management and background screens; and if this Congress can continue to fortify the rights of Speck and Manson, we should assist the American workers in some basic civil rights, too.

What about the workers coming into the company that pays minimum wage and says, we find out that you could afford to pay more. We have a collection bargaining agreement.

Will the company have to take a lie detector test? This is a rights vote, and what separates us from the Soviet Union is the debate that is going on in this House today.

It is a rights vote. I support this bill, and any amendment to weaken it, I will speak out against it.

Mr. GUNDERSON. Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. DELAY).

(Mr. DELAY asked and was given permission to revise and extend his remarks.)

Mr. DELAY. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, this debate is incredible. If the Members look at the bill and the cosponsors of the bill, it will show the Members the irony of H.R. 1212.

It seems interesting to me that the proponents of the bill, most of them, criticize the CIA, the FBI, law-enforcement agencies for Gestapo tactics. Yet, they are the very agencies that they are exempting in this bill and going to allow to use this abusive and intrusive polygraph.

These are also the very people that claim they protect labor, and by doing so, protect jobs. Yet, by passing this bill, No. 1, they are destroying 100,000 jobs by putting out and wiping out 10,000 businesses that administer polygraphs.

No. 2, polygraphs vindicate employees from accusations that could cost them their jobs and their reputations, and they are going to wipe that out.

The same proponents of this bill are also the very ones that say they are consumer advocates. Yet this bill will remove one of the tools that is used to fight theft that results in higher prices. We ought to call this bill the Criminal Protection Act of 1987.

The advocates also claim to be the protectors of children, elderly, and of women. Yes, these are the same people that want to take away the tools that would keep the child abuser out of the day-care center, keep those that mistreat the elderly out of the nursing home, and keep the rapists and the thieves out of personal residences.

I have an amendment that will exempt pest-control companies, and I will use this amendment to show the Members how ridiculous this bill is, and show the Members example after example.

In one case in San Antonio, there was a rapist that was kept from being hired by a pest control company because of the polygraph exam and other test procedures. If you as homeowners want to take away the ability of screening people, rapists and thieves, out from being able to come into your home, then you should support this bill. If you do not, and if you want to keep these people out of these homes, and they do come in unattended, then vote for my amendment. Please remember that there are all kinds of examples of horror stories of people going in to service a home and not only raping but stealing.

Mr. NEAL. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from North Carolina.

Mr. NEAL. Mr. Chairman, I thank the gentleman for yielding.

Is it the gentleman's position that these things are accurate?

Mr. DELAY. Absolutely.

Mr. NEAL. Does the gentleman have any evidence?

Mr. DELAY. Mr. Chairman, reclaiming my time, and I will tell the gentleman how accurate they are.

They are not from some study the gentleman cut out from the Institute of Justice, but accuracy of the practical marketplace.

If they were not accurate, companies would be wasting their money using them. They use them because they are 85- to 95-percent accurate.

Mr. MARTINEZ. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. ANDREWS].

Mr. ANDREWS. Mr. Chairman, I thank the gentleman for yielding me this time.

Private industry does have a real problem, and that is in screening employees and trying to avoid theft.

The answer, I believe, does not lie with the polygraph machine, with a lie detector.

We know from the estimates we have heard here in the debate today that they are only accurate somewhere between 8 and 10; and 25 percent of the time they are fallible. They do not work.

The response for business is to do it the old-fashioned way, to carefully screen their prospective employees, to examine their recommendations, to talk to their previous employers, but not a fallible lie detector.

I served 4 years in the district attorney's office in the Houston area. Most of that time I worked in prosecuting organized crime cases and major drug rings in the Texas area.

I am telling the Members, time and time again, the lie detector proved unworkable and fallible, and was not a useful tool, even in the very most competent hands.

In one instance I tried a defendant who robbed a camera store in a small shopping center. He was covered in a hood in a jumpsuit, and at the point of a gun in about 3 minutes he robbed a young woman of the money in the store.

He had six alibi witnesses, and he took three polygraph tests. Two were administered by the police department. He passed all three.

The State was prepared to dismiss the case, but the young woman over and over again said that this is the man that robbed me.

The case was tried, and I wondered whether the guilty verdict and the 15 years that the jury gave that defendant were correct. Two weeks later they brought the defendant into the courtroom manacled and ready to be sent away.

Everyone in the room but the jury knew that that man had passed those lie-detector tests. He leaned to the bailiff, and he whispered to him, "You know, if I had killed that young woman, today I would never be in this mess now."

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9537

They are fallible, they do not work, and it is very important by this bill that we limit their use as much as we can.

Mr. GUNDERSON. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. DELAY].

Mr. DELAY. Mr. Chairman, I thank the gentleman for yielding.

I wanted to ask the gentleman from Texas [Mr. ANDREWS], my good neighbor and friend from Houston, does the gentleman believe that drug tests are 100 percent infallible?

Mr. ANDREWS. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from Texas.

Mr. ANDREWS. Mr. Chairman, I thank the gentleman for yielding.

Of course not, but we can be relatively sure that they are more accurate.

If I could answer the gentleman's question?

Mr. DELAY. Are they 80 percent infallible?

Mr. ANDREWS. If I could have an opportunity to answer your question?

Mr. DELAY. Are they 80 percent infallible, 90 percent?

Mr. ANDREWS. If the gentleman would stop interrupting me and let me answer the question, the American Medical Association has stated over and over again that a lie-detector test is just about as accurate as a flip of the coin.

That is not true with drug testing.

Mr. DELAY. There are studies that refute that.

I am just asking the gentleman if drug tests are fallible. Is the gentleman suggesting that we require 100 percent accuracy on all tools to stop criminals?

Is the gentleman for or against drug testing?

The CHAIRMAN. The time of the gentleman from Texas [Mr. DELAY] has expired.

Mr. GUNDERSON. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, I point out to the Members that the gentleman from Texas who just told the story did not point out that the gentleman was the prosecutor, the one obviously who was involved and supportive of the administration and the results of those polygraph tests; but now after the individual referred to was convicted, now the gentleman chooses to believe the person who was convicted.

I just suggest that we put this story in its proper perspective. I am not sure I believe someone who is convicted of this kind of a crime, is this type of person the one we ought to be relying on in determining whether a polygraph is or is not valid.

Mr. MARTINEZ. Mr. Chairman, I yield 5 minutes to the gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I urge support for this legislation. I am the prime sponsor of this bill.

The Members are going to be voting today on whether or not to halt what is an absolute epidemic in the growth of the use of the lie detector gadget in the American workplace.

One hundred eighty-two of the Members have joined me in cosponsoring this legislation. It has the support of the American Medical Association, the American Psychological Association, the AFL-CIO, the American Civil Liberties Union.

These organizations join me in opposing all specific exemptions and weakening substitute.

Similar legislation passed this House last year by a vote of 236 to 173; and it had, as does this bill, broad bipartisan support.

□ 1215

Yes, there is an epidemic explosion in the growth of the use of lie detector in the United States. The American Polygraph Association tells us that last year there were 2 million lie detectors tests given in the United States, and that number has tripled in just the past 10 years.

Now, when folks hear that there have been 2 million tests given, they say, "Well, sure, that's the FBI, the CIA, the National Security Council, and local police giving those tests." Not true. Ninety-eight percent of the 2 million tests given last year were not given by public agencies. They were given by private employers against their employees and 75 percent of those 2 million tests were given against people who were only applying for a job. They had not been accused of any wrongdoing. It is the 18-year-old who wants to be a stenographer, and they say, "Come here, sit down. We are going to strap you in and make you prove that you are not guilty of something."

Only about one-fourth of the tests are given to investigate workers who might be accused, usually wrongly accused, of some crime or other.

The broad support for lie detectors stems from the simple fact that there is no scientific evidence that shows that these gadgets, these so-called lie detectors work. Employers in this country have been deceived by the myth that a metal box plugged into a wall socket can detect truth from lies. If you believe that somehow all liars have universal physiological responses, that is, they all perspire about the same rate, their respiration increases at about the same rate, their heart beat increases at about the same rate, across all liars in the United States, then you think the gadget works. I suggest that that is like believing in Pinocchio. You believe that when you lie something physiological happens to you. In the case of Pinocchio, his nose got longer. In the case of the accused, you start to perspire more.

There has been much made here on the floor of the House about the use of the lie detector by the Federal Government. Yes the Federal Government uses them. Two percent of the tests given last year were given by all public agencies, including the Federal Government. But the Federal Government gives them in ways far different than private employers do.

The Department of Defense is a user of lie detectors, but this Congress limits the number of lie detector examinations that can be given by that Department. The Department of Defense itself has regulations that involve the preinterview, the test itself is given under specific controlled conditions, postinterviews, and again they limit the number they give. Then they forbid themselves down at the Department of Defense to use the lie detector as the sole determinant as to a person's questionability or lack or questionability.

Do they work? Well, they might be 85 percent effective, according to the people who support the gadget.

Now, let us see what that means. Let us say that an employer has 1,000 job applications and the employer suspects that 10 percent, or about 100 of those 1,000 job applications, are dishonest people, about 10 percent. So he gives the lie detector tests.

Now, if it works at the maximum, at 85 percent, that means that 85 out of the 100 people that they suspect, 85 of them will be correctly identified by the lie detector; but remember, 15 percent of them, or 135 prospective employees, will be misidentified.

Thus, here is what happens. The lie detector will accuse out of the 1,000, it will accuse 220 suspects, of whom 61 percent will be wrongly identified.

Out our way in Montana, we like western music, and I will close with this for now, my friends. There is a song by a Western singer called Tom T. Hall and there is a line in that song that says: "If you hang them all, you will get the guilty."

Mr. GUNDERSON. Mr. Chairman, I yield 4 minutes to the gentleman from Texas [Mr. BARTLETT].

(Mr. BARTLETT asked and was given permission to revise and extend his remarks.)

Mr. BARTLETT. Mr. Chairman, I rise in opposition to H.R. 1212 and to urge a "yes" vote in support of many of the amendments that will be offered to help to do what some of the sponsors of the bill say that they want to do.

I would like for the House in these remaining minutes to back up just a little bit and cut through the smoke and the haze and talk about what H.R. 1212 actually does.

Now, some of the proponents and the speakers have said that they believe that the polygraph either never works or almost never works and thus they would prohibit it. They would say it should never be used. Yet the bill

H 9538

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

itself provides, authorizes the use of the polygraph by Government agencies.

Others would say that the polygraph is an imperfect tool and sometimes does not work, and yet this bill before us, and make no mistake about it, prohibits the use of the polygraph by any employer other than a Government agency, prohibits them in post-employment, prohibits it in the case of theft, prohibits it in the case of preemployment, prohibits no matter what the occupational needs are of those employees.

Let us back up to a few facts. First, this bill in its form today does not clarify the use of the polygraph. It does not limit the use of the polygraph. It does not correct abuses. It simply prohibits the use of a polygraph examination which is currently being used as one tool, as one determinant in preemployment and postemployment theft.

So we do not have before us a bill that somehow corrects abuses. We have a bill before us that eliminates the use of the polygraph in all but Government agencies.

Second, it does have law enforcement implications, and I think we ought to understand that. If you do not believe that or do not understand it, well, call your local police department or call your defense contractor who has to try to enforce national security.

The fact is that when a theft or a breach or a violation of health or safety has occurred in a nursing home or a bank or a defense contractor, that employer uses a variety of determinants to determine who they can eliminate as suspects and then turns the criminal case over to the police.

Take away that tool, and you take away the law enforcement agency's ability to enforce the law.

Third, let us examine the civil rights argument that is so often trotted out and is overused it is somewhat trite.

It has been said that the polygraph is not permitted as evidence in a criminal case in a court of law, and that is true; but the fact is that when employers hire employees we have long understood that those employers use all kinds of tests that are not allowed in a court of law. They use literacy tests sometimes if it is part of the job qualifications. They use hearsay evidence by checking references. They interview employees without the presence of an attorney.

References are used. Hearsay evidence is used. Interviews are used without the rules of evidence.

Now, the fact is that the polygraph has changed and that in today's world the use of the polygraph is not used by industry as a sole determinant because industry is trying to hire and to find qualified employees. Industry uses and business uses today, and we have evidence and testimony in the hearing record, industry uses the polygraph as one determinant, as one in-

dicator, just like they use references, just like they use personal interviews, just like they sometimes use written examinations. They use it as one determinant.

This bill does not say that they could use it as one determinant. This bill would say that under no circumstances can a polygraph be used as any indication. That is not fair to the other employees and it is not fair to the customers and it is not fair to the individual homeowners who those employees will be entering their homes at all times of the day or night, and it is not fair to the consumer.

Mr. Chairman, I urge a "yes" vote for the Darden-Young substitute which does what many of the proponents of H.R. 1212 say they want to do, and that is to limit abuses, correct abuses, provide a framework, adopt minimum standards. If that is what we want to do, let us adopt minimum standards.

Mr. MARTINEZ. Mr. Chairman, I yield myself the balance of the 30 seconds I have left.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. MARTINEZ. I yield to the gentleman from Michigan [Mr. CONYERS]. (Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, this bill will provide important and needed protection for hundreds of thousands of workers who are victimized each year by unreliable and intrusive polygraph testing.

Compulsory polygraphs as a preemployment testing device represent a threat to all job-seekers. Additionally, there is mounting evidence that they represent an even more serious danger to black workers. What the new evidence indicates is that the polygraph is not only a threat to the privacy of all, but is a special threat to equal opportunity for black Americans.

None of this evidence may represent conclusive proof that polygraphs discriminate along racial lines. But it certainly constitutes important danger signs. The data reflects something that is already widely accepted: that the most important determinant in the accuracy of polygraph testing is the tester. What this new data suggests is that testers just bring their own subjective biases to the process.

The fight for equal employment opportunity in this country has not been an easy one, but we have made much progress in recent years. We cannot afford to see those gains eroded through back door means.

The unreliability and intrusiveness of polygraphs is reason enough to pass H.R. 1212. The evidence that they are also racially biased makes it absolutely imperative.

I am attaching to these remarks the following documents which are part of that mounting body of evidence of the racially discriminatory nature of the polygraph:

The opinion of the U.S. District Court for the Northern District of Illinois in the case of *Moon v. Cook County Police and Corrections Merit Board*, No. 78 C 1572 (Jan. 18, 1980). The court there found that the plaintiffs had presented sufficient evidence to establish that

the defendant's preemployment polygraph test failed blacks at a significantly higher rate than whites. The case settled after this court ruling and the settlement included an agreement to eliminate the polygraph requirement.

The complaint in *Johnson v. Alexander's Inc.*, No. 85 Civ. 9691, filed Dec. 12, 1985, in the U.S. District Court for the Southern District of New York, charging that polygraph tests have a racially discriminatory effect. Paragraphs 20 and 21 of the complaint describe the findings made by the New York States Division of Human Rights before the case was filed in Federal court. The division found the charge of discrimination supported by probable cause. The case was settled for \$25,000.

A statistical report by John Van Ryzin, chairman of Columbia University's Department of Statistics, filed in support of the complaint in *Johnson versus Alexander's*. The statistical analysis is based on data on polygraph test outcomes admitted by the defendant. Over a 15-month period, during which more than 1,000 applicants were tested, 73.4 percent of the whites passed the test, while only 63.6 percent of the blacks passed.

EEOC Decision No. 79-44, February 23, 1979. The Equal Employment Opportunity Commission determined that a charge of discrimination was supported by reasonable cause in a case where the applicant was rejected on "psychological grounds" for failing a polygraph test; the evidence showed that blacks were psychologically disqualified at a higher rate than whites.

An excerpt from a report by the Office of Technology Assessment on "Scientific Validity of Polygraph Testing: A Research Review and Evaluation" (November 1983). The OTA's report states that research conducted cross-culturally indicates that there are ethnic differences in response to stress that may affect the detection of deception.

An excerpt from an article by Paul R. Sackett and Philip J. Decker, "Detection of Deception in the Employment Context: A Review and Critical Analysis," *Personnel Psychology*, Vol. 32 (1979). The authors refer to research evidence of ethnic differences in physiological reactivity to stress that could affect the accuracy of test results for different groups. They also note "the potential for factors such as first impressions, prejudices and stereotypes to consciously or unconsciously affect the overall judgment made by the examiner."

An article by Daniel Jussim, "Lies, Dam Lies—and Polygraphs," from *The National Magazine*, December 21, 1985, discussing the discriminatory aspects of polygraphs.

[In the U.S. District Court for the Northern District of Illinois, Eastern Division, No. 78 C 1572]

HAROLD L. MOON, PLAINTIFF, v. COOK COUNTY POLICE AND CORRECTIONS MERIT BOARD, JAMES L. O'KEEFE, SIDNEY J. SKINNER, SAMUEL W. NOLAN, E. JAMES GARRETT, ROBERT C. CUMMINGS, INC. POLYGRAPH LABORATORY, DEFENDANTS.

ORDER

This cause comes before the court on plaintiff's objections to the Magistrate's order of September 17, 1979 recommending that defendant's motion for summary judgment be granted and the case dismissed. For the reasons herein stated, this court, after reviewing the additional evidence presented after the Magistrate's report, denies defend-

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9539

ant's motions to dismiss and for summary judgment.

Also before the court is plaintiff's motion to certify the class. For the reasons herein stated, this motion is granted.

Plaintiff, Harold Moon, a black, brings this action challenging the creation, administration, evaluation, and use of polygraph tests administered to applicants for the position of Cook County Correctional officer. Plaintiff, after taking the polygraph test, was informed that he had not received a satisfactory grade on it and, consequently, was rejected as an applicant. Plaintiff brings this suit alleging that the polygraph tests discriminate against blacks in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., 42 U.S.C. §§ 1981 and 1983, and the Fourteenth Amendment.

The defendant, in moving for summary judgment and dismissal, contends that there can be no discrimination where, as here, twice as many blacks as whites were hired as Correctional Officers over the five year period covering 1974-1978.

However, summary judgment under Rule 56, Federal Rules of Civil Procedure, is an extreme remedy which should be sparingly employed. *City National Bank of Fort Smith, Arkansas v. Vanderboom*, 422 F.2d 221, 223 (8th Cir.), cert. denied, 300 U.S. 905 (1970); *Homan Mfg. Co. v. Long*, 242, F.2d 645 (7th Cir. 1957). It should be entered only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56, Fed.R.Civ.P.

The basic mission of the summary judgment procedure is to allow a court to pierce the pleadings and assess proof in order to see whether there is a genuine need for a trial. *Gauck v. Meleski*, 346 F.2d 433 (5th Cir. 1965). Issue finding and not issue resolution is the court's task under such procedure. *Hackensack Water Co. v. Village of Nvack*, 289 F. Supp. 671 (S.D. N.Y. 1968). In performing its task, the court must draw inferences from underlying facts contained in such materials as affidavits, exhibits, and depositions, in a light most favorable to the non-movant. *Technograph Printed Circuits, Limited v. Methode Electronics, Inc.*, 356 F.2d 442, 446-7 (7th Cir.), cert. denied, 384 U.S. 950 (1966). The non-movant's allegations must be taken as true, to the extent that they are consistent with its evidence before the court. See *Goodman v. Mead Johnson & Co.*, 534 F.2d 566 (3d Cir. 1976), cert. denied, 429 U.S. 1038 (1977). It is the court's duty to resolve all doubts as to the existence of a genuine issue as to material fact against the moving party. *Technograph Printed Circuits, Limited v. Methode Electronics, Inc.*, supra.

In the instant case, this court finds a clear question of material fact as to whether the use, administration, evaluation, and creation of the polygraph tests employed by the Correctional Department operates discriminatorily against blacks.

First, we note that defendants contentions, that there can be no discrimination where twice as many blacks as whites have been hired during the 1974-1978 period, lack serious merit. Numerous cases have held that a racially balanced work force cannot immunize an employer from liability for specific acts of discrimination, here the alleged employment of the polygraph test. See e.g., *Turnco Construction Corp. v. Walters*, 46 L.W. 4967, 4970.

And, in the instant case, plaintiffs have established by statistical evidence a prima facie case of discrimination based on the information contained in defendant's files.

These statistics demonstrate that a higher percentage of blacks failed the polygraph test than whites taking the same test. In fact, plaintiff's expert correctly determined from the information available that there was one chance in 1,000 that in 1976-1978 the proportion of blacks who failed the polygraph would be as great as 72.5% (where 67.5% of those taking the test was black) if blacks had had an equal chance of passing the test.

In 1978, 65% of those who took the polygraph were black and 74% of those who failed the polygraph were black. But, 31.2% of those taking the test were white, yet only 21.5% of those who failed were white. Plaintiff's expert correctly determined that the chance that this proportion of blacks would fail the test absent discrimination is less than two in 10,000.

Based on the statistics, plaintiff has proffered sufficient evidence to constitute a prima facie case of discrimination.

While defendant correctly notes that the percentage used for the number of blacks taking the test was an assumption based on the percentage of blacks who applied, plaintiff used all the information available to him and defendants have offered no other figure that they allege to be more precise. While this assumption must be tested, its mere existence without some contrary evidence from defendants, is not enough to undermine plaintiff's efforts to establish a prima facie case. In fact, in *Hester v. Southern Railway Co.*, 497 F.2d 1374, 1379-1381 (5th Cir. 1974), a case cited by defendants in challenging the use of assumptions by plaintiff, the defendant there, unlike the defendant here, offered testimony that plaintiffs percentages were miscalculated because applicants "deselected" themselves. Defendants have not offered any such testimony nor proof explaining the basis for their challenges to plaintiff's assumptions.

The Supreme Court case of *New York City Transit Authority v. Blazer*, 99 S.Ct. 1355, 1364-1366 (1979) is likewise not applicable where, as here, defendant's have not offered any explanation as to the likelihood that plaintiff's assumptions are inaccurate in toto. Moreover, in *Blazer* the Supreme Court acknowledged that the available statistics could possibly have proven a prima facie case.

This court also find it noteworthy that plaintiff's statistics are compiled from records which were in defendant's possession and defendant's challenges are logged against statistics for which plaintiff could find no records because, as defendant's admit, "the Merit Board does not have in its possession all of the white forms collected in 1977 and 1978." In fact, defendant's efforts to undermine the validity of plaintiff's statistics is based on less reliable assumptions than plaintiff's.

For the foregoing reasons, this court finds that summary judgment and/or dismissal is inappropriate at this juncture . . .

[U.S. District Court, Southern District of New York]

BARBARA JOHNSON, PLAINTIFF, AGAINST,
ALEXANDER'S, INC., DEFENDANT
(Complaint)

PRELIMINARY STATEMENT

1. This is an action brought pursuant to Title VII of the Civil Rights Act of 1964, as amended, 41 U.S.C. Section 2000e, seeking declaratory and injunctive relief to redress the injury done to the plaintiff, Barbara Johnson, as a result of the defendant's policy and practice of denying employment to job applicants and new employees solely on the basis of a polygraph test. The defendant's polygraph tests, which are used as

an initial condition of employment for positions at the defendant's stores in New York State, have a substantial discriminatory impact on job applicants and employees who are black. These tests are not justified by business necessity: they are not accurate and cannot serve as a valid predictor of future job performance. Accordingly, the defendant's policy and practice of conditioning employment on polygraph test results violates the Civil Rights Act.

JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to 42 U.S.C. §§ 2000e-5 (f)(1) and (f)(3), the jurisdictional provisions of Title VII. Because this action arises under the laws of the United States, jurisdiction also lies under 28 U.S.C. § 1331. The plaintiff also seeks declaratory relief pursuant to 28 U.S.C. § 2201 and 2201 and Rule 57 of the Federal Rules of Civil Procedure.

PARTIES

3. Plaintiff Barbara Johnson is a 42 year old black woman. She is a citizen of the United States and the State of New York, and resides in Manhattan.

4. Defendant Alexander's, Inc. (hereinafter referred to as "Alexander's") is a corporation operating a chain of department stores. Its principal corporate office is located at 500 Seventh Avenue, New York, New York.

STATEMENT OF THE FACTS AND APPLICABLE LAW

A. Alexander's Denial of Employment to Ms. Johnson.

5. Ms. Johnson applied for employment as a "fitter-checker" (dressing room attendant) at Alexander's in October of 1981. On or about October 15, 1981, Ms. Johnson took and passed the requisite written test and was given an interview. During the interview she was told that if she received the job she would be required to submit to a polygraph test.

6. On October 19, 1981, Ms. Johnson began working for Alexander's on a part time basis. She worked every day that week and the beginning of the next week. During this period, she performed the duties of her job in a satisfactory manner.

7. On October 27, 1981, Ms. Johnson was required to take a polygraph test at Alexander's Lexington Avenue store.

8. Ms. Johnson asked the polygraph examiner, an Alexander's employee, what would happen if she refused to take the test. She was told that she would be fired. Ms. Johnson submitted to the test.

9. Ms. Johnson truthfully answered all of the questions that were put to her during the polygraph test. After the test was completed, she was told that she would be informed of the results.

10. On October 30, 1981, Ms. Johnson was instructed to report to the store personnel manager. The personnel manager told Ms. Johnson that she had "failed" the polygraph test and that it was Alexander's policy to terminate persons who fail the test. Ms. Johnson was discharged from employment that day.

B. Alexander's Policy and Practice of Conditioning Employment on Polygraph Test Results.

11. Ms. Johnson was denied employment pursuant to a policy and practice of Alexander's, which continues in effect to the present, requiring all employees in certain positions to pass a polygraph test as an initial condition of their employment.

12. The polygraph tests that are required by Alexander's as an initial condition of employment (hereinafter referred to as "initial polygraph tests") are administered to job applicants and new employees before or

H 9540

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

shortly after they commence their employment at Alexander's. The tests are administered by polygraph examiners employed by Alexander's.

13. The initial polygraph tests are used by Alexander's to assess whether an applicant or new employee is being truthful or deceptive when answering questions relating to his or her background, past employment and past behavior.

14. The job applicants and new employees who are required to submit to an initial polygraph test are deemed to have "failed" the test, and are denied employment, if (a) the job applicant or employee makes admissions in the course of the polygraph test that disqualify him or her from employment; or (b) the polygraph examiner determines, by examining the charts recorded by the polygraph machine, that the job applicant or employee gave deceptive answers during the test.

15. The policy and practice described above in paragraphs 11 through 14 applies uniformly to all Alexander's stores in New York State.

16. Ms. Johnson was denied employment by Alexander's, pursuant to the policy and practice described above in paragraphs 11 through 14, solely because an Alexander's polygraph examiner determined that Ms. Johnson's polygraph charts indicated that she gave deceptive answers during an initial polygraph test.

C. The Discriminatory Impact of Alexander's Employment Policy.

17. Alexander's policy and practice of denying employment to job applicants and new employees solely on the basis of the outcome of an initial polygraph test results in the disqualification of a disproportionately high percentage of black employees and job applicants.

18. Alexander's use of polygraph tests as an initial condition of employment is not justified by business necessity. The initial polygraph tests used by Alexander's are not accurate, cannot detect deception and are not a valid predictor of future job performance.

19. By making employment decisions, including the decision to discharge Ms. Johnson, on the basis of an employment test that has a disparate impact on blacks and is not justified by business necessity, Alexander's violated and continues to violate Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-2(a).

D. Administrative Charges Filed by Ms. Johnson.

20. On April 23, 1982, Ms. Johnson filed a complaint with the New York State Division of Human Rights charging Alexander's with unlawful discrimination in employment on the basis of race. Ms. Johnson's discrimination charge was filed with the New York District Office of the Equal Employment Opportunity Commission (hereinafter referred to as "the Commission") on or about June 22, 1982. The Commission deferred investigation of the charge to the State Division of Human Rights.

21. The State Division of Human Rights (hereinafter referred to as "the Division") conducted an investigation of the racial impact of Alexander's polygraph testing. On September 19, 1985, the Division issued a determination that there is probable cause to believe that Alexander's polygraph testing discriminates on the basis of race. The Division's investigation found that "[t]he figures [on the racial impact of polygraph testing at Alexander's] establish that Black employees fail the polygraph test at a statistically significantly higher rate than others. . . . Additionally the respondents have not shown that the use of the polygraph is a compelling business necessity. . . ." ("Basis

for Probable Cause," dated September 13, 1985).

22. On November 15, 1985, the Commission issued a Notice of Right to Sue authorizing Ms. Johnson to file a civil action in federal district court. The Notice of Right to Sue was issued at Ms. Johnson's request, pursuant to 29 C.F.R. § 1601.38(a), because more than 180 days had elapsed since the filing of Ms. Johnson's charge with the Commission.

PRAYER FOR RELIEF

Wherefore, plaintiff requests that the Court:

A. Declare, pursuant to 28 U.S.C. § 2201, that Alexander's policy and practice of denying employment to job applicants and new employees solely on the basis of the outcome of an initial polygraph test violates Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2(a);

B. Enjoin Alexander's from continuing its use of initial polygraph tests as a condition of employment;

C. Order Alexander's to offer the plaintiff reinstatement to her position, and award her back pay and all other benefits of employment from the date of her discharge;

D. Award the plaintiff reasonable attorneys' fees and the costs and disbursements incurred in the prosecution of this action.

E. Grant such other relief as may be deemed appropriate.

Dated: New York, NY, December 12, 1985.

Respectfully submitted,

MARGARET K. BROOKS,
JON BAUER,
(Legal Action Center
of the City of New
York, Inc.)
Attorneys for Plaintiff,
Barbara Johnson

STATISTICAL REPORT IN THE CASE OF JOHNSON
VERSUS ALEXANDER'S

(By John Van Ryzin, Ph.D., Chairman, Department of Statistics and Professor, Division of Biostatistics, Columbia University)

SUMMARY

This report covers a statistical analysis of the results of "initial polygraph tests" and "security interviews" administered by Alexander's from August 1, 1980 through October 27, 1981. The statistical analysis seeks to address the question: Does the administration of the initial polygraph test given by Alexander's show substantially different pass proportions for blacks and whites, which are not attributable to chance by usual statistical practices? In answering this question, the analysis is done for the comparison of the black pass proportion with the white pass proportion, and for the comparison of the black pass proportion with the pass proportion for all non-blacks.

The defining characteristics of the "initial polygraph test" and "security interview" are described in the Pretrial Order (Stipulated Facts, ¶14-21). The initial polygraph test is part of the security interview procedure. Individuals may fail the security interview either (1) by failing the initial polygraph test (i.e., such persons are found, by means of the polygraph test, to have been deceptive in answering test questions), or (2) by making admissions that disqualify them from employment. To analyze the racial impact of the initial polygraph test, my analysis excludes instances where Alexander's records indicate that failure was based upon disqualifying admissions.

However, if Alexander's records are found to be insufficiently reliable in distinguishing between persons who failed the security

interview solely because of a finding of deception on the polygraph test, and persons who failed because of admissions, then the data concerning the results of the overall "security interview" may be viewed as the best available measure of the initial polygraph test's impact on different groups. Accordingly, I have also done a statistical analysis for the comparison of black and white pass proportions, and for the comparison of black and non-black pass proportions for the data on the results of the security interview (i.e., including admissions).

Based on the detailed analysis carried out below, I conclude that, for the initial polygraph test, the black pass proportion of 63.6 percent versus the higher white pass proportion of 73.4 percent is not due to chance alone. In fact, the probability of the white pass proportion being this much higher than the black pass proportion is approximately .001 (one in a thousand). This is based on a difference in the pass proportions of 3.11 standard deviation units. The standard deviation analysis measures, in standard statistical units of variation, the significance of the disparity between the observed difference in the pass proportions and the result one would expect to find in a race-neutral test: no difference in the pass proportions for blacks and whites. A standard deviation of more than 2 units is commonly considered by statisticians as not due to chance alone. A similar analysis, of the black pass proportion of 63.6 percent versus the non-black pass proportions of 70.9 percent has a standard deviation of 2.82 units. The probability that such a larger pass proportion for non-blacks is due to chance alone is approximately .002 (two in one thousand).

Furthermore, if one compares the proportions for the entire "security interview" procedure (i.e., including admissions), the results are as follows: (1) For the black pass proportion of 58.2 percent versus the white pass proportion of 70.4 percent, the standard deviation is 3.86 units, representing a probability of approximately .0001 (one in the ten thousand) that the larger white pass proportion was due to chance alone. (2) For the black pass proportion of 58.2 percent versus the non-black pass proportion of 66.1 percent, the standard deviation is 3.07 units, representing a probability of approximately .001 (one in a thousand) that the larger non-black pass proportion was due to chance alone.

The above statements are justified in a more detailed explanation which is presented in the remainder of the report. Based on the above results, I conclude there is clear statistical evidence that black applicants and new employees given the initial polygraph tests administered by Alexander's during the period cited had a significantly lower pass proportion on the test when compared with both whites or non-blacks; and, furthermore these differences are not reasonably attributable to chance alone. Thus, I conclude that the initial polygraph test administered by Alexander's has an unfavorable impact on black applicants or new employees. Statistical analysis of the entire "security interview" procedure likewise shows that the Alexander's security interview has an unfavorable impact on blacks.

DETAILED ANALYSIS

The statistical analysis for the statements presented in the summary above will now be given in detail. The data upon which these statements are based is given in Table 1 below. The data represented in Table 1 comes from the chart agreed upon by the parties in the Joint Pretrial Order (Stipulated Facts, ¶23). This table does not include

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9541

applicants of unknown ethnic origin and tests for which the results are unknown. The total number of such persons is a mere 19 out of 1457 persons taking the test. Since this is only 1.3 percent of all persons taking the test, the omission of such small numbers would not result in statistical conclusions essentially different from those given above. Also omitted from Table 1 are five "inconclusive" test outcomes. These are omitted because no employment decisions were made on the basis of inconclusive tests. In two instances, employees failed a first test but requested and were given a second test. In these two cases, only the outcome of the second test is recorded in the Table, since only the second test resulted in an employment decision.

TABLE 1.—DATA ON POLYGRAPH TEST RESULTS OF 1433 KNOWN CASES BY ETHNIC GROUP

Ethnic group	Test results		
	Pass	Fail	Admission
White.....	240	87	14
Black.....	448	256	66
Hispanic.....	175	88	31
Asian.....	23	4	0
Native American.....	0	1	0

Table 2 presents the pass proportions as percentages by ethnic group with and without admissions included. Note that the last row of table 2 presents the combined rates for all ethnic groups which are non-black.

TABLE 2.—PASS PERCENTAGES BY ETHNIC GROUP

Ethnic group	Pass percentages	
	Initial polygraph test (admissions excluded)	Security interview (admissions included)
White.....	73.4	70.4
Black.....	63.6	58.2
Hispanic.....	66.5	58.5
Asian.....	85.2	85.2
Native American.....	0.0	0.0
Non-black.....	70.9	66.1

To analyze the data from Tables 1 and 2, a standard statistical technique of comparing two binomial proportions is employed. See, for example, Mosteller, Rourke and Thomas (1970, pp. 318-323). Specifically, four analyses were done: (1) comparing the black and white pass proportions for the initial polygraph test (without admissions included), (2) comparing the black and non-black pass proportions for the initial polygraph test, (3) comparing the black and white pass proportions for the security interview (including admissions), and (4) comparing the black and non-black pass proportions for the security interview.

A detailed explanation of the statistical procedure used will be given in the case of the comparison of the black and white pass proportions for the initial polygraph test (see (1) above). These results are given in Table 3 below. The comparisons in (2) to (4) above follow a similar procedure and the results are stated in Tables 4 to 6 below.

The statistical procedure used makes the following assumptions. Suppose we have two populations of applicants taking the polygraph test. In case (1), these populations are the black applicant pool and the white applicant pool. We assume that the applicants in table 1 are a random sample of the applicant pool for each racial group. Under these assumptions, it is well-known that the number of whites who pass have what is called binomial population with unknown pass proportion p_1 . The number of white passes in this sample can be designat-

ed x_1 , while n_1 designates the sample size for whites. In case (1) above, $x_1=240$ and $n_1=327=240+87$ (see row one of Table 1). Similarly, the number of blacks who pass have a binomial distribution with unknown pass proportion p_2 . In the sample under study, the observed black number of passes is $x_2=448$, and the black sample size $n_2=704=448+256$ (see row two of Table 1).

We now ask the question: is $p_1 > p_2$ (the unknown racial group pass proportions are the same) as opposed to whether $p_1 > p_2$ (the unknown white pass proportion is higher than the unknown black pass proportion)? To answer this question, we begin by comparing the two observed proportions.

$$\hat{p}_1 = \frac{x_1}{n_1} = \text{observed proportion of white passes.}$$

$$\hat{p}_2 = \frac{x_2}{n_2} = \text{observed proportion of black passes.}$$

The estimated standard error, here .0315, is a measure of the expected spread of the observed difference $\hat{p}_1 - \hat{p}_2$. Statistical theory says that if we divide the difference $\hat{p}_1 - \hat{p}_2$ by the estimated standard error s , we get a statistic which measures the number of normalized standard deviations contained in the observed difference $\hat{p}_1 - \hat{p}_2$. In this case, the z-value is 3.11.

$$z = \frac{\hat{p}_1 - \hat{p}_2}{s} = \frac{.098}{.0315} = 3.11.$$

A z-value of more than 2 is commonly considered to be statistically significant. In other words, when the z-value exceeds 2, the observed difference in pass proportions cannot reasonably be attributed to chance alone.

By reference to statistical tables, the z-value can be used to determine the probability that the observed difference in pass proportions would occur by chance. In this case, the probability of the observed z-value being as large or larger than 3.11 is

$$\text{Prob}(\text{observed } z \text{ value} > 3.11) = \text{Prob}(\text{observed difference } \hat{p}_1 - \hat{p}_2 > .098) = .001$$

That is, the probability of seeing an observed difference $\hat{p}_1 - \hat{p}_2$ as large or larger than .098, if indeed the pass proportions are equal for the white and black applicant pools ($p_1 = p_2$), is approximately one in a thousand (1 in 1000). Hence, we can conclude that this difference is too large to be reasonably attributable to chance alone. Thus, p_1 the pass proportion for whites who take Alexander's initial polygraph test, is higher than p_2 the pass proportion for the population of black test-takers. We can conclude that blacks compared to whites suffer a disadvantage from the initial polygraph test administered by Alexander's. Furthermore, such a disadvantage cannot be attributed based on the observed data to chance alone.

We summarize the result for the comparison of the white vs black pass proportions for the initial polygraph test in Table 3 below. (See (1) above).

TABLE 3.—STATISTICAL RESULTS FOR WHITE VERSUS BLACK PASS PROPORTIONS ON THE INITIAL POLYGRAPH TEST

Ethnic group	Pass	Fail	Total	Pass proportion
White.....	240	87	327	0.734(73.4%) = \hat{p}_1
Black.....	448	256	704	0.636(63.6%) = \hat{p}_2
Total.....	688	343	1,031	0.667(66.7%) = \bar{p}

Observed difference of proportions = $\hat{p}_1 - \hat{p}_2 = .734 - .636 = .098$.
 Estimated standard error of difference = $s = .0315$.
 Normalized standard deviation units = $z = .098/.0315 = 3.11$.
 Probability (observed difference > .098) = .001 (1 in 1000).

TABLE 4.—STATISTICAL RESULTS FOR NON-BLACK VERSUS BLACK PASS PROPORTIONS ON THE INITIAL POLYGRAPH TEST

Ethnic group	Pass	Fail	Total	Pass proportion
Non-black.....	438	180	618	0.709(70.9%) = \hat{p}_1
Black.....	448	256	704	0.636(63.6%) = \hat{p}_2
Total.....	886	436	1,322	0.670(67.0%) = \bar{p}

Observed difference of proportions = $\hat{p}_1 - \hat{p}_2 = .709 - .636 = .073$.
 Estimated standard error of difference = $s = .0258$.
 Normalized standard deviation units = $z = .073/.0258 = 2.82$.
 Probability (observed difference > .073) = .002 (2 in 1000).

TABLE 5.—STATISTICAL RESULTS FOR WHITE VERSUS BLACK PASS PROPORTIONS ON THE SECURITY INTERVIEW

Ethnic group	Pass	Fail	Total	Pass proportion
White.....	240	101	341	0.704(70.4%) = \hat{p}_1
Black.....	448	327	775	0.582(58.2%) = \hat{p}_2
Total.....	688	423	1,111	0.619(61.9%) = \bar{p}

Observed difference of proportions = $\hat{p}_1 - \hat{p}_2 = .704 - .582 = .122$.
 Estimated standard error of difference = $s = .0316$.
 Normalized standard deviation units = $z = .122/.0316 = 3.86$.
 Probability (observed difference > .122) = .0001 (1 in 10,000).

TABLE 6.—STATISTICAL RESULTS FOR NON-BLACK VERSUS BLACK PASS PROPORTIONS ON THE SECURITY INTERVIEW

Ethnic group	Pass	Fail	Total	Pass proportion
Non-black.....	438	225	663	0.661(66.1%) = \hat{p}_1
Black.....	448	327	775	0.582(58.2%) = \hat{p}_2
Total.....	886	547	1,433	0.614(61.4%) = \bar{p}

Observed difference of proportions = $\hat{p}_1 - \hat{p}_2 = .661 - .582 = .079$.
 Estimated standard error of difference = $s = .0257$.
 Normalized standard deviation units = $z = .079/.0257 = 3.07$.
 Probability (observed difference > .079) = .001 (1 in 1000).

The conclusion I reach from Tables 3 through 6 is that if one compares the black pass proportion to either the white or non-black proportion for the initial polygraph test or security interview, there is a large, normalized standard deviation indicating most clearly that Alexander's administration of the initial polygraph test and security interview has an unfavorable impact on blacks.

REFERENCE

Mosteller, F., Rourke, R., and Thomas, G.B., Jr. (1970). "Probability with Statistical Applications," 2nd Ed., Addison-Wesley Publishing Co., Reading, MA.

POLYGRAPH TEST HAS BIASED IMPACT

Decision of Equal Employment Opportunity Commission Decision No. 79-44, February 23, 1979.

TITLE VII—CIVIL RIGHTS ACT OF 1964

Pre-employment Inquiries—Psychological Exam—Polygraph.—Rejection of an applicant for police employment because he failed a psychiatric test was racially discriminatory where the procedures used, which included a polygraph test, disqualified black applicants at a disproportionately

high rate and were not shown to be related to successful job performance.

Back reference.—¶ 420.30.

[Full Text of EEOC Decision]

Summary of Charge

Charging Party alleges that Respondents engage in unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964, as amended, on the basis of race by using hiring practices and selection procedures which discriminate against Blacks.

Jurisdiction

Respondent police department is an employer within the meaning of Section 701 of Title VII and, at the time the charge was filed, employed [number] persons. Respondent Civil Service Commission, is an employer within the meaning of Section 701 of Title VII.

The charge was deferred to the (local) Civil Rights Commission on March 26, 1973. No investigation was made of Charging Party's charges by the (local) Civil Rights Commission.

The charge was timely filed with the EEOC and all other jurisdictional requirements have been satisfied.

Summary of Investigation

At the time the charge was filed, Respondents utilized the following procedures to select policemen: 1) a written general ability test administered by the Civil Service Commission; 2) the formation of an eligibility list by the Civil Service Commission; 3) a background investigation; 4) a physical exam by the Department of Safety Medical Director; 5) a written psychological exam; 6) a psychiatric interview and evaluation of the summaries of the background investigation and the psychological exam; 7) review of the applicant's file by the Chief of Police; and 8) final selection by the Director of Public Safety.

Charging Party received a score of 81.515 on the written exam which placed him 832 on the eligibility list. He took the polygraph test prior to the psychiatric and psychological tests and was rejected on psychological grounds as a result of this polygraph test. He alleges that his responses to questions posed during the polygraph were not accurately reflected. For example, he stated that his affirmative answer to a question regarding his knowing homosexuals was recorded as "applicant admitted going with homosexuals."

Respondent's Chief of Police denied that Charging Party had been discriminated against and stated that Respondent Civil Service Commission devised and administered the tests used. Respondents refused to cooperate in the investigation of the charge, claiming that the charges fell within the continuing jurisdiction of the United States District Court . . . where an action had been brought under 42 U.S.C.A. § 1981.

An action was filed on October 12, 1972, by the—an organization composed principally of Black police officers, and individual Black police officers against the city, its Chief of Police, the Director of the Cities Program, and members of the [city] Civil Service Commission. The suit alleged that a range of practices used by the Respondents in the recruitment, testing, screening and hiring of new patrolmen; the assignment, treatment and promotion of current police officers, as well as the examination administered by the Civil Service Commission on July 15, 1972, had a racially discriminatory effect on Blacks and Puerto Ricans. The Court held that the evidence created a *prima facie* case that the battery of tests constituting the examination of July 15, 1972, had a racially discriminatory impact upon Blacks and Puerto Ricans who took the examination. The court fixed the mini-

mum number of appointments of Blacks and Puerto Ricans, male and female, to be made to the police force from the 1972 eligibility list at 18 percent.

An action under 42 U.S.C.A. § 1981, however, is not a bar to action by any other persons who may believe that Respondents have in the past discriminated, or are presently discriminating, against them in violation of Title VII of the Civil Rights Act of 1964, as amended. It is well established that an action for employment discrimination involving racial discrimination may be brought under Title VII or 42 U.S.C.A. § 1981. See e.g. *Head v. Timken Roller Bearing Company* [6 EPD ¶ 8876]. 486 F.2d 870 (6th Cir. 1973), *Taylor v. Safeway Stores, Inc.* [10 EPD ¶ 10.410]. 524 F.2d 263 (10th Cir. 1975) where it was held that 42 U.S.C.A. § 1981 is an independent cause of action which may be maintained either concurrently with a claim under Title VII or without exhausting Title VII remedies and *Boles v. Union Camp Corp.*, 57 FRD 46 (S.D. Ga. 1972) 5 EPD ¶ 8051 where a class action was brought by several Black employees of Union Camp Corporation and by two former black employees and two blacks who were rejected under Title VII and 42 U.S.C.A. § 1981.

Although Charging Party successfully completed the eligibility exam, he was rejected for employment. The rejection of the Charging Party was based on psychiatric unfitness. An analysis of the points of rejection reveal wide disparities in the percentages of Blacks and Whites rejected. For example, 7.9 percent of Whites were rejected because of background while 19.3 percent of Blacks were rejected; 79 percent of Whites were rejected for psychological reasons (consisting of an IQ test and personality test) while 8.7 percent of Blacks were rejected; 16.90 percent of Whites were rejected for psychiatric reasons while 39.3 percent of Blacks were rejected; 28.30 percent of Whites were rejected for medical reasons while 18.7 percent of Blacks were rejected.

It is well established that employment tests and qualifications which have a disproportionate exclusionary effect on minority applicants and do not have a demonstrable relationship to successful performance on the job are prohibited. See e.g. *Griggs v. Duke Power Co.* [3 EPD ¶ 8137], 401 U.S. 424, 431 (1971), *Castro v. Beecher* [4 EPD ¶ 7783], 459 F. 2d 725 (1st Cir. 1972).

Furthermore, the Commission has held that the use of any test which adversely affects the hiring, promotion, transfer, or any other employment or membership opportunity of classes protected by Title VII constitutes discrimination unless: a) the test has been validated and evidences a high degree of utility and b) the person giving or acting upon the results of the particular test can demonstrate that alternative suitable hiring, transfer, or promotion procedures are unavailable. See EEOC Guidelines on Employment Selection, 29 CFR § 1607.3.

Conclusion

In view of the disproportionate impact of Respondents' selection procedures on Blacks, and in the absence of validation of the procedures, we conclude that there is reasonable cause to believe that Respondents violate Title VII of the Civil Rights Act of 1964, as amended, on the basis of race by using hiring practices and selection procedures which discriminate against Blacks.

SCIENTIFIC VALIDITY OF POLYGRAPH TESTING: A RESEARCH REVIEW AND EVALUATION ETHNIC AND GROUP DIFFERENCES

Another category of subject differences that may affect polygraph validity has to do with ethnic and group differences in physio-

logical response. Research conducted cross culturally (e.g., 97,104,158), indicates that there are ethnic differences in response to stress. Such differences may, in turn, affect detection of deception. As noted earlier, these effects may interact with the ethnic identification of the examiner. However, effects of ethnic differences have not been directly tested with respect to polygraph examinations.

AUTONOMIC LIABILITY

A final individual difference is what Waid and Orne (194) have referred to as automatic liability. Regardless of other differences among subjects, there may be consistent individual differences connected with their level of automatic arousal.

Although there is considerable variance for an individual in autonomic responses to most physiological measures of automatic nervous system (ANS) arousal, electrodermal liability may be different. Given the importance of the EDR for polygraph examinations, it may be essential to understand more about this factor. Unfortunately, most of this research (e.g., 200) has been conducted with concealed information tests and not with CQT or R I tests.

SETTING

One theory underlying lie detection using the polygraph is that the threat of punishment leads an individual to manifest a physiological reaction (48). This suggests, then, that settings in which an individual is more certain of being detected and in which the consequences are greatest, will permit higher levels of detection. Furthermore, in order to be certain of being detected, a subject must believe in the efficacy of the polygraph procedures in order for it to function. According to some (e.g., 194), the polygraph is often used somewhat like a "stage prop," and its presence is meant to "enhance the subject's concern." Stimulation tests, used in almost all field polygraph examinations, serve the same function, albeit more directly. There is considerable discussion (e.g., 202) in the literature about how frequently within a polygraph examination such stimulation tests should be utilized in order to increase the validity of the examination.

INSTRUMENT

Some research, reported by Orne and his colleagues, addresses the question of the situational features necessary for a polygraph examination. In one component of a study reported by Orne, et al. (123), subjects were led to believe that the polygraph recording equipment was not operative. There was some indication that the pretest condition in which subjects were led to believe that the polygraph instrument was inoperative produced a lower detectability; however, results were not statistically significant. In an earlier study (161), detectability was not affected by subjects' belief in whether the machine was recording. Both of these studies involved use of concealed information tests.

A more recent study by Orne's group (198) tested a similar hypothesis using a different procedure. In this study, subjects saw the polygraph machine turned off, although the experimenters actually ran the leads to a second polygraph device and were able to record responses during a pretest review of questions. The results indicated that subjects who were aware of being recorded had significantly higher responses to relevant questions and not significantly different responses to control questions.

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9543

DETECTION OF DECEPTION IN THE EMPLOYMENT CONTEXT: A REVIEW AND CRITICAL ANALYSIS

(By Paul R. Sackett and Phillip J. Decker)

Empirical research on the validity of the polygraph, voice stress analysis, and paper and pencil instruments as mechanisms for the detection of deception is reviewed. It is noted that while these devices have their greatest use in the employment context, virtually all research has been done in an actual or simulated criminal investigation context. Three separate uses of devices for the detection of deception in the employment context are identified, namely, pre-employment screening, periodic screening of current employees, and investigation into a specific theft. Differences between each of these uses and the criminal investigation context are identified, and issues limiting the generalizability of research findings from one context to another are raised. Among the issues are the effects of a low base rate of guilt on accuracy, the effects of making multiple judgments on overall accuracy, and the potential for racial or ethnic bias in judgments of guilt or innocence.

An extensive body of literature exists on the topic of the detection of deception and investigation of theft using various techniques, including interpretation of physiological responses and questionnaires. Very little of this literature has appeared in psychological journals. Most reports are contained in polygraph trade publications or law enforcement publications. Lykken (1978b) discussed the lack of involvement by psychologists in this field, labeling it a case of "police men rushing in where science fears to tread."

Regardless of who has done the research or its quality, the vast majority of polygraph examinations are conducted in the employment context rather than the criminal investigation context (U.S. Senate, 1974). However, virtually all reported research has dealt with actual or simulated criminal investigations.

REACTIONS TO POLYGRAPH EXAMINATIONS

The questions raised in this paper have focused on the accuracy of polygraph examinations. It should be noted that a number of objections to the polygraph can be made on ethical, social, and constitutional grounds. Among these are objections that the polygraph is an invasion of privacy and an infringement on the dignity of man, that it reverses the principle that one is innocent until proven guilty by requiring individuals to prove their innocence, and that it violates 5th amendment rights against self incrimination. Proponents of the polygraph reply that individual rights must be weighed against employer losses and that individuals have an obligation to society to cooperate in attempts to identify dishonest individuals (Shattuck, Brown, and Carlson, Note 6). The stand one takes regarding the polygraph may be largely determined by whether one's sympathies lie with the individual or the employer.

Another issue of interest is the attitude of applicants and employees toward the polygraph examination. Ash and Wheeler (Note 7) report that 86 percent of applicants thought the examination was fair, 96 percent were willing to take the test to get a job, and 88 percent were willing to routinely take an exam as a condition of employment. They interpret these results as indicating that resistance to the polygraph has been overestimated. However, all participants completed the attitude questionnaire after the polygraph examination. Thus, the questionnaire may have been viewed as part of the selection procedure, and applicants may have felt that expressing negative attitudes

toward the examination would affect their chances for employment. Further research is needed in a setting in which no negative outcome may be anticipated by the subjects due to expression of negative attitudes.

BIAS IN POLYGRAPH EXAMINATIONS

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment decisions on the basis of race, color, religion, sex, and national origin. Two potential sources of bias in polygraph examinations have been identified. The first involves possible racial, ethnic, or sexual differences in physiological reactivity to psychological stress. Kugelmass and Lieblich (1968) have shown that persons of Eastern Mediterranean origin show GSR non-reactivity more often than other ethnic groups. Relying on different physiological measures for different subgroups may result in differential accuracy across subgroups. It should be noted that ethnic differences in GSR level (e.g., Johnson and Corah, 1963; Lazarus, Tomita, Opton, and Kodama, 1966) do not constitute a threat to polygraph accuracy, since the subjects' responses to irrelevant or control questions are compared with their responses to relevant questions.

Second, and perhaps of greater interest, is the potential for factors such as first impressions, prejudices, and stereotypes to consciously or unconsciously affect the overall judgment made by the examiner. Orne, Thackray, and Paskewitz (1972) have suggested that "the manner in which questions are asked can certainly influence the physiological response. The interrogator wishing to obtain a record with physiological evidence of deception is likely to be able to do so. In view of the work of Rosenthal (1966) on experimenter bias, it seems extremely likely that the interrogator could unwittingly communicate some aspects of his conviction to the subject" (p. 751). There are no published field studies reporting information on the percent of deceptive and nondeceptive judgments among the various protected classes. Such information should be readily available and deserves to be reported.

There is one appellate court case confirming the EEOC's right of access to polygraph records (*Circle K Corporation vs EEOC*). The information sought by the EEOC is instructive: "a list of all applicants and present employees subjected to the polygraph examination, their racial/ethnic identity and whether they were accepted or rejected; documentation of the nature, standardization and validity of the polygraph test, and a list of questions asked of each applicant; qualifications of the examiners who administered the tests * * * (P. 1054). The EEOC was granted access to this information, but a case involving discrimination on the basis of the polygraph examination has not come to trial. There have, however, been a number of cases in which the subjective nature of the decision made in an employment interview had been identified as having the potential for discrimination (e.g., *Hester vs Southern Railway Co.*, *Causey vs Ford Motor Co.*). On the other hand, one interview case has upheld the employer's right to subjective evaluation unless there is evidence of bias (*Salton vs Western Electric*). Thus, an examination based solely on the interpretation of polygraph charts may be on stronger legal grounds than one involving both charts and an evaluation of the examinee's verbal and nonverbal behavior.

[From the Nation, Dec. 21, 1965]

LIES, DAMN LIES—AND POLYGRAPHS

(By Daniel Jusim)

A machine that monitors blood pressure, respiration and the skin's electrical conduc-

tivity is depriving tens of thousands of law-abiding people of jobs every year. Used by employers as a means to end both dubious and devout, the polygraph is nevertheless becoming as familiar as the time clock in more and more American workplaces. In the private sector alone, estimates of the number of polygraph tests administered annually range from several hundred thousand to 2 million. The American Polygraph Association says that three-quarters of them are used in pre-employment screening. A Presidential directive revealed last week swells the number of Federal employees who must undergo examination.

The test is most commonly used by businesses in which low-level employees handle large sums of cash daily in return for modest checks weekly, such as banks, restaurants and department stores. But all kinds of concerns tap into their workers' supposedly telltale heartbeats: meatpacking companies, hospitals and even the Yale Club have used "lie detectors" to screen prospective employees, check upon workers periodically or track down culprits in the wake of a theft or act of sabotage. Usually a security firm is hired to do the dirty work, but some businesses have in-house operations. Because employers who favor polygraph testing generally make it a condition of employment, workers find it difficult to refuse to take the test.

The machine is especially popular among employers who resent Federal and State regulations on hiring and firing; its reputation and supposedly scientific tool gives them a license to reject or sack whomever they please. Polygraph victims can almost never prove that an employer acted illegally. We didn't fire you because you're getting old and costing us too much, a company can argue; we fired you because the polygraph says you're a thief.

Don Blews, once a manager for a department store chain in the Carolinas, provided a glimpse into polygraph practices when he testified before a Senate Judiciary subcommittee in 1978. According to Blews, his district supervisor told him that blacks "just don't work out" and ordered him to dismiss two black women workers. Blews said that when he refused, the supervisor remarked, "we'll have to show you how our polygraph test works around here." The women were subsequently fired, after their test results indicated "a sign of a possibility of deceit." His bosses also turned down the only two blacks whom he had ever recommended for management trainee positions, again on the basis of the polygraph test. Others who lost their jobs at Blews's store included a woman who confessed that her boyfriend used to smoke marijuana, a woman who admitted that she occasionally suffered from migraines, an employee who said her heart condition made it unsafe for her to take the test and two high-school part-timers whom the polygraph examiner refused to fit into his schedule. Blews also testified that "the polygraph companies used by my employer apparently had a quota of employees they had to fire at every round of testing in order to show that the testing was accomplishing something and that the cost * * * was justified." Blews was fired after protesting against misuse of the test—but not before taking an examination himself and being accused of giving deceptive answers.

Besides using electronic inquests to discriminate against racial minorities, companies use them to spot deviants of all stripes. In 1977 workers at the Coors brewery struck, partly because they objected to the company's voyeurism: the polygraph agency employed by Coors asked job applicants these questions: What are your sexual prefer-

H 9544

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

ferences? How often do you change your underwear? Have you ever done anything with your wife that could be considered immoral? Are you a homosexual? Are you a Communist?

Union organizers have also been targets. The National Labor Relations Board recently ruled on a case involving two waitresses who tried to organize the Shoney's restaurant chain in Georgia. One of them, Maria Sganga, was fired on the basis of information she revealed during the interview preceding a polygraph examination. The company said she admitted she had taken home some leftover potatoes and parsley, a violation of company rules even though she had her manager's permission. Patricia Burch, the other waitress, had refused to sign the test consent form, which in Georgia permits the examiner to inquire about a worker's finances and military service. She considered her finances her own business and didn't want to be questioned about the military because her husband was in the service. She offered to sign a revised consent form but was fired nonetheless, for actions her boss considered tantamount to refusing the polygraph test.

N.L.R.B. Judge Richard J. Linton ruled that Shoney's "discharged Sganga and Burch because of their union and other protected * * * activities," adding that the company "would not have ordered the polygraph tests in the absence of such activities." He ordered them reinstated with back pay.

In the course of the hearing, a director of operations for Shoney's testified that he uses the polygraph "to keep people honest," that is, as a deterrent to theft. Jay Harvey, director of legislation for the A.F.L.-C.I.O.'s food and allied services trades department, whose federated union members are often subjected to polygraph tests, says the practice is common: "There are two kinds of employers who use the polygraph. The kind who honestly have the mistaken belief that the machines work—that's the minority. The majority of employers know that the machine is not necessarily reliable," but believe, as Richard Nixon put it, that polygraphs "scare the hell out of people."

Even employers simply seeking job-related information from applicants may end up invading their workers' privacy. People interrogated while hooked up to a pneumatic chest tube, a blood-pressure cuff and a galvanic skin-response indicator often come away feeling humiliated and violated. Polygraph fees have thus dubbed the tests psychological rubber-hose treatments and mental strip searches. The New York State Attorney General's Office has charged several examiners with sexual harassment. Carlin Meyer, who heads the office's labor bureau, says the office receives at least ten polygraph-related complaints each week.

A recent court case in Chicago revealed that blacks may suffer the adverse consequences of polygraph errors more frequently than whites. In a discrimination suit brought in U.S. District Court, individuals seeking jobs as prison guards proved to the satisfaction of the court that blacks fail pre-employment polygraph tests more often than whites. Jon Bauer, a staff attorney for the Legal Action Center of New York, a public interest law firm that has litigated several polygraph cases, believes that the discrepancy may result from differences between blacks and whites physiological responses to stress, tensions between white examiners and black subjects, or prejudices that can enter into an examiner's evaluation, which relies as much on subjective impressions as on squiggles on a chart. In any case, said Bauer: "we should not tolerate a test that has a discriminatory effect on

blacks when there is no adequate evidence that the test is valid."

Losing one's job or not getting hired because of failure to pass a polygraph test can have disastrous consequences. A toy-department manager who was fired by one company after flunking a test (he had high blood pressure, which can skew test results) was dismissed from his next job after six months, when his new boss learned of the previous exam. In effect, the man had been blackballed in the toy industry.

In another form of polygraph double jeopardy, job seekers who have failed a test as applicants at one company find themselves facing the same polygraph agency when they look for work with a different employer. When the agency reports that they previously failed the test, they are sent on their way.

More than twenty states and the District of Columbia have passed legislation limiting polygraph use by private employers. All of the laws prohibit companies from "requiring" the tests, but ten states permit firms to "request" that individuals take them. Violations are considered a misdemeanor and generally punished with a small fine. Employers seeking to skirt the law have several options. Large chain stores in regulated states can hire employees in an adjacent state that has no polygraph statute and then transfer them to the regulated state. And employer pressure in "request" states can easily make workers feel that they have no choice but take the test. Finally, some companies simply ignore that law and pay the fine if they get caught. Some critics estimate that as many as 59,000 workers per year are denied employment either because they refuse to take the test or because of inaccuracies.

Because most state regulations are toothless, polygraph foes are pushing for Federal legislation prohibiting such tests. The Polygraph Protection Act of 1985, which would effectively ban the instrument in the private sector, is scheduled for a floor vote in the House before Christmas. Co-sponsored by 164 representatives, the bill has received strong support from the A.F.L.-C.I.O. Unlike earlier polygraph bills, which got bogged down in arguments over the constitutional right to privacy, H.R. 1524 is couched solely in terms of employment opportunity. According to labor lobbyist Jay Harvey, the bill will pass because "the American people don't like the test" and "there aren't too many [in Congress] who want to say that they advocate polygraphs." The bill's sponsor, Pat Williams, is also confident of passage. Antipolygraph sentiment runs the ideological gamut: Jack Kemp supports H.R. 1524, and Orrin Hatch and Edward Kennedy jointly introduced the Senate version, S. 1815.

The polygraph industry's answer to the proposed ban is a Federal licensing law which would set standards for examiners. That the industry favors that approach is not surprising, since use of the machine is more widespread in the twenty-six states that have licensing laws than in states having no polygraph statutes. The fact that Shoney's is in Georgia, a licensing state, should make legislators wary of the polygraph lobby's arguments. If every examiner had the integrity of a Boy Scout, the problems inherent in the technology of the polygraph would not go away.

A number of big companies, including J.C. Penney, Sears, Roebuck & Company, I.B.M. and General Electric, don't use the polygraph. At companies that do, workers have some defenses against it, even without Federal legislation. Some unions protect their members, either by winning contract provisions forbidding the test or by intervening

to stop an employer from administering the examination. And workers ill treated by polygraph testing have filed a variety of civil suits, invoking state polygraph laws, Federal and state fair-credit reporting laws and such legal principles as malpractice, discrimination and defamation. A number of plaintiffs have received awards in the six figures. In 1982 an assistant manager in a Zayre department store in Florida received \$250,000 as compensation for being fired under what the court described as "circumstances implying that he had been guilty of a felony." He had failed a lie detector test two years earlier and was dismissed for allegedly stealing \$500 from the store. But after he left, the thefts continued, and eventually the culprit—who had passed the test—was discovered. The man sued Zayre for defamation, and the company that administered the test for negligence.

Unfortunately, invasion of workers' privacy and unfair denial of employment would not end with the banning of the polygraph. Bosses today have a battery of tests at their disposal that evaluate urine, handwriting or personality. Some who have been forced to abandon the polygraph have turned to written "honesty tests." If polygraphs are outlawed, workers will no doubt be faced with the question. Have you stopped ripping off the company?

Mr. RAHALL. Mr. Chairman, I have long supported legislation such as H.R. 1212, the Employee Polygraph Protection Act, which will grant much needed protections for American workers. This measure is needed to ensure that employees are not unfairly denied employment and careers wrongfully ruined based on the results of the highly questionable polygraph test.

The simple fact is, there is no scientific evidence that polygraph machines or other so-called lie detector tests accurately and reliably detect dishonesty. Which is precisely why results of such tests are not admissible in Federal courts. Because the polygraph test basically relies on simple mechanical readings of variations in an individual's rate of breathing, skin perspiration, and blood pressure during questioning, it is valid only as a test of stress. How can stress related to deception be separated from the fear, anger, frustration or humiliation resulting from being forced to take the test?

The use of lie detector machines in the American workplace has dramatically escalated in recent years. Despite the questions about the accuracy of lie detector tests, approximately 2 million are given each year, most by private companies. The tests are an invasion of a worker's privacy and require an individual to prove his or her innocence even without evidence of suspicion of guilt. Our workers should not be denied job opportunities or discriminated against because they may refuse to take such an unreliable and inaccurate test or because of false test results.

Because State laws have proved ineffective in protecting America's workers from the abusive and degrading tests, legislation on the Federal level, such as H.R. 1212, is desperately needed. As Members of Congress, it is our responsibility to protect the citizens of this country from unwarranted and unfair treatment. I strongly urge my colleagues to support this legislation and to oppose amendments designed to weaken the bill or protect specific industries.

Mr. BONKER. Mr. Chairman as an original cosponsor of H.R. 1212, I want to urge my

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9545

colleagues to support this legislation which will protect workers from being denied employment either because of information obtained through or refusal to take a lie detector test.

According to the Office of Technology Assessment, over 2 million polygraph tests are administered every year, 90 percent of them by private employers. Yet, over the years, studies have consistently shown that polygraph tests are unreliable. In most cases, lie detector tests are inadmissible as court evidence because of their questionable validity.

These same studies have also shown that lie detector tests can be beaten because they are only designed to measure physiological responses with no determination as to cause. Self-inflicted pain, extreme nervousness, and apprehension all can influence test results. It is up to the examiner to interpret the results and often these individuals are poorly trained.

Beyond the technical questions of validity, I believe the improper use of lie detectors does a disservice to our constitutional premise of innocence until proven guilty. Businesses who rely on lie detector tests to screen job applicants, assume untrustworthiness unless a lie detector test can be passed. Unfortunately, it has been shown that it is the most honest individuals who suffer the highest incidents of failure because of their adverse reactions to having their honesty questioned during these tests. This injustice is magnified in many cases, when workers find themselves forced to respond to questions into areas of their personal life with little regard for their right to privacy or relevancy to their work ability.

Many businesses, however, strongly believe that lie detector tests are an essential tool in preventing employee crime. Evidence exists, however, which shows that businesses that conduct thorough background checks and foster a trusting work atmosphere tend to have lower incidence of employee crime than those who rely on lie detectors to police their workforce.

Last, I am aware that many States have already passed legislation to protect workers from lie detector tests as conditions for employment. These laws have been circumvented by many businesses who either coerce applicants into taking tests "voluntarily" or arrange for interviews in neighboring States where prohibitory laws do not apply.

All this evidence points to the need for uniform, Federal legislation to ensure protection of workers' constitutional rights. I urge my colleagues to consider the overwhelming evidence against polygraph tests and support this legislation today.

Mr. HALL of Texas. Mr. Chairman, I rise in opposition to the Employee Polygraph Protection Act, H.R. 1212.

I believe that employers should be allowed the opportunity to continue to use the polygraph tests responsibly and for legitimate purposes. The polygraph helps protect the financial health of American businesses, and the health and safety of the customers as well as the employees.

The House of Representatives has repeatedly voted to permit the use of polygraph in circumstances where the public interest justifies its use. We have voted to allow the FBI, the CIA, and other national defense agencies to continue to use lie detectors. If, as supporters of H.R. 1212 suggest, these tests are so

ineffective and unreliable, why are we using them to help protect national security?

Like the Federal Government, private businesses need the polygraph to guard their sensitive information and to protect the health and the security of their work forces. Businesses should be permitted legitimate use of lie detector tests as long as the rights of employees are protected.

I believe that this matter is one which should be regulated by State law. My home State of Texas has one of the toughest polygraph laws in the country which I introduced when I was in the State senate.

I urge my colleagues to vote against H.R. 1212. Voting for this legislation is just one more vote to abolish the right of the State to govern its citizens without interference from the Federal Government.

Mr. WEISS. Mr. Chairman, I rise in support of H.R. 1212, the Polygraph Protection Act, as it was reported from the House Education and Labor Committee. This bill is absolutely essential in order to restore basic fairness to the American workplace.

Let us state the issue clearly. There is no such thing as a lie detector in the workplace. There exist certain mechanical and electrical devices which are intended to detect lies by employees or potential employees. But there exists not one shred of evidence that that is what they do.

Quite to the contrary, there is a preponderance of evidence demonstrating that the tests, themselves, often lie. And it is not white lies that these devices tell, but lies that have serious and lasting consequences for the lives of millions of American workers.

The American Medical Association says:

Studies indicate that polygraph tests result in enough false-positive and false-negative findings of truthfulness that their value is little better than the probabilities of chance, or flipping a coin.

Americans enjoy games of chance as a form of recreation. But they should not and will not tolerate employers who play games with the future of 2 million Americans who are subjected to lie detector tests each year. The continued use of devices masquerading as lie detectors is a serious invasion of privacy and an affront to basic human dignity.

H.R. 1212 would eliminate the use of these devices in the workplace. It would make it illegal for employers to require or request that employees or job applicants take lie detector tests. It would ensure that employees are notified of this prohibition, and it would provide specific recourse in the case of violations. H.R. 1212 is an urgently needed measure that ought to be approved intact and without any weakening amendments.

However, the record of the House of Representatives in considering this type of legislation is far from pristine. Last year, during consideration of a similar measure, the House voted to exempt industry after industry from the proposed prohibitions on polygraph use. In the end, the bill was so full of loopholes that it really amounted to an endorsement of the use of polygraphs. Though I strongly approved of the original measure, I was forced to vote against the final version that resulted from repeated amendments on the House floor.

I fervently hope that the House will not make the same error this year. There is no rationale for exempting specific industries from prohibitions on polygraph use. The fact is that

polygraphs are just as harmful and just as inaccurate in all workplace settings.

I therefore urge my colleagues to join me in defeating amendments to exempt different industries from the bill's prohibitions. For a bill riddled with exceptions will be worse than no bill at all. It will only sanction a practice that is fundamentally at odds with individual rights.

I, for one, will not hesitate to vote against the final bill if it sanctions polygraph use in the guise of prohibiting it.

Mr. BRENNAN. Mr. Chairman, I rise as a cosponsor and strong supporter of H.R. 1212, the Employee Polygraph Protection Act. This needed legislation seeks to limit the growth of lie detector testing in the workplace—which has tripled in the past 10 years.

It is estimated that more than 2 million polygraph tests are given each year. In fact, 98 percent of those tests were not given by the FBI or the CIA, but were given by private business. Some three-quarters of these tests were given for preemployment screening.

Our criminal justice system presumes that an individual is innocent until proven guilty. Unfortunately, use of the polygraph stands that important principal on its head as it requires someone to prove their innocence. As a former criminal prosecutor I am fully aware of the unreliability in these gadgets. Courts refuse to accept polygraph results and it is sadly ironic that criminals are protected from polygraphs, while American workers are not. This legislation attempts to address that unfairness.

Twenty-two States and the District of Columbia have approved legislation prohibiting polygraph for use in the private work force. Another 19 States have attempted to regulate their use. However, the separate nature of these laws have not effectively protected workers from being subjected to these unreliable tests. Many localities are circumventing the law by requiring prospective employees to take the test in a neighboring State which allows polygraph testing.

H.R. 1212 is a prudent and moderate approach to the problem of protecting our citizens from abuse of lie detectors by management. American workers deserve the same protection afforded to those accused of crime—the ability to retain the presumption of innocence until proven guilty which is fundamental to our way of justice.

I urge my colleagues to join me in strong support of H.R. 1212.

Mrs. COLLINS. Mr. Chairman, I rise in support of H.R. 1517, the Aircraft Collision Avoidance Act of 1987.

As many of my colleagues have remarked, this bill is long overdue. The Federal Aviation Administration has dragged its feet in implementing collision avoidance systems which are already available. The FAA has failed to foster the development of the next generation of collision avoidance systems.

As chairwoman of the Government Activities and Transportation Subcommittee, charged with oversight responsibilities of the FAA, I am aware of the foot-dragging potential of that agency. In the case before the Congress today, FAA has delayed for years mandating the installation of so-called one-dimensional collision avoidance systems. The agency's decision appears to have been to delay this first generation system until the more sophisticated system is perfected. Unfortunately,

H 9546

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

the two-dimensional systems have not come as quickly as FAA had hoped. In the meantime, the agency has done nothing. Airline passengers are not receiving all the protection that present-day technology offers.

I suggest that FAA consider itself on notice. The Congress is going to continue to pay very close attention to FAA activities. Rulemaking, research, enforcement, all these responsibilities which FAA may have not properly met, will be subject to congressional scrutiny. If need be, legislation will be offered. As the chairwoman of the oversight subcommittee, I intend to continue my subcommittee's monitoring via hearings and reports.

I wish to commend the authors of this bill, the Public Works and Transportation Committee and the Committee on Science and Technology. I wholeheartedly support this measure.

[Mr. MARTINEZ addressed the Committee. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. GUNDERSON. Mr. Chairman, I just want to point out in closing, let us not be hypocrites here today. Let us not impose upon the private sector what we are unwilling to do for ourselves.

I remind my colleagues, every one of them who has spoken in support of this legislation today needs to be reminded that on June 16 of this year by a vote of 414 to nothing we approved the Mica amendment as it deals with foreign policy in the implementation and conduct of our foreign policy.

On May 11 of this year, by a vote of 345 to 44, we established the use of a permanent polygraph examination for national security purposes.

The CHAIRMAN. All time has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute, now printed in the reported bill shall be considered as an original bill for the purpose of amendment and each section shall be considered as having been read.

The Clerk will designate section 1.

The text of section 1 is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the "Employee Polygraph Protection Act".

Mr. NEAL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to try again. Earlier I raised two questions concerning opposition to this bill. One is the question, the very basic question concerning our system of justice, wherein we assume our people to be innocent until proven guilty. It is absolutely clear that the widespread use of polygraph tests assumes quite the opposite. It essentially says that we assume people in a variety of circumstances are guilty and we think it's appropriate, as a condition of employment in some cases, or under other conditions that they should have to prove their innocence.

Would one of the opponents of this bill please help me in understanding

how you can possibly justify the idea that we should turn our system of justice on its head by our assuming guilt and requiring people to prove their innocence.

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. NEAL. I am happy to yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, I thank the gentleman for yielding.

I would like to suggest to the gentleman that in most cases the use of the polygraph is just part of the tool that industry uses, or in the case of the Defense Department, it is just a part of the process they use; when determining whether or not some one should be given access to our most sensitive national security secrets, certain court cases in our country in the last couple of years almost mandate polygraphs for employers.

Let me read just a very brief statement in response to the gentleman's question.

Mr. NEAL. Is the gentleman responding to this question,

Mr. YOUNG of Florida. Yes, I am responding to the gentleman's question.

Mr. NEAL. All right, I would like to hear it.

Mr. YOUNG of Florida. This is from testimony from the Florida Secretary of State to the other body last year. He said:

Recent litigation has also established the obligation of businesses to conduct adequate background evaluations to assure the protection of the public. Rulings from several cases nationwide support this statement. One recent pending suit involves a carpet cleaning company whose employee raped and murdered the child of a client. The proprietor has been sued for failure to perform adequate employment screening, specifically for not using an available resource—the polygraph.

□ 1230

Mr. NEAL. Mr. Chairman, reclaiming my time, the gentleman is not responding to my question.

Mr. YOUNG of Florida. Try again.

Mr. NEAL. Mr. Chairman, the question is this, I say to the gentleman from Florida, that the proponents of the widespread use of polygraph testing, putting aside the accuracy of these gadgets which I hope we get to in a minute, but putting that aside, is it not true that when one says to a prospective employee, or to others under a wide variety of circumstances that as a condition of one thing or another one has to take this test, that we are assuming their guilt and requiring that they prove their innocence? That is the question.

Mr. YOUNG of Florida. Mr. Chairman, if the gentleman will continue to yield, I do not see it that way at all. If that were the case, then the Federal Government would obviously not be as heavily involved in the use of polygraph as we presently are.

Mr. NEAL. That is not an answer, let me say to the gentleman.

Mr. YOUNG of Florida. The answer is no, that is not the case.

I disagree totally with the gentleman's assumption.

Mr. NEAL. Let me reclaim my time and comment on this question of the Federal Government's use of the polygraph.

The fact is that when we entrust people with important security information or other important responsibilities in our Government on the basis of their having passed a polygraph test, we are running an enormous risk. To those who object to this legislation because it continues to allow agencies of the Federal Government to use these tests, I say I think they are correct. We are running a grave risk to our national security by depending on these gadgets which are clearly very highly inaccurate. We have had important testimony from a number of gentlemen on the floor, including the distinguished gentleman from Utah [Mr. NIXSON], a professor of statistics, which indicates that the error rate of these gadgets is incredibly high.

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. NEAL. I yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, I would like to respond to that very point and I say to my colleague, pay close attention to what I am going to say. The Defense Department in using the polygraph when screening people who have applied for top secret and special access type clearance, uses the polygraph only as a part of their screening process. It is not the total determining factor.

The gentleman suggested that to allow someone that kind of access just on the basis of a polygraph is a grave risk. But let me say to the gentleman that that is not how it is done. Polygraph examination is just part of a lengthy process used to clear one for access to classified material.

The CHAIRMAN. If there are no amendments to section 1, the Clerk will designate section 2.

The text of section 2 is as follows:

SEC. 2. PROHIBITIONS ON LIE DETECTOR USE.

It shall be unlawful for any employer engaged in commerce or in the production of goods for commerce—

(1) directly or indirectly, to require, request, suggest, or cause any employee or prospective employee to take or submit to any lie detector test;

(2) to use, accept, refer to, or inquire concerning the results of any lie detector test of any employee or prospective employee;

(3) to discharge, dismiss, discipline in any manner, or deny employment or promotion to, or threaten to take any such action against—

(A) any employee or prospective employee who refuses, declines, or fails to take or submit to any lie detector test; or

(B) any employee or prospective employee on the basis of the results of any lie detector test; or

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9547

(4) to discharge or in any manner discriminate against an employee or prospective employee because—

(A) such employee or prospective employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act;

(B) such employee or prospective employee has testified or is about to testify in any such proceeding; or

(C) of the exercise by such employee, on behalf of himself or others, of any right afforded by this Act.

The CHAIRMAN. Are there amendments to section 2?

Mr. BARTLETT. Mr. Chairman, I move to strike the last word.

(Mr. BARTLETT asked and was given permission to revise and extend his remarks.)

Mr. BARTLETT. Mr. Chairman, I rise for the purpose of clarification.

Mr. Chairman, my good friend, the gentleman from North Carolina [Mr. NEAL] is so eloquent on this case, and I want to pursue a bit of what he has mentioned a moment ago because I think the House needs to understand it. I would pose a question to the gentleman in a moment and give him ample opportunity to respond.

The House should be willing to take one of two positions, but not both simultaneously. We should either contend, as the bill does, that the polygraph should not be used on any occasion or we should permit it to be used but not as the sole determinant.

The gentleman from North Carolina [Mr. NEAL], was eloquent a moment ago in essentially saying it should not be used as the sole determinant. Frankly, I agree with that.

I do want to point out to the gentleman that one of the key features of the Darden-Young substitute is that for private employment as well as public employment, that the polygraph shall not be able to be used for discharging, disciplining, or denying employment or promotion to any employee as the sole determinant, or based solely on the analysis and opinions of the polygraph examiner.

My question is, is the gentleman proposing that we prohibit the use of polygraph even as the sole determinant, or does he believe that it should be as is currently done in national security, permitted to be used as one determinant, but not the sole determinant?

Mr. NEAL. Mr. Chairman, will the gentleman yield?

Mr. BARTLETT. Mr. Chairman, I yield to the gentleman from North Carolina.

Mr. NEAL. Mr. Chairman, the overwhelming evidence offered before our Subcommittee on Legislation and National Security on this question indicates that the polygraph tests are not lie detector tests. They are not reliable. They are not accurate. They cannot be depended upon.

So it is ridiculous to use these tests as a determinant of accuracy, when they are inherently unreliable, as the gentleman from Texas [Mr. Brooks],

the chairman of our full committee, pointed out.

They can be useful. We can scare people with them. As long as people believe there is a level of accuracy here, we can scare people into admitting guilt, but the fact of the matter is that these things are inherently unreliable. It is no more accurate than the flip of a coin, as one witness said.

Mr. BARTLETT. Mr. Chairman, I do not want to put words in the gentleman's mouth, but I do want the House to understand. The gentleman then is advocating that we prohibit the use of the polygraph in all cases, even as one determinant, rather than prohibiting its use as a sole determinant?

Mr. NEAL. Mr. Chairman, if the gentleman will yield, that would be my own preference. That is absolutely correct. I think it is a very dangerous idea, especially dangerous to be using these gadgets in the area of national security.

Mr. BARTLETT. Mr. Chairman, my question is, even as one determinant? That is my question.

Mr. NEAL. If I could respond to the gentleman, I would say that if we are willing, as the gentleman from Texas [Mr. Brooks] pointed out in his testimony, to start again using the rack or the dunking stool, or some other item of witchcraft, certainly those could be useful in scaring people into admitting guilt and so on.

If the gentleman would like to broaden the arsenal of our tools that we are going to use in this area, I guess we could include polygraph with those kinds of gadgets, but they are about the same level of reliability.

Mr. BARTLETT. Reclaiming my time, the gentleman does not believe in what is explicitly provided for in the bill, that is the use of polygraph in national defense and national security by the Government. Does the gentleman oppose that section of the bill, and think it should be deleted?

Mr. NEAL. Yes, I believe that is a dangerous procedure. I believe we will endanger our national security by that use.

Mr. BARTLETT. The gentleman believes it should be used in no case whatsoever. Would the gentleman then see this bill as the first step toward prohibiting the use of polygraph in national security cases?

Mr. NEAL. Mr. Chairman, I would hope so, because I think we run a grave risk of endangering our national security by relying on these gadgets which are inherently inaccurate.

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. BARTLETT. I yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, when the Walker spy case first broke, I had the opportunity to inquire of the Chief of Naval Intelligence, what he needed to effectively do something to prevent Walker spy cases from happening, he responded by saying, "we need authority to poly-

graph those who seek access to classified information."

This is the Chief of Naval Intelligence. The Secretary of the Navy made basically the same statement as did many others. These are the people that have been given the responsibility for our national security. They tell us they have authority to polygraph.

If you don't trust them, than fire them. But if you do trust them, at least give them the tools they need to meet their responsibility.

The CHAIRMAN. The time of the gentleman from Texas [Mr. BARTLETT] has expired.

(By unanimous consent, Mr. BARTLETT was allowed to proceed for 1 additional minute.)

Mr. BARTLETT. Mr. Chairman, what I want to say very clearly so that everyone who is watching this debate understands, is that the debate is between the proponents of H.R. 1212 who have written a bill that would prohibit the use of polygraph in all cases except for national security even though national security would likely be next, but just prohibit the use of the polygraph as any kind of determinant comparable to prohibiting the use of reference checks because they are not perfect, or personal interviews, or written tests. That is one side of the debate.

The other side of the debate, would be the Darden-Young substitute that would permit the use of the polygraph under licensing but only if used as one determinant, but prohibit the use of the polygraph as the sole determinant.

Darden-Young would correct whatever abuses the sponsors would purport to have in the marketplace by prohibiting the use of the polygraph as the sole determinant.

Mr. Chairman, I yield to the gentleman from North Carolina [Mr. NEAL].

□ 1240

Mr. NEAL. I thank the gentleman for yielding. I would like to propose a question to the distinguished gentleman from Florida.

The CHAIRMAN. The time of the gentleman from Texas [Mr. BARTLETT] has again expired.

(By unanimous consent, Mr. BARTLETT was allowed to proceed for 1 additional minute.)

Mr. BARTLETT. Mr. Chairman, I continue to yield to the gentleman from North Carolina.

Mr. NEAL. Mr. Chairman, when the gentleman from Florida pointed out the statement regarding this Government official who thought that the polygraph was the most valuable tool at his disposal, or whatever that exact quote was, was it his position that the polygraph test was an accurate one, or was it his position that it had utility because some people believe that they were accurate and he might be able to scare someone into a confession or something?

H 9548

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. BARTLETT. I yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, I thank the gentleman for that question. I would say again that none of us are contending, even in the field of national defense, and especially in the field of national defense, none of us are contending that the polygraph is the ultimate tool. But it is a tremendous tool in the overall process of doing background research to determine whether or not access to the most sensitive national defense secrets of our Nation will be granted. No, it is not a single tool. We have made that point time after time after time. It is one of the tools, and it is a most effective tool in conjunction with the other parts of the procedures that are used.

To get security clearances on occasion takes a year or longer when getting a person cleared for a particular type of classification, and the polygraph does not take anywhere near a year to perform, as the gentleman knows.

The CHAIRMAN. The time of the gentleman from Texas [Mr. BARTLETT] has again expired.

(On request of Mr. MARTINEZ and by unanimous consent, Mr. BARTLETT was allowed to proceed for 1 additional minute.)

Mr. MARTINEZ. Mr. Chairman, will the gentleman yield?

Mr. BARTLETT. I am happy to yield to the gentleman from California.

Mr. MARTINEZ. Mr. Chairman, the fact that the gentleman says it takes a year or a year and a half to get clearance on these high security matters indicates that the Federal Government at least in the use of these machines is not relying on them.

The problem lies in that a private employer often does rely totally on that and does a very cursory investigation once he determines that the evidence presented by this polygraph test is valid, and he does assume that it is valid. They have testified over and over again in the hearings that they believe in the reliability of this polygraph machine.

The problem that nobody here has talked about is that there is another flaw in it, and that is the human flaw, because these machines only read your blood pressure, your temperature and miscellaneous things like that, and then that polygrapher, depending on his training and his biases, is the determinant of whether the gentleman is lying or not, and that in many cases has been proven, as is true in the case of several court cases which have taken place, not to be valid.

Mr. BARTLETT. Reclaiming my time, I understand the gentleman's point. Of course, what the bill does is permit the use of the polygraph without restriction in national security cases. So if it is not accurate it does not provide for the sole determinant

standard. The Darden-Young bill provides for the sole determinant standard, prohibits a sole determinant use of the polygraph. The Darden-Young bill does it right.

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. BARTLETT. I yield to the gentleman from Florida.

Mr. YOUNG of Florida. I thank the gentleman for yielding. He has very eloquently made the point I was going to make. There is going to be the use of the polygraph whether this bill passes or not.

What we are trying to do is make sure that the person conducting the examination is professional, has been licensed and knows what he is doing, and that the person being examined has legal protection of his personal and civil rights.

Mr. WILLIAMS. Mr. Chairman, I move to strike the last word. I am going to use 30 seconds of my 5 minutes and plead with my colleagues not to ask me to yield to them.

Mr. Chairman, the last time the bill was on the floor of the House it took us 6 hours to complete it. We are now debating specific points that we will debate again when these amendments come up and when the substitute is offered. I just appeal to my colleagues to wait until we get to the specific section of the bill where the amendments can be offered before we start a debate that we are going to go over again when we do reach that specific section, which in most instances, for most of the amendments, will be section 6.

We hope to be able to adjourn around dinnertime, but if I recollect how this debate proceeded a year ago, it is moving considerably more slowly now than it did then, and then it took 6 hours. So we want full debate and that is the reason I requested a fully open rule. But I encourage my colleagues to allow this process to move ahead.

I yield back the balance of my time.

The CHAIRMAN. Are there any amendments to section 7?

If not, the Clerk will designate section 3.

The text of section 3 is as follows:

SEC. 3. NOTICE OF PROTECTION.

The Secretary of Labor shall prepare, have printed, and distribute a notice that employers are prohibited by this Act from using a lie detector test on any employee or prospective employee. Each employer shall post and keep posted, in conspicuous places upon its premises where notices to employees and prospective employees are customarily posted, the notice distributed by the Secretary under this section.

The CHAIRMAN. Are there any amendments to section 3?

If not, the Clerk will designate section 4.

The text of section 4 is as follows:

SEC. 4. AUTHORITY OF THE SECRETARY OF LABOR.

(a) **IN GENERAL.**—The Secretary of Labor shall—

(1) issue such rules and regulations as may be necessary or appropriate for carrying out this Act;

(2) cooperate with regional, State, local, and other agencies, and cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this Act; and

(3) make investigations and inspections and require the keeping of records necessary or appropriate for the administration of this Act.

(b) **SUBFERA AUTHORITY.**—For the purpose of any hearing or investigation under this Act, the Secretary shall have the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49, 50).

The CHAIRMAN. Are there any amendments to section 4?

If not, the Clerk will designate section 5.

The text of section 5 is as follows:

SEC. 5. ENFORCEMENT PROVISIONS.

(a) **CIVIL PENALTIES.**—(1) Subject to paragraph (2)—

(A) any employer who violates section 3 may be assessed a civil money penalty not to exceed \$100 for each day of the violation; and

(B) any employer who violates any other provision of this Act may be assessed a civil penalty not to exceed \$10,000.

(2) In determining the amount of any penalty under paragraph (1), the Secretary shall take into account the previous record of the person in terms of compliance with this Act and the gravity of the violation.

(3) Any civil penalty assessed under this subsection shall be collected in the same manner as is required by subsections (b) through (e) of section 503 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1853) with respect to civil penalties assessed under subsection (a) of such section.

(b) **INJUNCTIVE ACTIONS BY THE SECRETARY.**—The Secretary may bring an action to restrain violations of this Act. The district courts of the United States shall have jurisdiction, for cause shown, to issue temporary or permanent restraining orders and injunctions to require compliance with this Act.

(c) **PRIVATE CIVIL ACTIONS.**—(1) An employer who violates the provisions of this Act shall be liable to the employee or prospective employee affected by such violation. An employer who violates the provisions of this Act shall be liable for such legal or equitable relief as may be appropriate, including (without limitation) employment, reinstatement, promotion, the payment of wages lost, and an additional amount as consequential damages.

(2) An action to recover the liability prescribed in paragraph (1) may be maintained against the employer in any Federal or State court of competent jurisdiction by any one or more employees or prospective employees (or any person acting on behalf of such employee or employees) for or in behalf of himself or themselves and other employees or prospective employees similarly situated. No such civil action may be commenced more than 2 years after the date of the alleged violation.

(3) The court shall award to a prevailing plaintiff in any action under this subsection the reasonable costs of such action, including attorneys' fees.

Mr. GUNDERSON. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I want to call to the attention of my colleagues section 5 of this bill. I do not have an amendment at the present time and I do not

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9549

intend to offer one because I do not think we ought to pursue along an acrimonious debate over the penalty section of this bill. I think the substance of the bill is far more important.

But I want people to understand what section 5 does here. It not only imposes rather significant financial penalties of up to \$10,000 for any employer who violates the use of the test when they are banned, but it also goes so far as saying that once this legislation is passed that the Secretary of Labor shall prepare, have printed and distribute to every employer all over this country a notice that says lie detector tests cannot be required.

That is good, I have no problem with the Secretary of Labor doing that.

What I have a problem with, and what people ought to be aware of in this legislation is the fact that subsection (a) of section 5 provides for a penalty not to exceed \$100 per day whenever that sign is not posted, from here to eternity.

I do not know how many of my colleagues have ever worked in the private sector. I am going to assume the vast majority of us have. I think we have all gone past those time clock areas where you punch the time clock and you see some notices and you do not see some notices. I have to tell my colleagues that as a youngster, in high school and in college, I had jobs as a janitor. I got to do the cleaning and all of that, and as we would go through and clean, and in particular when we would prepare for special occasions that were all dilapidated, that were outdated, that were faded, discolored, we would throw all of that away, clear the blackboard off so that we could start a new set of notices on the bulletin board.

I want my colleagues to know that the legislation in front of us now is going to require a \$100 penalty, up to \$100 penalty a day for anyone who innocently happens to have had some employee, who is a young high school janitor who accidentally, unintentionally, not knowingly, happened to pull that notice down.

Mr. DARDEN. Mr. Chairman, will the gentleman yield?

Mr. BARTLETT. I am happy to yield to the gentleman from Georgia.

Mr. DARDEN. Mr. Chairman, I thank the gentleman for yielding. I would like to use this opportunity, Mr. Chairman, to point out one distinction here that I do not think has been made very clear to the Members of this body. The distinguished gentleman from North Carolina [Mr. NEAL], kept on talking about how this bill would somehow require a person to give testimony against himself and obviously violate the fifth amendment to the Constitution of the United States, which of course provides that no person shall be compelled to testify against himself.

It is important to note, Mr. Chairman, that most of the complaints we

have heard about the polygraph relate to the specific conduct of law enforcement agencies, whether or not a particular sheriff or a police agency or a bureau of investigation has in fact properly conducted a polygraph examination, or in many instances has the scope of the examination gone too far, or has the person conducting it for the police actually been qualified.

I would like to point out to the Members of the body, Mr. Chairman, that the activities of police agencies, whether it be State, Federal, or local are absolutely exempt under this law. So if we are worried about innocent people somehow being forced into confessing or in some way admitting guilt or being found guilty by the use of a polygraph, this bill does not do a bit of good, because this bill excludes all activities of any police force or any other law enforcement agency.

So I would like for the body to keep that in mind, Mr. Chairman, that we are not really getting to the problem if we are interested in police abuses and a person having to violate the fifth amendment. What we are doing here is simply punishing the private sector by saying you cannot do in the private sector what you can do in the public sector.

Mr. WILLIAMS. Mr. Chairman, will the gentleman yield?

Mr. GUNDERSON. I am happy to yield to the gentleman from Montana.

Mr. WILLIAMS. Mr. Chairman, I want to note that the gentleman from Wisconsin raises a good point, and that is whether or not the penalties that are assessed here, the civil penalties, are too high, given the violations.

I would remind the House that they are within keeping with other penalties in similar types of legislation.

I would also tell the House that this \$10,000 fine is a maximum and that the Act goes on to say that the Secretary shall take into account the gravity of the violation.

Finally I would remind or ask the House to recall that there was a recent award against an employer, a drug company in the United States, a recent award against that company of \$4 million for violating the rights of an employee to whom they gave a polygraph examination.

The CHAIRMAN. The time of the gentleman from Wisconsin [Mr. GUNDERSON] has expired.

(By unanimous consent, Mr. GUNDERSON was allowed to proceed for 30 additional seconds.)

Mr. GUNDERSON. Mr. Chairman, I want to point out that the gentleman from Montana and I really have no dispute on the penalty section for the violations of the use or the abuse of the polygraph. My objection is the fact that we are going to send this signal in this legislation that we will provide penalties of up to \$100 per day if there is not this little paper notice hanging up in every employer's building around this country. That is excessive, that is extreme, that is asking for

trouble, and I think that section ought not be in this bill.

Mr. LUNGREN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I was intrigued while sitting in my office listening to the debate to hear some of the comments of the proponents of the bill that do not seem to me to match up with what is in the bill itself.

The point has been made by some who oppose this bill that even as we speak there are instances in which employees are using lie detector tests in order to take suspicion from them. Yet if my colleagues read the language of this bill, they would not be able to voluntarily do that. Why? Because it is unlawful for any employer "to use, accept, refer to, or inquire concerning the results of any lie detector test of any employee or prospective employee." So even if the employee requests of his employer permission to take a lie detector test so that that individual might be able to have more evidence that in fact, he or she, was not involved in something that was not appropriate, it would be a violation of the law for the employer to accede to the request of the employee to do that.

I do not understand why we are so worried about this test that we would even prohibit an employee from voluntarily taking it, and then allowing or asking or requesting or imploring their employer to look at it.

The other thing I would mention is in this case we want to make sure we really sock it to the employer. If you look at the last three lines of section 5 you find this: "The court shall award to a prevailing plaintiff in any action under this subsection the reasonable costs of such action, including attorneys' fees."

Note it does not say the court shall award the "prevailing party". In other words, a case, no matter how frivolous, brought against an employer by the employee that is determined to be frivolous will not allow that employer to get back the costs incurred. That may be a very expensive proposition when we realize up in the previous subsection it says:

An action to recover the liability prescribed in paragraph (1) may be maintained against the employer in any Federal or State court of competent jurisdiction by any one or more employees or perspective employees (or any person acting on behalf of such employee or employees) for or in behalf of himself or themselves and other employees or perspective employees in a similar situation.

In other words, it legitimizes class action suits.

So we can have a situation in which an employee brings a frivolous case on behalf of other employees or other members of a class before a court, go through the whole case, all the way to trial, and at that point in time when it is tossed out the employer is left with the large expenditure of funds, including attorney fees, but does not get the

H 9550

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

benefit of this section which says only prevailing plaintiffs can be recompensed.

□ 1255

Now I do not understand in this House how we continually want to make sure that we sock it to the employer even when the employer is proven to be without fault. Continually we have bills brought to us here that say, "By God, we are going to sock it to you and we are going to put the fear of God in you, so that even though we don't have a good case against you, we are going to punish you nonetheless."

That does not make a great deal of sense to me. It is a manifestation of a prevailing attitude in this House that seems to say the deep pockets of the employer are so deep we can keep digging and digging and digging.

Why we have this bias against employers in this bill, I do not know. "You shall award to the prevailing plaintiff, only" but not to the prevailing defendant.

The other factor I would like to discuss here is the question of whether or not these lie detector tests have any validity whatsoever.

We seem to just easily jump over the fact that we have required them in defense, in the intelligence community and now in the foreign policy community.

As a member of the Committee on Intelligence, I can tell you that the intelligence community absolutely believes in the validity of these tests, not as the sole determinant but as part of an entire review of prospective employees. In fact, in the last number of years that this Congress has been most critical of the intelligence community for security lapses, one of the problems cited has been the failure to administer such tests to individuals subsequently found to have skipped out with State secrets.

The CHAIRMAN. The time of the gentleman from California [Mr. LUNGREN] has expired.

(By unanimous consent, Mr. LUNGREN was allowed to proceed for 3 additional minutes.)

Mr. LUNGREN. So, in fact, as Members have suggested in debate here, there is a schizophrenic attitude evident on the floor today which says that we can use, in fact we require to be used, this tool as a pre-employment practice or as an investigative tool with the intelligence community of the United States. This is because we think that the national security interests of the United States are so important. Yet the validity that is assumed when we grant that authority and obligate those agencies to use it, is thrown by the wayside when we discuss it here.

Now I have in my previous life as an attorney had the opportunity to represent some security companies, that is, those who provide security. And I will tell you I am not satisfied in all cases

that the standards that presently apply for those people who are allowed to carry guns and have badges on their shirts, rent-a-cops some people call them, are as great as they ought to be. But it seems to me nonsensical for us to say that a security firm that is going to put an amendment, a loaded gun on the hip of its employee to go out and supposedly protect us, is not going to have the ability to use this tool as part of an overall approach to its employment practices.

We allow these things to be done with respect to our police departments. In fact, a Supreme Court case found that a police officer accused of a particular offense may be required to take a lie detector test and his job would be in the balance if he failed to do so. This was allowed even though the Court would not allow that it be required in a criminal setting.

I also do not understand why we say here that the polygraph is not to be used because it is a fallible instrument. Every single one of us in this Chamber is fallible. In fact, last Thursday we found out how fallible our rules are in this House. Yet I do not see anybody here saying that we ought to close down completely, not do the Nation's business because we have imperfect laws or imperfect rules. In fact, some Members on that side have instructed us that those rules are going to remain imperfect and we should just accept it because that is the cost of doing business.

In a somewhat similar fashion, the polygraph is not infallible. We should recognize this. It can be used, it has been used. We have criticized the intelligence community when they have not used it. It seems to me to be the height of hypocrisy to require it in our "ballpark" but not to allow it in the private sector.

Mr. NEAL. Mr. Chairman, will the gentleman yield?

Mr. LUNGREN. I yield to the gentleman from North Carolina.

The CHAIRMAN. The time of the gentleman from California [Mr. LUNGREN] has again expired.

(On request of Mr. NEAL and by unanimous consent Mr. LUNGREN was allowed to proceed for 2 additional minutes.)

Mr. LUNGREN. I continue to yield to the gentleman from North Carolina.

Mr. NEAL. I thank the gentleman for yielding.

Mr. Chairman, I recognize that the gentleman from Florida and the gentleman from California and others are vitally interested in our national security. What I do not understand is how they would be willing to even begin to trust such a fallible instrument. It is not that these gadgets are accurate 95 percent of the time or 99 percent of the time; the fact of the matter is that they are no more accurate than the flip of a coin.

Mr. LUNGREN. Reclaiming my time, I would say to the gentleman I have heard that cited. I will tell you that is not the testimony you hear from the intelligence community. That is not the testimony you hear from the people who have been part of the CIA, the NSA and so forth, over the last 25 years.

In fact, criticisms of those agencies for security lapses have included criticism that they did not use the lie detector test when it should have been used. And there has also been the point that had it been used it is most likely that the agencies would have been able to stop certain people from having the classes of information that otherwise got into the hands of our enemy.

Mr. NEAL. Mr. Chairman, will the gentleman yield again briefly?

Mr. LUNGREN. I yield to the gentleman from North Carolina [Mr. Neal].

Mr. NEAL. I thank the gentleman for yielding.

Mr. Chairman, I would like to refer the gentleman to some scientists, not hearsay evidence but scientific evidence. Here is a statement by Dr. John Berry, associate dean, Georgetown University School of Medicine. He calls his paper "The Nonexistence of the Lie Detector Test." He says he wants to "make two important points today." This was the testimony before our Committee on Government Operations.

"Two important points about the polygraph: First, no such machine as a lie detector exists. There is no physiological response unique to lying.

"I have to point out that the other point he makes is that a lot of people believe that there is such a thing as a "lie detector" test so you can scare some people.

The CHAIRMAN. The time of the gentleman from California has again expired.

(By unanimous consent, Mr. LUNGREN was allowed to proceed for 2 additional minutes.)

Mr. LUNGREN. I will continue to yield to the gentleman from North Carolina [Mr. Neal].

Mr. NEAL. I thank the gentleman for yielding.

The author of the paper went on to say that lying is only one of several stimuli which may excite a person; other stimuli which cause excitement are fear of losing one's job, embarrassment or anger at being examined, for example. He, in answer to his own question, "Does it work at all?", says this: "It is a simple coin. It will be right 50 percent of the time in a dichotomous situation that is a lie-nonlie." The point he makes is that so called "lie detection" test are no more accurate than the flip of a coin.

So I say to my distinguished colleagues, the point is we are relying on something that is inherently unreliable and to use this even as a part of

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9551

clearing someone for important national security considerations is dangerous to our own security.

Mr. LUNGREN. I appreciate the gentleman's remarks. I might say if you would go back, say 10 years ago to the time when Mr. Califano was Secretary of HHS, I can cite you quotes from Mr. Califano, when he said that the CAT scanner was not an appropriate diagnostic instrument and that we were wasting money on it. Yet I know people walking the streets today who are alive because they used the CAT scanner as a diagnostic tool.

Mr. NEAL. The gentleman is very cleverly changing the subject. The subject is polygraphs.

Mr. LUNGREN. Now, wait a second. I would be glad to listen to the gentleman on his time but this is on my time.

The point is I can cite you medical authorities who will tell you that bypass surgery should not have been done in many cases 12 years ago. In fact, my father is one of those, a board certified internist and cardiologist. He changed his mind about their applicability after he had one. Thank God he has been able to live for over a decade after having such an operation.

I accept the gentleman's opinion as his own, that doctor's. I will say this, those in the intelligence community of the United States, not giving an opinion off the top of their head but giving an opinion based on their experience over some approximately 40 years have told us it is an essential tool to protect the national security interests of the United States. They use them in the employment practice, the preemployment practice techniques and also investigations later on. I would say that I would yield to their ideas rather than to someone who is giving us an opinion based on no practice.

The CHAIRMAN. The time of the gentleman from California has again expired.

(On request of Mr. NEAL and by unanimous consent, Mr. LUNGREN was allowed to proceed for 1 additional minute.)

Mr. NEAL. Mr. Chairman, will the gentleman continue to yield?

Mr. LUNGREN. I yield to the gentleman from North Carolina [Mr. NEAL].

Mr. NEAL. I thank the gentleman once again for yielding.

Mr. Chairman, I would ask my distinguished colleague to bring to the floor of the House of Representatives some evidence, some scientific evidence, not hearsay, not my evidence, not my opinion, not your opinion, but bring us some evidence that these gadgets are reliable. I certainly want to keep an open mind on the subject. I have raised this point throughout the debate today and no one in opposition to this bill has presented one scintilla of evidence that these things are reliable.

Mr. LUNGREN. There is a difference between science and art but that does not mean that art is witchcraft. We talk about the art of medicine; we do not talk about the science of medicine in terms of diagnosing people.

We talk about the practice of medicine; we do not talk about the perfection of medicine. Many of the techniques, diagnostic as they are, that doctors use today cannot be proven absolutely scientifically but they are proven in terms of practical effect. I would suggest that the relationship that the gentleman has presented between the scientific and witchcraft is a non sequitur. In fact we are talking about an art that has been proven.

The CHAIRMAN. Are there any amendments to section 5?

If not, the Clerk will designate section 6.

The text of section 6 is as follows:

SEC. 6. EXEMPTIONS.

(a) NO APPLICATION TO GOVERNMENTAL EMPLOYERS.—The provisions of this Act shall not apply with respect to the United States Government, a State or local government, or any political subdivision of a State or local government.

(b) NATIONAL DEFENSE AND SECURITY EXEMPTION.—(1) Nothing in this Act shall be construed to prohibit the administration, in the performance of any counterintelligence function, of any lie detector test to—

(A) any expert or consultant under contract to the Department of Defense or any employee of any contractor of such department; or

(B) any expert or consultant under contract with the Department of Energy in connection with the atomic energy defense activities of such department or any employee of any contractor of such department in connection with such activities.

(2) Nothing in this Act shall be construed to prohibit the administration, in the performance of any Intelligence or counterintelligence function, of any lie detector test to—

(A)(i) any individual employed by, or assigned or detailed to, the National Security Agency or the Central Intelligence Agency, (ii) any expert or consultant under contract to the National Security Agency or the Central Intelligence Agency, (iii) any employee of a contractor of the National Security Agency or the Central Intelligence Agency, or (iv) any individual applying for a position in the National Security Agency or the Central Intelligence Agency; or

(B) any individual assigned to a space where sensitive cryptologic information is produced, processed, or stored for the National Security Agency or the Central Intelligence Agency.

(c) EXEMPTION FOR FBI CONTRACTORS.—Nothing in this Act shall be construed to prohibit the administration, in the performance of any counterintelligence function, of any lie detector test to an employee of a contractor of the Federal Bureau of Investigation of the Department of Justice who is engaged in the performance of any work under the contract with such Bureau.

AMENDMENT OFFERED BY MR. YOUNG OF FLORIDA

Mr. YOUNG of Florida. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. YOUNG of Florida: Page 8, after line 13, insert the following new subsection:

(d) NURSING HOME EXEMPTION.—This Act shall not prohibit the use of a lie detector test by an employer on any employee or prospective employee of any nursing home facility. This subsection shall not preempt or supercede any State or local law which prohibits or restricts the use of lie detector tests.

Mr. YOUNG of Florida. Mr. Chairman, this amendment comes at an appropriate place in the bill. Section 6 is entitled National Defense and Security Exemptions. In 1985, when we had the Armed Services authorization bill before the House, the House of Representatives approved by a vote of 333 to 71 an amendment offered by this Member to establish a polygraph program for those in the Defense Department seeking classified clearances.

That 2-year test program worked so well that in 1987 we offered the amendment to provide a permanent program for the national Department of Defense. That permanent program was approved by this House 345 to only 44 against.

And as was discussed earlier today, the House this year voted 414 to zero for an amendment to the State Department authorization bill to require the use of polygraphs in screening embassy security personnel.

So obviously the House of Representatives believes there is need for the use of polygraph.

I made this point earlier and I want to say it again briefly: If this bill becomes law the way it is presently written or if it is to be amended several times or no times, there is still going to be the use of the polygraph because the bill presented by the gentleman from Montana allows the use of polygraph by the Federal Government, State governments, county governments, and local governments and political subdivisions thereof.

Just for example back home in Florida where we used to have mosquito problems, we used to have what we called mosquito control boards. Now under this bill you use the polygraph when someone applies for a job on the mosquito control board to drive a truck between the hours of midnight and 4 o'clock in the morning spraying swampy areas and drainage ditches. Under this bill you could use the polygraph in that case but you could not use the polygraph to screen someone who would deal with America's elderly because under this bill, you cannot use the polygraph to screen an employee who is seeking employment to serve America's elderly in nursing homes.

In fact, I thought when the bill came out that it might do that, because last year in this debate, along with a number of other exemptions that the chairman accepted, he accepted my amendment to exempt nursing homes from this prohibition because he felt—and I am sure most of us in the Chamber felt—that if anyone needs our protection it is those elderly in nursing homes who cannot take care of themselves, who are bedridden,

H 9552

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

who have no family, in many cases, to look after them.

Mr. Chairman, I digress just a moment here: Here are three volumes of hearings conducted by Select Committee on Aging of the House of Representatives dealing with abuse of the elderly and to a great extent in nursing homes.

□ 1310

These reports also deal with the rights of America's institutionalized aged lodged in confinement, and elder abuse. Throughout these hearings we are told how elderly people in nursing homes have been abused and overdrugged to keep them under control so they did not make a lot of demands. We hear of soiled bed clothes not changed because someone did not want to do it, and of theft from elderly persons in the nursing homes.

One of the problems in nursing homes is that people who work there do not get paid enough money, and many of them do not stay on the job very long. They are very transient; they come and they go, and it is very difficult to keep track of their previous employment records.

So nursing homes and nursing home managements have turned to another tool. Little by little they are using the polygraph to screen prospective employees, those who are going to deal with the elderly, those who in the wee hours of the night have access to that patient strapped down to that bed, those who in the wee hours of the night have access to those people's belongings.

Mr. Chairman, we owe those in nursing homes the protection of this Congress and of this law, and I say again there is going to be the polygraph in America whether the Williams bill passes or not. The Williams bill provides for the polygraph in certain cases. But it is at least necessary that we accept this amendment to create an exemption for nursing homes so that those people who are serving America's elderly might be checked out before they do serious harm to one of our elderly mothers or grandmothers or fathers or grandfathers.

Let us look after them. As I said, the subcommittee chairman accepted this amendment last year. I had hoped that he would accept it again this year.

Mr. MARTINEZ. Mr. Chairman, I rise in opposition to the amendment, and I will not take the full 5 minutes allotted to me because I do not think it is necessary.

It really offends me to think that there are people who assume that every pervert in the world wants to work in this industry, and that all of those people who are working out there very diligently and conscientiously should be polygraphed in order to prove that they are conscientious and diligent, and yet there are people who are looking to work in these professions because of their dedication to

aiding and helping the elderly and children in daycare centers and other places.

I hate to think that we have to worry every time we send a child to school or to preschool or anytime we put one of our elderly parents or relatives in a day care home. I hate to think that we have to worry about all the perverts that are working there and all the perverts that want to apply for jobs there. It goes back to what one of my colleagues said. You are innocent until you are proven guilty, but this assumes you are guilty before you are proven innocent. That is offensive.

I do not see that there is anything wrong in requiring employers to do a diligent job if investigating the backgrounds of the individuals who are applying, looking at their credentials and histories and seeing what they are and who they are. I am sure that in the multitude of people working out there in those industries there is no reason to be alarmed. I resent the inference that all of those people need to be polygraphed.

Mr. Chairman, I also resent the inference that America is going to hell in a hand basket if we do not allow the polygraph to be used.

Mr. WILLIAMS. Mr. Chairman, I move to strike the last word, and I rise in opposition to the amendment.

Mr. Chairman, it is true that this bill does not prevent the public sector, that is, law enforcement officers, the FBI, the National Security Council, and all the rest, from using the polygraph. They use the lie detector under very restrained and highly regulated circumstances. This bill does not have jurisdiction over that matter and does not affect it.

But I remind my colleagues again that our local police agencies, the FBI, the National Security Council, the CIA, and the other public agencies throughout the United States administer only 2 percent of the lie detector tests given in the United States. What we are trying to do here is restrain the vast bulk of the quick, easy, simple, inexpensive, unreliable tests that are given in the United States.

Yes, we accepted this amendment the last time. We accepted it at almost midnight after 6 or 7 hours of debate. We felt that the Senate would not take this bill with that amendment in it or would strip that amendment. I guess we were correct about the former. The Senate did not take the bill. It was a mistake on our part to accept this amendment.

I ask my colleagues, have they read the amendment? It says that any employee or prospective employee of a nursing home facility has to undergo a lie detector test. I wonder how many people that is in the United States—prospective employees of nursing homes. It means that not only would we be strapping in and plugging in the doctors, the nurses, and the specialists that work in nursing homes, but we would also be giving the lie detector

test to the fellow that raises the flag in the morning outside the nursing home and takes it down at night. We would also be strapping in the secretary that works in the front office and provides only indirect service to any of those elderly citizens in the nursing home. The groundskeeper who is out there cutting the lawn and trying to keep the place looking nice for those senior citizens and the people visiting them would have to undergo a lie detector test under this amendment.

Do we want to keep our senior citizens safe in the nursing homes in this country? Absolutely. Of course we do. And that may mean that we ought to raise the minimum wage in America, because, as the gentleman from Florida has noted, one of the reasons, in his opinion, that we get less than perhaps excellent employees in nursing homes is because we do not pay them enough. We will see how the gentleman and his colleagues vote when the minimum wage bill comes up perhaps next year.

Yes, we need good personnel practices, including good wages and good benefits in the nursing homes. We need a screening process. But we just maintain that to make every employee and every prospective employee of the nursing homes in the United States undergo this demeaning test is wrong.

Mr. BARTLETT. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS. I yield to the gentleman from Texas.

Mr. BARTLETT. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, there will be a lot of debate no doubt on this, but I do want to be sure to clarify and give the gentleman a chance to clarify his statement as to what the amendment says. I have a copy of it if the gentleman has not been provided one.

The amendment does not provide that every employee or any employee of any nursing home will be subjected to a polygraph test. The amendment merely says that this act shall not prohibit the use of the polygraph by an employer of employees at a nursing home. The amendment does not mandate the employers to do any more or any less than they are doing now.

It goes on to say that this subsection is not going to preempt any State law which in most States places rather stringent standards and in most States prohibits the use of the polygraph as the sole determinant.

So when the gentleman told us that this amendment provides that all employees of nursing homes will be required to take a polygraph test, I just want to bring to the gentleman's attention the fact that that is not true. This amendment provides that this act will not prohibit the use of the polygraph, but it does not require it for anybody.

Mr. WILLIAMS. Mr. Chairman, reclaiming my time, I appreciate the gentleman's explanation. He is, of course, correct. I did not mean to and I

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9553

believe that I did not misrepresent the amendment. This simply allows nursing home owners to polygraph any employee or any prospective employee, from the groundskeeper to the flag raiser.

Mr. LUNGREN. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, a lot of times here we talk in the ephemeral world. We talk in legalities, and we do not talk about what actually happens in the real world. We forget, on the one hand, that we have in the past, and State legislatures have in the past, enacted precisely legislation which does not allow certain information to come out.

Yes, you can in some cases get conviction records if those conviction records have not been sealed, but you cannot get arrest records. And as many of us know, in many situations around the country, because of the overcrowding of our court system, oftentimes a plea bargain will take place to an offense that is a lesser offense or to an offense that may be only tangentially involved with the facts of the crime committed.

So in some cases we may have someone whose actions gave rise to a crime which would bring some cause to have alarm about having that individual taking care of the elderly. Yet there is no way the employer can check on that.

When the Subcommittee on Health and Long-Term Care of the Select Committee on Aging held hearings on the rights of America's institutionalized aged, they heard testimony from one of the representatives from California, the executive director of the Commission on California State Government Organization and Economy, that has gone in and looked at the level of care of the institutionalized elderly. He indicated that although under California law the applicant, that is, the person whose actual name would be on the license for the community care facility is screened for past criminal record, there is—and these are his words—"no way of knowing whether his employees have a criminal record. We received testimony on various cases in which employees with criminal records raped, beat, and abandoned residents."

That is what we are talking about here. We are not talking about the guy who is raising the flag in the morning and has no connection with the patients involved. We are talking about prospective employees with criminal records who would rape, beat, and abandon residents. These are the elderly in our community care facilities.

That is pretty serious. That ought to be something that we are concerned about in this House. So when we talk about this amendment, let us talk about the practical. Let us talk about an 80-year-old woman who is bedridden, who is being treated in one of these facilities, and who is at the

mercy of the employees there. And so I ask, should we say to her after she has been beaten or raped, "Well, maybe if we had had a little bit better information about that person, we wouldn't have hired him. But, you know, we had to make sure that person didn't suffer the indignity of having to take a lie detector test as part of the entire screening; nonetheless we will make sure that that person is not employed tomorrow to rape or to beat you."

This is the real world. We are not making these things up. This is from the testimony of people who have looked at what has happened in my home State of California.

Mr. Chairman, I would suggest that we ought to be concerned about that.

Mr. LAGOMARSINO. Mr. Chairman, will the gentleman yield?

Mr. LUNGREN. I yield to the gentleman from California.

Mr. LAGOMARSINO. Mr. Chairman, I thank the gentleman for yielding.

What the gentleman says is very accurate and very true. It is something we should consider very carefully. It is not just a possibility.

Just yesterday, I believe it was, a man pleaded guilty to killing 13 people, and they think there were many more, in a hospital. This is a not unsimilar situation.

Mr. Chairman, this is something we do owe to our people. Why should we say that the secrets of the Defense Department are more sacred than the lives and well-being of our elderly citizens?

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. LUNGREN. I am happy to yield to the author of this amendment.

Mr. YOUNG of Florida. Mr. Chairman, I thank the gentleman from California for his contribution. He has made some very, very strong and persuasive points here. In support of that, let me just hold up these relatively important copies of newspaper stories telling how previous employers are not responding to requests for information about employees that might have worked for them because if they give a bad recommendation, they are getting sued. In some cases they are getting sued if they give a good recommendation.

They are just buttoning up in many cases, and it is getting more difficult all the time to learn something about an applicant from a previous employer.

Mr. LUNGREN. Mr. Chairman, I thank the gentleman for offering his amendment, and I hope we will have a unanimous vote in favor of this amendment.

Mr. DARDEN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of the amendment offered by the gentleman from Florida [Mr. Young], and I want to commend him for realiz-

ing that here we have a very obvious flaw in the Williams bill that must be addressed and that I think certainly is addressed by this amendment.

I think it is interesting to note, Mr. Chairman, that if this House of Representatives has gone on record for any one thing or any one subject or any one topic, it has been taking action to better the lot and the lives of our elderly people in this country. I think to take away, as this bill would do, the right to see that those persons who care for and administer care to our elderly are not properly investigated would indeed be setting a bad, bad precedent here on the floor of the House of Representatives.

□ 1325

Further example of how unfair the situation has become, Mr. Chairman, under the bill as it now stands, a person who is charged, a young person who is charged with stealing \$3.50 worth of candy from a store can be polygraphed by the police; but at the same time a person who may have a serious record of convictions, and the amount of convictions may not have been divulged, cannot be polygraphed by the owners of a nursing home.

It is important to note that, let us not take away this valuable investigative tool which should be used in conjunction with, not solely for the purpose of determining suitability for a particular job, but in conjunction with all other evidence to screen out these people who might not be employable.

I was gratified last year when the committee accepted this amendment, but now it appears to be an opposite situation here today.

Mr. MARTINEZ. Mr. Chairman, will the gentleman yield?

Mr. DARDEN. I yield to the gentleman from California.

Mr. MARTINEZ. Mr. Chairman, I thank the gentleman for yielding to me.

I want to refer to the point the gentleman makes on the validity of a lie-detector test, because it is given by a police department and not used in evidence.

A court of law does not recognize it, because the polygraph is recognized as invalid. They cannot use it in evidence.

If the police are using it, they are using it as a supplement, and that requires them to dig up the hard evidence, and more than just that polygraph test.

I think the argument is the kind of an argument that confuses us into giving credibility to the use of a lie detector test in the private workplace.

Mr. DARDEN. The police can, under this bill, continue to use a polygraph unfettered as they have in many years throughout this country.

What it does prohibit as it stands now is the right of a person who may go to work in a nursing home to care for our elderly, they cannot have that type of background check.

H 9554

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

Mr. LUNGREN. Mr. Chairman, will the gentleman yield?

Mr. DARDEN. I yield to the gentleman from California.

Mr. LUNGREN. Mr. Chairman, I thank the gentleman for yielding.

The police departments use the lie detector tests in precisely the same way we are asking under this amendment that employers, in taking care of the elderly, use it; that is, in employment situations.

That is where the police use it today, and the Supreme Court has said that they can use it. They can use it for employment circumstances.

We are not talking about using it for criminal circumstances here. We are talking about using it for employment circumstances.

Mr. DARDEN. Mr. Chairman, I thank the gentleman for making that point.

We are contending that the polygraph ought to be used in evidence, even though it might be permitted to be used in evidence by stipulation in some States.

We are making the point that once more the polygraph should be used as the same investigative tool by owners of nursing homes, just as police officers can use it.

It is a valuable investigative tool which should not be taken away from the possible benefit to the elderly.

Mr. WILLIAMS. Mr. Chairman, will the gentleman yield?

Mr. DARDEN. I yield to the gentleman from Montana.

Mr. WILLIAMS. Mr. Chairman, I thank the gentleman for yielding.

Who ought to investigate crime? This bill says if the police departments want to investigate crime and want to use the lie detector to investigate crime, let them do it; but what some of the Members on the floor seem to want is to allow private industry to become police departments, and not only that, but they want to allow private industry to use the gadget in a way we do not allow law enforcement to use it; and that is, for preemployment, for people who never committed a crime.

The Members would allow the owners of nursing homes to require a secretary seeking a job in a nursing home to be sat down, strapped in and plugged in. We do not let the law-enforcement agencies in this country do that. That is a far broader situation than the gentleman wants to create.

Mr. WALKER. Mr. Chairman, I move to strike the requisite number of words.

I rise in support of the amendment, and I would say to the gentleman from Montana that what the gentleman just said is wrong with regard to what we do in this body.

Just a few moments ago the staff checked with the Capitol Police, and guess what. For the protection of ourselves around here, we allow the Capitol Police to have two full-time examiners who do nothing but screen all ap-

plicants for the Capitol Police Force, to check the info that is on their applications, not for investigative work of criminals.

We allow our Capitol Police to screen all their applicants about the information that is on their applications.

Mr. WILLIAMS. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Montana.

Mr. WILLIAMS. Mr. Chairman, I thank the gentleman for yielding.

My question is, do we allow the Capitol Police, or any other police department, to use the lie detector test to screen prospective employees of nursing homes or banks or anywhere else?

That is what this amendment allows, nursing homes, so I was not wrong.

Mr. WALKER. No, we are allowing the Capitol Police Force, in terms of the people that apply to work at the Capitol Police Force, to use lie detector tests to screen those applicants, exactly what the gentleman from Florida wants to do in terms of nursing homes, screening their own applicants. It is exactly the same.

What we now have is a standard which says that to protect ourselves, we will have one standard. To protect the elderly of America, we will have another standard.

That is an abomination. Once again, we have legislation on the floor that says we are somehow above the law, that this particular body of men and women is better than the law, that what we are going to take away from private industry, we are not willing to take away from ourselves, because there is nothing in this bill that takes away from our ability to use lie detectors to screen the people that protect us.

I cannot understand it. Why is it day after day, week after week we are bringing bills to the floor that say we are better than the rest of the American people?

I would think it would get to be an embarrassment after a while. To find out the gentleman from Florida wants to protect the elderly of America, and we say no, you cannot do that. When it comes to protecting ourselves, we are going to have the best equipment in our arsenal to do so.

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, I thank the gentleman for yielding to me.

I want to make sure I understand the gentleman's point. If it is proper to use a polygraph examination to screen those who protect Members of the U.S. Congress, then it should be proper to use that same process, that same quote gadget unquote to protect elderly people lying in nursing homes who cannot take care of themselves nearly as well as we can here in Con-

gress. Is that what the gentleman is saying?

Mr. WALKER. I would say to the gentleman, I think it is probably more important to have that particular ability rather than for ourselves.

Maybe those people who are lying helpless in nursing homes deserve more protection than what we deserve in the U.S. Congress, and so the gentleman is absolutely correct, and that is the point I am making.

If the technique is good enough, if it is good enough for elderly Americans, it is good enough for employers all the way across this country.

I find it very, very disturbing that day after day, week after week we are saying we are somehow better than the rest of America.

Mr. WILLIAMS. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Montana.

Mr. WILLIAMS. Mr. Chairman, I thank the gentleman for yielding to me.

Does the gentleman know in this matter of the House being duplicitous here on Capitol Hill, does the gentleman know whether or not the Capitol Police give lie detector tests to that fellow that raises the flag and to those secretaries that work in the office of the gentleman from Pennsylvania, because this amendment allows nursing home owners, not public officials, to give the lie detector test to people applying for a job to cut lawn outside the nursing home?

Mr. WALKER. The gentleman's bill exempts all government employees, so it is my understanding, and in the same way that the gentleman's amendment allows the nursing home operators to behave, we are allowed to behave ourselves.

If we wanted to test the people who raised the flag in the morning, we could under the gentleman's bill; but under the gentleman's bill, the nursing home operator does not have that option.

The gentleman from Florida is saying that your bill ought to give the nursing homes that option.

Mr. BARTLETT. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Texas.

Mr. BARTLETT. Mr. Chairman, I thank the gentleman for yielding to me.

We need to get back to what the bill says, and I propound the question to the sponsor of the bill, or any of the sponsors including the gentleman from Montana.

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. WALKER] has expired.

(On request of Mr. BARTLETT, and by unanimous consent, Mr. WALKER was allowed to proceed for 3 additional minutes.)

The CHAIRMAN. The Chair will offer the explanation that in accord-

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9555

ance with the precedents, the Chair will recognize members of the committee, first priority, and then those non-members in accordance with seniority.

I thought that explanation would be in order to understand the recognition by the Chair of diverse Members who have sought recognition.

Mr. WALKER. We thank the Chair.

Mr. Chairman, I yield further to the gentleman from Texas [Mr. BARTLETT].

Mr. BARTLETT. Mr. Chairman, I thank the gentleman for yielding to me.

I would propound the question to the sponsors of the legislation.

Would they then accept an amendment to permit nursing-home operators to use the polygraph as one determinant in hiring those employees that deal directly with the elderly in a way in which it is an occupation?

If that is an amendment that is acceptable, then perhaps the sponsor of the bill should accept the amendment with that change in it, and we could go on to the next amendment.

Mr. WILLIAMS. Mr. Chairman, will the gentleman yield?

Mr. WALKER. Mr. Chairman, I would be glad to yield to the gentleman from Montana to see if the gentleman wants to have that reasonable amendment added to the bill.

Mr. WILLIAMS. Mr. Chairman, I thank the gentleman for yielding to me.

The sponsor of the bill believes that one cannot cure baldness through the application of electricity, just as one believes that a box plugged into a wall cannot determine through the application of electricity whether the person is telling a truth or a lie.

The sponsor of the bill is opposed to the use of the lie detector gadget.

Mr. WALKER. Let me say to the sponsor of the bill, what the gentleman is saying is, it is perfectly all right when it comes to protecting the gentleman, when the Capitol Police use it to protect him, and the gentleman's bill in now way says we are going to take that power away from the Capitol Police when it comes to protecting the gentleman?

Mr. BARTLETT. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Texas.

Mr. BARTLETT. Mr. Chairman, I thank the gentleman for yielding.

I further inquire as to whether or not the sponsor would accept an amendment to unexempt Congress from this bill.

Mr. WILLIAMS. Mr. Chairman, if the gentleman will continue to yield, the sponsor of this bill will cosign a bill introduced by the gentleman from Texas to take away from the Capitol Police the use of the lie detector gadget.

Will the gentleman offer that?

Mr. BARTLETT. It would not be a bill; it would be an amendment to this bill.

Mr. WILLIAMS. My bill would have jurisdiction over this. If the gentleman can offer this amendment to strip the use of the lie detector from the Capitol Police, his gentleman will support it; and I will tell the gentleman why.

Spies and terrorists, people intent on doing the Members any bodily harm can go through a lie detector like water through a sieve.

If we are depending on the lie detector to protect ourselves, we are in a lot of trouble.

Mr. BARTLETT. Mr. Chairman, if the gentleman will continue to yield, the sponsor of the bill is being straightforward and honest then.

The gentleman wants to prohibit polygraphs in all cases. The House will consider an amendment to remove the congressional exemption from this bill.

Mr. WALKER. Mr. Chairman, reclaiming my time, we also do lie detector tests of the people who work on our intelligence committees, for example.

It goes much further than that when we are relying on protecting the intelligence of this country, using the employees of this body, and we use lie detectors there too.

The gentleman thinks they are some sort of a witchcraft, but we do depend upon them.

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. WALKER] has again expired.

(On request of Mr. Young of Florida, and by unanimous consent, Mr. WALKER was allowed to proceed for 3 additional minutes.)

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Ohio.

Mr. KASICH. Mr. Chairman, I thank the gentleman for yielding to me.

The Stillwell Commission, the group that studied the problems with security leaks throughout this country, pointed out the problem with polygraphs is not the fact that people can avoid them.

The problem is that they are not administered in a way that does not tip somebody off as to when those tests are going to be administered; and in fact, if you study the whole Walker situation, the senior Walker told his son, "Don't get yourself in a position where you are ever going to be polygraphed, because that is how you are going to get discovered."

Using a polygraph in national security is a very valuable tool in terms of trying to prevent this kind of thing from happening. They are recommending more use of the polygraph, not less, when it comes to national security.

That point ought not to be missed when we are looking at something as sensitive as this.

□ 1340

Mr. WALKER. Mr. Chairman, I thank the gentleman.

Let me yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, I thank the gentleman for yielding.

An important point has been raised relative to who believes the polygraph works or does not work.

This latest conversation prompts me to read this statement from Christopher Boyce. Christopher Boyce appearing before the Senate Committee on Governmental Affairs made this statement. Christopher Boyce is very infamous in that while he worked for one of our defense contractors, he sold out to the KGB and provided them with some very strategic information that harmed us considerably.

Christopher Boyce said that the KGB officer who was his charge told him that they had ways to beat the polygraph. Christopher Boyce said to the Senate:

I knew I could not pass the polygraph and greatly feared it. That same fear heightened my resolve never to accept direct employment with the CIA because they require a polygraph.

Now, Christopher Boyce, I think, should be paid attention to because he has cost us a lot of money and he has given the Soviets some very important strategic information that belonged to us, that we developed. Unfortunately we are getting away from the amendment at hand. The subject before us now is are we going to give elderly people in nursing homes the protection of having an opportunity to screen prospective employees who are going to be tending them in the wee hours. That is the issue. Are we going to do that or not?

Unfortunately we have allowed the debate to move in the wrong direction. The proponents of this bill are trying to create the illusion that we are going to polygraph, that we want to polygraph everyone who applies for a job anywhere in the world. That is not the case, not the case at all.

First of all, to conduct a polygraph examination takes time.

No. 2, it is extremely costly and if you think that all these industries just want to indiscriminately use polygraphs, you are wrong, but it is a very good tool and the existence of the program itself will be very helpful.

But let us not allow this debate to move off in 20 directions. This debate, this moment, is whether or not we are going to give protection to the elderly people in America's nursing homes.

I thank the gentleman for yielding.

The CHAIRMAN. The time of the gentleman from Pennsylvania has again expired.

(By unanimous consent, Mr. WALKER was allowed to proceed for 2 additional minutes.)

Mr. WALKER. Mr. Chairman, let me say to the gentleman, and I will

yield to the gentleman in a moment, but let me say to the gentleman that I think it is important that we refocus the debate on his amendment.

What this gentleman is saying is we ought to do unto others, namely, the elderly, what we willingly do unto ourselves, namely, we allow our Capitol Police to administer lie detector tests when it comes to protecting us. They do it on the basis of job applications. That is the same standard of protection that we ought to allow to the elderly of this country.

Mr. NEAL. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I am very glad to yield to the gentleman from North Carolina.

Mr. NEAL. Mr. Chairman, I thank the gentleman for yielding.

I agree with the gentleman that we ought to be on this subject, but the gentleman from Florida made a very important point. The gentleman from Florida said that the spy that he quoted was afraid of the polygraph. That is precisely the point.

The point is that the polygraph tests do not work. They are not lie detector tests. They are unreliable, no more accurate than the flip of a coin, but there are people who are afraid of them. There are some people out there who believe that they work and in those cases when there are people who believe that they work, the threat of a polygraph can elicit a desired response; but as more and more people learn that they do not work, they will become less and less effective.

This is the most important point, since they are unreliable and many people do it, the most dangerous people, the people who would be most dangerous to our national security or to our elderly or to us here, the terrorists and so on, know how to beat them.

There are mental techniques, drugs, and other ways to beat the polygraph.

Mr. DELAY. Mr. Chairman, will the gentleman yield?

Mr. WALKER. Let me regain my time and yield to the gentleman from Texas.

Mr. DELAY. Mr. Chairman, I think that the gentleman from North Carolina has established his entire support for this bill on the fallibility of the polygraph system. The gentleman cited a few studies and challenged us to come up with studies of our own.

The CHAIRMAN. The time of the gentleman from Pennsylvania has again expired.

(At the request of Mr. DELAY, and by unanimous consent, Mr. WALKER was allowed to proceed for 2 additional minutes.)

Mr. WALKER. I yield to the gentleman from Texas.

Mr. DELAY. Mr. Chairman, I would ask the gentleman after my statement if he will change his support for the bill if we can cite to the gentleman numerous studies that show the accuracy of the polygraph.

In 1984, the Department of Defense called for a study to be done of the number of studies in the United States that have been done on the accuracy of the polygraph. I would just like to cite a few of them.

From Dr. Barland, University of Utah, 89.7 percent accurate.

Mr. Phillip Bersh, Temple University, 92.4 percent accurate.

Mr. Richard Blum, Stanford University, 96.2 percent accurate.

Dr. Frank Horvarth, 87.8 percent accurate.

Dr. David Raskin, 96 percent accurate, and I could go on and on. I have got the book coming over. It is about that thick of all the studies that have been done that show that it is as accurate as most drug testing or any other tools that are being used in employment; so I can show the gentleman that there are as many, if not more studies, that show at least 85 percent accuracy of the polygraph.

I will ask the gentleman, will he now change his support for the bill, because I have as many, if not more, than the gentleman has on the accuracy of the polygraph.

Mr. NEAL. Mr. Chairman, will the gentleman yield to me to respond?

Mr. WALKER. I am happy to yield to the gentleman from North Carolina.

Mr. NEAL. Mr. Chairman, I would refer the gentleman to the distinguished Republican Member from Utah who is a former professor of statistics. I think he will point out to the gentleman if we can get him involved in this debate that at those levels of accuracy, and I am not a statistician and I cannot make his argument for him, but I wish the gentleman was here to make it, because I think he could demonstrate that at these levels, and this comes as news to me, frankly, because the studies I have seen indicate that they are much less reliable than the gentleman indicates, but even at these levels the gentleman is talking about, the level of inaccuracy would be one that would be a very dangerous one for us to trust, so I hope that when the gentleman from Utah returns we can get involved in this.

Mr. DELAY. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I am happy to yield to the gentleman from Texas.

Mr. DELAY. Mr. Chairman, I am looking for the gentleman from Utah, the statistician, because three of the studies were done by the University of Utah.

Mr. CHAIRMAN. The time of the gentleman from Pennsylvania has once again expired.

(By unanimous consent, Mr. WALKER was allowed to proceed for an additional 10 seconds.)

Mr. WALKER. Mr. Chairman, I do so just to bring the subject matter back, protect the elderly the same as we protect ourselves. Vote for the

amendment of the gentleman from Florida.

Mr. JEFFORDS. Mr. Chairman, I move to strike the requisite number of words.

(Mr. JEFFORDS asked and was given permission to revise and extend his remarks.)

Mr. JEFFORDS. Mr. Chairman, the key question here is whether or not passing this amendment will do anything to protect the elderly. That is the question.

Related to that is the question of the validity of preemployment testing.

Now, the gentleman from Texas mentioned some studies, and if my memory serves me correctly these studies were done by the polygraphers about themselves, or related to studies of polygraphers, or at least did not deal with preemployment testing.

Mr. DELAY. Mr. Chairman, will the gentleman yield?

Mr. JEFFORDS. I will yield to ask the gentleman this question. Did they deal with preemployment testing?

Mr. DELAY. Yes, the studies dealt with preemployment testing and these were not conducted by polygraphers. These tests were performed by professors in universities that made studies commissioned by private organizations and compiled by the Department of Defense in 1984. These individuals are not polygraphers.

Mr. JEFFORDS. Well, I would just point to the OTA, the Office of Technology Assessment of the Congress, which did a study of the studies, and those were not commented on there, and found that there is no study, to their knowledge at that time, that showed any validity to preemployment testing. That is the issue here, because we are weighing issues here dealing with the private sector which we do not have with the Government sector.

Now, as to government use of the polygraphers I will recite some information that came to me this morning by virtue of my being on C-SPAN. I was talking with a polygrapher who did some preemployment testing for a police department. I will get to that matter in a minute.

The question here is an interest-weighting matter. The important point here is the polygraph test is not reliable. Let us take a look at what the courts have said about this and how long they have said it. The first case in the U.S. Supreme Court case dealing with polygraphs was in 1923. This issue and discussion on it has been in existence for probably 70 years. Yet still the courts will not allow this test to come into evidence. This should be distinguished from drug testing and all those kind of things which are allowed in evidence in courts under certain circumstances. Let us not be confused by these analogies.

Also, it should be pointed out that this particular amendment is opposed by the American Medical Association, the American Psychologists Association,

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9557

tion and the American Nurses Association. These tests administered here under these circumstances are humiliating. They are an invasion of privacy with the questions that are asked. They have no known validity in the preemployment testing situation, the private sector interests should be distinguished from the military and others who come forward and are placed in a position of national security. They are considered to have waived some of those rights. Certainly that would be true with respect to police officers dealing with us here in applying for positions which involve that kind of rigorous testing required for such tests and responsibilities. This is not true when you talk about people deserving and work for nursing homes, et cetera in the private sector.

Let me relate to you the experience I had this morning to show you how these polygraphs are used or rather misused. On C-SPAN this morning, naturally I was challenged by polygraphers. One was the police department examiner in one of the Virginia areas. He called and said, "It is very reliable. We had a hundred applications for four positions in the police department. I examined them and in 96 cases I could tell they were drug addicts, criminals or sexual abusers. Therefore, we were able to hire the only four that came forward that I could tell were really honest and would make police officers, and they have."

Now, can you believe that that would occur? He must have been sitting outside of the State prison examining people coming out the door and looking for jobs. That is the kind of ridiculous response you get from some polygraph operators.

I point that out because what we are basically concerned with here is the protection of people, yes; but it is protection also of those who want to be there to try to protect people.

Since the polygraph has no demonstrated reliability in this kind of situation, what we are trying to say here, at least in the preemployment situation, is that we should not subject people to such intimidating and unreliable tests, thus eliminating people from being able to work by virtue of a test which absolutely has no known validity in the preemployment situation.

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. JEFFORDS. I am happy to yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, I thank the gentleman for yielding.

Since we got away from the elderly nursing home amendment once again and we are back on the bill, let me tell you why the gentleman from Georgia (Mr. DANEN) and myself have suggested this substitute, because we put in there a Bill of Rights for that person who might be examined by a polygrapher. A substitute says:

A polygrapher may not ask a question during the actual examination unless such question is in writing and has been reviewed with the examinee prior to such examination.

That takes care of the problem the gentleman from Indiana (Mr. VISLOSKY) mentioned earlier in the debate when they could not pronounce the name of his high school.

A polygraph examiner may not inquire into (a) religious beliefs or affiliations; racial beliefs or opinions; political beliefs or affiliations; sexual preferences or activities; beliefs affiliations or opinions regarding unions or labor organizations. Each prospective examinee shall be required to sign a notice before the beginning of each polygraph examination that he understands the limitations imposed on the examiner; that the examinee may terminate the examination at any time; that the examinee has legal rights and remedies if the polygraph examination is not conducted in accordance with this title.

And it goes on.

The CHAIRMAN. The time of the gentleman from Vermont has expired. (At the request of Mr. YOUNG of Florida, and by unanimous consent, Mr. JEFFORDS was allowed to proceed for 1 additional minute.)

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield further?

Mr. JEFFORDS. I yield to the gentleman from Florida.

Mr. YOUNG of Florida. Let me add this further point. This is a bill of rights to protect the person who will be examined by a polygrapher.

Now, under the Williams bill, there is no such guarantee. There is no bill of rights for the examinee in the bill before us.

This substitute is the only legislation pending today that protects the rights of the examinee. That is why we should adopt this substitute later on to do just that. There are going to be polygraph examinations whether the Williams bill passes or not; so at least let us make them professional and provide a bill of rights for the examinee now Mr. Chairman, but at this point let us get back to the issue at hand, which is protection of the elderly in nursing homes, because that is the issue before us right now.

The CHAIRMAN. The time of the gentleman from Vermont has again expired.

(By unanimous consent, Mr. JEFFORDS was allowed to proceed for 2 additional minutes.)

Mr. JEFFORDS. Well, it is true, Mr. Chairman, that under the Williams bill there would be no Bill of Rights because there would be no examination. You do not need a bill of rights to protect you from something which is prohibited.

Now, if the gentleman is saying that it would expand to other areas that may be allowed, that may be true and I would certainly have no quarrel with that aspect of it. But here we are involved here with the question of validity and nothing you can do is going to make something that has been shown

not to be valid enough to be considered in evidence for 70 years to be suddenly valid now. I am sure that questions not have been asked, have been changed and reordered by polygraph examiners over the years to try and get admissible results. Yet they still cannot get results which are reliable enough to let the courts admit them into evidence.

So I would say right now the question is whether or not these tests are valid the evidence is very clear that they are not valid, potential employees should not be subjected to such humiliating tests and questions in preemployment situations.

□ 1355

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, I am sure the gentleman from Vermont did not do this intentionally, but he misspoke. Under the Williams bill millions of Americans can be polygraphed. Those who work for the U.S. Government, those who work for the governments of all the 50 States, those who work for the governments of the thousands of counties and the thousands and thousands of cities can all be polygraphed.

Mr. JEFFORDS. Reclaiming my time, I will admit that the gentleman is correct and add that is true for some employees of the defense industry.

Mr. YOUNG of Florida. All of those people are subject to polygraph by the Williams bill. I do not think the gentleman intended to misspeak, but unfortunately he did.

Mr. JEFFORDS. Mr. Chairman, I would say that the gentleman is correct in that. Of course those situations other than the Federal Government are not under our jurisdiction, otherwise we may have given consideration to covering them. However, that does not diminish my arguments relative to the non validity of the tests.

Mr. MARTINEZ. Mr. Chairman, will the gentleman yield?

Mr. JEFFORDS. Mr. Chairman, I yield to the gentleman from California.

Mr. MARTINEZ. Mr. Chairman, the point is they are susceptible to being polygraphed and are not part of the Federal Government. The point is there are tens of thousands of those who have no business being polygraphed because they have not done anything wrong to begin with, who are going to be polygraphed if this bill does not pass.

Mr. JEFFORDS. I agree with the gentleman. We are here to protect the private sector, also, as well as deal with Government agencies.

Mr. Chairman, I again urge my colleagues that this amendment be defeated.

Mr. McCOLLUM. Mr. Chairman, I move to strike the last word.

H 9558

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

Mr. Chairman, I think this debate is down to the point now where we ought to be talking about what is reasonable. Everything we do in this Congress, it seems to me, is all part of our checks and balances, that old balance wheel that we have talked about in many of these debates comes into play here, it seems to me.

What are the inherent evils of the polygraph test? I do not think there are inherent evils. If the polygraph is given to somebody, there may be harassment, there is potential for abuse of it in the preemployment practice, no doubt about it, but in the sense that it is inherently evil that somebody will suffer physical ailment or somebody is going to die from it or somebody is going to be irreparably injured by it, that is highly improbable that that would occur. On balance, the question is under what circumstances, if any, will the polygraph examination be given in the employment scenario?

It seems to me that when one weighs the limited amount of evil, if that is what it is to be called, or problems for somebody seeking employment in a nursing home, the harassment and potential abuse that might be there weighed against the harm that could occur to the elderly if we denied the owners and operators of nursing homes the opportunity to preemployment screen with a polygraph, I think that we have to come down firmly on the side of the elderly in allowing the employment screening to take place.

The fact of the matter is that there will always be debate over the technical validity of the polygraph, whether it is 85, 90, 72 percent accurate. Let me say to my colleagues, drug tests are not all accurate. We had a great debate over the AIDS test, and a lot of people still say, people in the medical profession, say the AIDS test does not screen out all the necessary things to make certain determinations.

The point is that the polygraph test, by the evidence I have seen, and I have seen a lot of it as my colleagues have also seen it, is extremely valid for the purposes of preemployment screening if an employer uses other things besides simply the polygraph, which we would be required I am sure under any form of this legislation, the substitute or this one, the tests that the gentleman from Florida [Mr. Young] has proposed in his substitute would seem eminently fair. These would provide the degree of safeguards necessary to let the polygraph be used for the protection of the elderly.

I had a grandmother in a nursing home, some of my colleagues have had their parents or grandparents in a nursing home. I think most of the nursing homes of this country are to be respected. There has been a great improvement over the last few years in the quality of care and inspections, but elderly people in nursing homes themselves are often not capable of understanding certain things, or pro-

tecting themselves. They are among the most vulnerable citizens of this country. They are people that I am sure every Member of this body wants to be sure their interests are protected. The fact is they can have valuable possessions in their rooms that could be easily stolen. As the debate brought out earlier, in a nursing home, an elderly citizen can be attacked by the wrong person working there. We have had documented cases of rape and of physical abuse to the elderly in nursing homes by people who have no business being employees of those nursing homes. The polygraph itself is not going to be a guarantee to get rid of all those people but it seems to me on balance, and I think that is what we have to do here as a body, if we are weighing the good and the evil of the use of the polygraph, in this case the good, the need for the polygraph in the nursing home setting to protect the elderly far outweighs any harm that could possibly occur in the employment area to somebody who might want to work in a nursing home.

There are a lot of other places, if somebody is worried about getting a job and being rejected, where they can go to work where they will not worry, and we will not worry, about what kind of threat they will be to the elderly, to the health and safety of the elderly and to their possessions.

It is just not responsible for this body to allow a bill like this to go through that would prohibit the employer in a nursing home context from screening people who work in that establishment who take care of the elderly, who are on guard around the clock at midnight when everybody else has gone home. It is not reasonable for us to prohibit that employer from using the polygraph, from using every reasonable means to protect the elderly that are in that nursing home facility.

Mr. Chairman, I strongly urge my colleagues to put some common sense into this debate. Whatever my colleagues think about the use of the polygraph in general, the gentleman from Florida's [Mr. Young] amendment on nursing homes is eminently fair and logical, and a balanced approach to this process. We need to have an amendment in this bill that exempts nursing homes.

Mr. Chairman, I urge my colleagues to vote for the Young amendment.

Mr. WORTLEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Young amendment. As a member of the Select Committee on Aging, I am acutely aware of the special concerns of the elderly and those involved with caring for the elderly. This amendment realistically confronts a very sad reality facing our seniors—a reality that involves cases of physical and psychological abuse, violation of rights, and financial exploitation in nursing homes.

Let me make it clear from the start that my comments in no way typify employees and professionals of the nursing home industry, but rather some particular cases which could be avoided in the future by the use of polygraph testing.

Physical abuse in nursing homes comes in many forms ranging from simple neglect to being strapped to a bed and left in the dark for hours. Occasionally, actual beatings occur which result in cuts, bruises, and broken bones.

Psychological abuse is even more diverse, ranging from verbal assaults to protracted efforts to dehumanize an elderly person.

Additionally, violation of fundamental inalienable rights occur in nursing homes. This includes violation of the right to adequate, appropriate medical treatment and the right to a clean, safe, living environment, among others.

Finally, financial exploitation by nursing home employees has been accomplished through force, fraud, deceit and misrepresentation. I am talking about documented cases in which employees have physically forced seniors into signing checks and cosigner release forms.

Allowing nursing home employers to use polygraph testing would significantly aid in weeding out those few—and I emphasize few—employees or applicants who pose a direct physical, psychological or financial threat to the elderly.

Currently, it is conceivable that a person with a history of physical assault could gain employment, undetected, in a nursing home. Polygraph testing is one important and necessary option to help make it impossible for a person to carry a bad track record, in terms of nursing home employment, from one location to another. I sincerely believe that nursing home employers should be permitted to use this testing method to aid their efforts to keep criminals away from the elderly.

I support this amendment since it provides a much needed tool in protecting our senior citizens. We have already made an exemption to the polygraph prohibition for reasons of national security, and I cannot accept that it is any less important to protect our elderly—your parents, my parents, my 87-year-old mother who resides in a nursing home. I urge your consideration and strong support of this crucial exemption to H.R. 1212.

Mr. GUNDERSON. Mr. Chairman, I move to strike the requisite number of words.

(Mr. GUNDERSON asked and was given permission to revise and extend his remarks.)

Mr. GUNDERSON. Mr. Chairman, I hope that I will not take my full time, but I think there are two important items that need to be added to the discussion on the amendment of the gentleman from Florida [Mr. Young].

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9559

I rise in support of this amendment and I rise in strong support of this amendment because I would call to the attention of every one of my colleagues and particularly my colleagues on the Democratic side of the aisle, to take a look at the 1985 May report by the Select Committee on Aging on "Elderly Abuse: A National Disgrace."

□ 1405

Take a look at that report and take a look at the discussions in there on the area of sexual abuse alone.

Let me recall for my colleagues some of the testimony from that report. An elderly woman with cerebral palsy related her experiences in five different nursing homes in which she lived. In one of those experiences she was abused sexually by her doctor. At that time her speech was so severely impaired that she could not relate this experience to her nurses.

A daughter wrote from California regarding treatment of her aged mother in a convalescent hospital. The hospital personnel would tie her mother in a chair and leave her in a crowded room for long periods of time. No attempt was made to treat a bad eye infection. Her mother was beaten up while a patient. When questioned by the daughter, the head nurse said, "We really don't know what happened."

Mr. Chairman, elder abuse is happening and what we are talking about here today could have a direct impact on curbing such abuse. Before we get into some kind of a rampage to automatically ban the use of polygraphs for everybody but national security, we must somehow or another take into consideration the very threats to those least able to protect themselves, our elderly population in this country.

Second, I want to point out that 41 States in this country have some kind of legislation regarding the use of the polygraph today. All 50 States, all 50 States, have regulation of their nursing home industry. Are we going to at the Federal level say no matter what you are trying to do to regulate your nursing homes, you cannot in any way try to protect the residents of that nursing home by making sure that the people that are hired as the staff and the employees of that nursing home do not have previous records of sexual abuse of elder people. Where are our consciences?

This amendment ought to be accepted. There should not have been a debate, and if there is a rollcall I ask everyone to vote for it in a unanimous fashion.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida [Mr. Young].

The question was taken; and the Chairman announced that the yeas appeared to have it.

RECORDED VOTE

Mr. YOUNG of Florida. Mr. Chairman, I demand a recorded vote. A recorded vote was ordered.

The vote was taken by electronic device, and there were—yeas 197, noes 237, not voting 9, as follows:

(Roll No. 497)

AYES—197

Anderson	Hammerschmidt	Oxley
Archer	Hansen	Pachard
Armey	Harris	Packard
Badham	Hastert	Pashayan
Baker	Hatcher	Pepper
Ballewenger	Hayes (LA)	Pickett
Barnard	Hefner	Picks
Bartlett	Hefner	Porter
Barton	Heger	Quillen
Bateman	Hffer	Ravenet
Bennett	Hochbruncker	Ray
Bentley	Holloway	Regula
Bereuter	Hopkins	Rhodes
Beverly	Hockaby	Roberts
Bilbrakis	Hunter	Rogers
Bliley	Hutto	Rose
Boggs	Hyde	Roth
Boutter	Irhofe	Roukema
Brownfield	Ireland	Rouland (GA)
Buechner	Jenkins	Saiki
Bunning	Jones (NC)	Saxton
Burton	Jones (TN)	Schaefer
Byron	Kaich	Schaefer
Cahalan	Kelce	Schulze
Chandler	Konnyu	Sensenbrenner
Chapman	Kyl	Shaw
Chappell	Lagomarsino	Shumway
Cheney	Lancaster	Shuster
Clarke	Latta	Slaisky
Coats	Leath (TX)	Skeen
Coble	Lew	Slaughter (VA)
Coleman (MO)	Lewis (CA)	Smith (NE)
Combat	Lewis (FL)	Smith (NJ)
Courter	Lightfoot	Smith (TX)
Craig	Livingston	Smith, Denny
Daniel	Lloyd	(OR)
Dannemeyer	Lott	Smith, Robert
Darden	Lavery (CA)	(NH)
Daub	Lujan	Smith, Robert
de la Garza	Lukens, Donald	(OR)
DeLoach	Lungren	Solomon
DeWine	Mack	Spence
Dickinson	MacKay	Stangeland
DioGuardi	Madigan	Stenhols
Dorman (CA)	Marlenee	Stump
Dreier	Martin (IL)	Sundquist
Edwards (OK)	Martin (NY)	Sweeney
Emerson	McCaulley	Swindell
Erdreich	McClellan	Tawa
Fawell	McEwen	Taylor
Fields	McGrath	Thomas (CA)
Flippo	McMillen (NC)	Thomas (GA)
Frenzel	Meyers	Thorn
Galegaly	Mica	Valentine
Gallo	Michel	Vander Jagt
Garcia	Miller (OH)	Vucanovich
Gekas	Molinar	Walker
Gingrich	Montgomery	Whittaker
Goodling	Moorhead	Wolf
Gradison	Morrison (WA)	Wortley
Grant	Myers	Wyle
Gunderson	Nelson	Young (FL)
Hall (OH)	Nichols	
Halt (TX)	Ortiz	

NOES—237

Achenbach	Bryant	Dargatzis (ND)
Akaka	Bustamante	Dowdy
Alexander	Campbell	Downey
Andrews	Cardin	Darbin
Annuizio	Carper	Dwyer
Anthony	Carr	Dymally
Applegate	Chay	Dyson
Aspin	Clinger	Early
Atkins	Coleman (TX)	Eckart
AuCoin	Coleman (TX)	Edwards (CA)
Bates	Collins	English
Beltonson	Conce	Espy
Berman	Covatta	Evans
Bivens	Cooper	Pascall
Boehlert	Coughlin	Fazio
Boland	Coyne	Feighan
Bombor	Crockett	Fish
Bonker	Davis (IL)	Flake
Bonski	Davis (MI)	Florio
Bosco	DeFazio	Foglietta
Boucher	DeSteno	Foley
Bower	Derrick	Ford (MI)
Brennan	Dicks	Ford (TN)
Brooks	Dingell	Frank
Brown (CA)	Dixon	Frost
Bruce	Donnelly	Gaydos

Gejdenson	Mavroules	Savage
Gibbons	Mazoli	Sawyer
Gilman	McCloskey	Schauer
Glickman	McCurdy	Schneider
Gonzalez	McDade	Schroeder
Gordon	McHugh	Schumer
Grandy	McMillen (MD)	Sharp
Gray (IL)	Mfume	Shauss
Gray (PA)	Miller (CA)	Shaw
Green	Miller (WA)	Shays
Gregg	Minnis	Shelton
Guarini	Moakley	Slattery
Hamilton	McMahon	Slaughter (NY)
Hawkins	Moody	Smith (FL)
Hayes (IL)	Morella	Smith (IA)
Henry	Morrison (CT)	Snowe
Hertz	Mrazek	Sobczak
Horton	Murphy	Spratt
Houghton	Murtha	St. Germain
Howard	Nagle	Staggers
Hoyer	Natcher	Staffings
Hubbard	Neal	Stark
Hughes	Nielson	Stokes
Jacobs	Novak	Studds
Jeffords	Oaker	Swift
Johnson (CT)	Oberstar	Synar
Johnson (SD)	Obey	Talton
Jontz	Olin	Taake
Kanjorski	Owens (NY)	Torres
Kaptur	Panetta	Towns
Kastenmeier	Patterson	Traffant
Kennedy	Pease	Traxler
Kennedy	Perkins	Udall
Kildee	Penny	Upson
Kleczka	Perkins	Vento
Kolter	Petri	Visclosky
Kostmayer	Price (IL)	Volkmer
LaFalce	Price (NC)	Walgren
Lantos	Puzzell	Watkins
Leach (IA)	Rahall	Waxman
Lehman (CA)	Rangel	Weber
Lehman (FL)	Richardson	Weiss
Lehard	Ridge	Weisman
Levin (MI)	Rinaldo	Wheat
Levine (CA)	Ritter	Whitton
Lewis (GA)	Robinson	Williams
Lipinski	Rodino	Wilson
Lowry (WA)	Roe	Wise
Luken, Thomas	Rostenkowski	Wolpe
Manton	Rowland (CT)	Wyden
Markey	Roybal	Yates
Martinez	Russo	Yatron
Matsui	Sabo	Young (AK)

NOT VOTING—9

Biaggi	Duncan	Owens (UT)
Brown (CO)	Gephardt	Reber
Crane	Kemp	Stratton

□ 1420

Mr. WELDON changed his vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MRS. ROUKEMA

Mrs. ROUKEMA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mrs. ROUKEMA. Page 8, after line 13, insert the following new subsection:

(d) EXEMPTION FOR SECURITY SERVICES.—(1) Subject to paragraph (3), this Act shall not prohibit the use of a lie detector test on employees or prospective employees of a private employer whose primary business purpose consists of providing armored car personnel, personnel engaged in the design, installation, and maintenance of security alarm systems, or other uniformed or plainclothes security personnel and whose function includes protection of—

(A) facilities, materials, or operations having a significant impact on the health or safety of any State or political subdivision thereof, or the national security of the United States, as determined under rules and regulations issued by the Secretary within 90 days after the date of the enactment of this Act, including—

H 9560

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

(i) facilities engaged in the production, transmission, or distribution of electric or nuclear power;

(ii) public water supply facilities;
 (iii) shipments or storage of radioactive or other toxic waste materials; and
 (iv) public transportation; or
 (B) currency, negotiable securities, precious commodities or instruments, or proprietary information or property.

(2) The exemption provided under paragraph (1) shall not diminish an employer's obligation to comply with—

(A) applicable State and local law, and
 (B) any negotiated collective bargaining agreement,

which limit or prohibit the use of lie detector tests on such employees.

(3) The exemption provided under this subsection shall not apply if—

(A) the results of an analysis of lie detector charts are used as the sole basis upon which an employee or prospective employee is discharged, dismissed, disciplined in any manner, or denied employment or promotion; or

(B) the test is administered to an employee or prospective employee who is not or would not be employed to protect facilities, materials, operations, or assets referred to in paragraph (1).

Mrs. ROUKEMA (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from New Jersey?

There was no objection.

Mrs. ROUKEMA. Mr. Chairman, I hope that as we consider this amendment there will be less heat and more light on the subject.

This is the same one which was passed by the House last year and which the gentleman from Montana [Mr. WILLIAMS] accepted last year. He stated then that "it is very necessary * * * to establish symmetry between what we allow in the public sector * * * and what we allow in the private sector." And that it "establishes some symmetry with what the FBI, the CIA, and the National Security Agency are allowed to do."

The amendment applies to firms whose primary business is to furnish protective security services for sensitive facilities affecting the public health and welfare and valuable items and documents. In other words, private firms which perform a policing function of protection of certain types of property and facilities would have the same ability to use the polygraph as public police forces.

This amendment would include armored car, uniformed and plainclothes guards and security alarm companies. It would allow the administration of polygraphs to those who guard such facilities as nuclear powerplants, public water supplies, and public transportation, such as airports. I cannot overstate the need for airport security. There would be devastating results to the public if just one terrorist infiltrated such facilities.

Let me give you just one example of the need for this amendment. The ar-

mored car industry transports, counts and stores over \$15 billion per day. The majority of the monetary losses in the industry—65 percent—result from internal theft. Furthermore, employees in the industry are frequently required to carry guns. Employers necessarily have a great concern for investigating those they employ in such sensitive positions, both to protect their customer's property and to protect the public.

To address concerns that the exemption not be so broad as to cover low priority security functions, there is an important limitation. The administration of polygraphs is only allowed when employees are engaged in the protection of currency, negotiable securities, precious commodities or instruments, proprietary information, or facilities, materials or operations having a significant impact on our national security or the health or safety of a state or locality.

Finally, the amendment contains a safeguard for employees who are tested. They may not be denied employment, discharged, or disciplined solely on the basis of the results of a polygraph test. An employer would have to have additional corroborating information before taking any of these actions.

The amendment specifically states that more restrictive state or local law or collective bargaining agreements limiting polygraph use are not preempted.

In further defining these interests through regulations, I emphasize that the language in the amendment is designed to be inclusive and broadly construed. Therefore, we do not expect the Secretary in his regulations to limit the exemption to just those facilities listed in the amendment. In addition, the definition of "proprietary information" shall include documents which are essential for the functioning of a business.

Finally, the amendment contains a safeguard for employees who are tested. They may not be denied employment, discharged, or disciplined solely on the basis of the results of a polygraph test. An employer would have to have additional corroborating information before taking any of these actions.

Even if you believe there is a need for this bill's prohibitions, you must realize that there are certain interests which are so sensitive to both the employer and the public that we must provide special consideration. The sponsors of the bill already recognize that a balancing test between individual interests and the public interest is sometimes needed because exemptions are included for all State, local, and Federal Government employers and for defense and FBI contractors. The private security industry has a similar compelling need for access to the polygraph.

I urge you to support this important common sense public safety exemption, as did the House last year.

□ 1435

Mr. SKELTON. Mr. Chairman, I approach the subject—in favor of the original bill and against the substitute—with trepidation. A number of years ago, I had the opportunity to serve as the Lafayette County prosecuting attorney back home in Missouri, and on several occasions, I was aware of and knew of the administration of polygraph tests to people who were suspected of criminal activity in one form or another. As a result of the experiences that I had, there were cases in which the findings were, at best, inconclusive. On two occasions I had good reason to believe that people beat the test. The fact of the matter is these tests are far from reliable and polygraphs are no better than the person who gives them.

We are fortunate to have in my home county a sheriff who has served on the force for some 27 years, and I think no one would question his ability. But, compare this gentleman, Sheriff Gene Darnell of Lafayette County, with someone who has had only 6 weeks of training and is a certified polygraph tester and I think that there would be a great deal of difference between the two.

In all truthfulness I have some serious problems with this issue, and because of my past experiences, I am driven irresistibly in favor of the bill.

Mr. SLATTERY. Mr. Chairman, I move to strike the last word, and I rise in support of the Roukema amendment.

Mr. Chairman, we all agree that the polygraph can be and has been abused. There is no question that some people have been wrongfully denied employment or fired on the basis of a faulty polygraph examination. There can be no doubt that this legislation will sharply reduce the use of the polygraph in the workplace.

This legislation will not eliminate the use of the polygraph. But, we are deciding where and when the use of the polygraph is justified. The Education and Labor Committee has already determined that for purposes of national security and law enforcement, some useful information can be gained from polygraph examinations.

Private security companies are often hired to fulfill functions of equal importance, especially in the area of public safety.

The Roukema amendment provides a narrow, well defined exemption from the provisions of H.R. 1212. Only professional security services could use polygraphs and only for employees who are assigned to protect:

Electric or nuclear powerplants;
 Radioactive or toxic waste;
 Public water supplies;
 Public transportation; or

Currency, negotiable securities and other precious materials.

In these instances, the overriding concern must be for the protection of the public and the preservation of

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9561

losses of currency or other precious items.

The Roukema amendment recognizes that the polygraph does not and cannot replace appropriate background checks on prospective employees. The results of a polygraph test could not be used as the sole basis under which an employee or prospective employee is dismissed, disciplined, or denied employment.

The polygraph is far from a perfect tool. But, I believe that in a limited number of instances, under the direction of a qualified examiner, the polygraph can be a useful tool.

In this case, I believe that we must put the public safety first. I urge a "yes" vote on the Roukema amendment.

Mr. SUNDQUIST. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment offered by the gentlewoman from New Jersey [Mrs. ROUKEMA] to exempt the private security industry from the restrictions placed upon the use of the polygraph in the pending legislation.

I think it is important, Mr. Chairman, as we take up this critical bill, that we have the good sense to make exceptions. I think it is important to recognize that we cannot make broad rules, that we cannot just get the steamroller going and say, "The public be damned."

This amendment is necessary to protect the private security industry, and I commend the gentlewoman from New Jersey [Mrs. ROUKEMA] for offering her amendment. It is necessary for consumers of private security, and I think it is critical for the general public safety.

Mr. Chairman, Government security agencies, such as the CIA and the FBI, as has been explained previously, have the option to use polygraph tests. Private security is an extension of Government security, and this is true particularly when security personnel protects companies doing contract work for the Government.

Mr. Chairman, it is only consistent with current policy that private companies be given the same polygraph exemptions as Government security. To do less does not make any sense. The polygraph test is a useful tool. It is a deterrent, it is a protector. This test, or even better said, the threat of this test effectively deters criminally minded individuals from abusing sensitive security positions. This test also protects the innocent, and that is important to consider. It protects the innocent in cases where integrity is questioned.

Security exists to protect the safety of the public. The general public is at danger if this amendment does not pass. The Roukema amendment ensures against terrorist or psychopathic takeovers of vulnerable public installations such as airports and water facilities.

Each and every one of us is affected by private security. We are affected when we go to a football game, when we go to the airport, when next summer we go to the conventions of the Democratic and the Republican Parties, when we go to the hospital, when we go to the grocery stores, or when we go to banks or any public places, and as has been mentioned previously, we in the House allow the use of the polygraph here at the Capitol. Yet we are going to say to the private sector, "You can't use this same tool while we in the House of Representatives allow it to be used for our protection."

The largest independently owned security company in America is headquartered in Memphis—Guardsmark, Inc. Its employees range from security guards at industrial plants to highly sophisticated security experts inside sensitive industries where there is no room for error. Think for a moment about the damage that could be done. We have read in the papers about problems in recent times. Think for a moment about the damage that could be done by the wrong person doing baggage screening. Think for a moment about the misconduct, as was recently reported, among security guards at a nuclear powerplant. If this amendment does not pass, we face that problem.

Finally, let us bear in mind that the results from this test cannot be used as the sole factor of an employment decision.

In a company that I am familiar with, Mr. Chairman, when they have been doing their interviewing and the prospective employee was given a list of the questions that were to be asked on the polygraph, over 65 percent of the people who were discovered to be guilty of filling out that employment application wrongly admitted to that offense prior to the polygraph test being administered. In other words, almost two-thirds of the people who were not telling the truth admitted prior to the test that they had filled out the application wrongly.

Are we going to deprive the private security industry of that tool? Good security can only exist with rigorous standards. I would urge my colleagues to support this amendment to guarantee effective security performance by private security companies.

Mr. Chairman, I ask the Members to support the amendment to guarantee good security for sensitive businesses and to support it for the safety and welfare of the general public.

Mr. BIAGGI. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mrs. ROUKEMA. Mr. Chairman, will the gentleman yield?

Mr. BIAGGI. I am glad to yield to the gentlewoman from New Jersey.

Mrs. ROUKEMA. Mr. Chairman, I want to thank the gentleman from New York [Mr. BIAGGI] for the won-

derful support he has given to this amendment, both last year in committee and on the floor, and now this year. I appreciate the leadership he has shown on this issue.

Mr. BIAGGI. Mr. Chairman, I thank the gentlewoman from New Jersey. She is very kind. I was just about to say that I am very proud to join the distinguished gentlewoman from New Jersey in offering this important amendment to permit certain segments of the private security industry to continue to use the polygraph test. I want to commend Mrs. ROUKEMA for the effective leadership she has demonstrated on this important issue.

Mr. Chairman, this is the same amendment that we offered last year on the House floor. It was adopted then by voice vote, and I would suggest to my colleagues that it deserves your overwhelming support once again. Simply put, it recognizes the highly sensitive nature of the security industry, while providing a number of carefully crafted and very important labor protections. Let me stress to my colleagues that, as a strong supporter of labor, I would not be endorsing this amendment if it did not protect the rights of labor.

As a 23-year police veteran, I believe there are certain very specific situations where the polygraph can and should be used to help prevent crimes, and to detect criminals once a crime has been committed. This is clearly one of those times.

This amendment would allow a private employer to use the polygraph for pre-hiring and post-hiring purposes, but only in those cases where employees would be responsible for high priority security functions. The bill defines these jobs as those that have a significant impact on the health or safety of any State or local government, as well as those jobs that impact on national security. The only other security personnel who would be eligible for the polygraph test under this amendment would be those responsible for protecting public utilities, hazardous materials shipments, public transportation, currency, negotiable securities, precious commodities, or proprietary information from terrorist or other criminal threats. I want to emphasize that this amendment does not provide a blanket prohibition for the entire private security industry. It deals strictly with terrorism and other highly dangerous security risks. Nothing more.

Certainly, a crime in any of these areas could have devastating consequences. That is why the private security industry deserves the same special consideration already given by this bill to Government employers and private contractors dealing with intelligence or counterintelligence with the CIA, NSA, Department of Defense, and the FBI. And, that's why this amendment, unlike some of the others to be of-

H 9562

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

ferred, is totally consistent with what's already in the bill.

Let me offer a perfect illustration of why this amendment is so important. In 1983, a member of a Puerto Rican terrorist group robbed a Wells Fargo armored car depot of \$7 million—the second largest theft in U.S. history. Why is that incident so important to today's debate? Because that Puerto Rican terrorist was a Wells Fargo security guard. Unfortunately, he was hired in Connecticut, a State that does not allow polygraph testing. Based on his employment profile, this terrorist was going to make a fine security guard and was entrusted with guarding millions of dollars. Only the polygraph test could have determined his true criminal intent. In this case, a group of violent terrorists ended up with \$7 million in stolen money to fund death and destruction. Simply put, we need to fight terrorism with all the tools at our disposal, and the polygraph test is one of those important tools.

As stated previously, the amendment contains a number of very important labor protections. For example, it would not preclude existing State and local law, or any negotiated collective-bargaining agreement, which limit or prohibit the use of lie detector tests; and it guarantees that the analysis of lie detector charts will not be used as the sole basis for denying employment or promotion. The Department of Labor would be required to ensure that these provisions are effectively enforced and that the rights of the employee under these provisions are fully protected.

H.R. 1212 seeks to prevent employment discrimination based on the irresponsible use of the polygraph test by private employers. I fully support that worthy objective and am an original cosponsor of this bill. I know that too much of the private sector does abuse and overuse the polygraph to the detriment of our Nation's labor force.

However, the same cannot be said about the private security services industry. In fact, evidence we heard presented before the Education and Labor Committee has convinced me that the polygraph test is an important anticrime tool that is selectively and responsibly used by the private security services industry.

Mr. Chairman, for anyone interested in fighting terrorism and other serious crime, this is a good amendment. For anyone interested in protecting the rights of labor, this is a good amendment. And, for anyone interested in protecting the security interests of our Nation, as well as the personal safety and property of American citizens, this is a good amendment.

I strongly urge its approval.

1450

Mr. MARTINEZ. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to state that we will get into the same debate that we got into in the past over the fact that some Members believe that this is the save-all of all the problems of industry, that by polygraphing employees prior to hiring that we are going to weed out the people that would perpetrate any wrongdoing while in your employ.

The truth of the matter is, it is not, because it does not take into consideration the conditions at the time when that person would perpetrate, for whatever reason.

I doubt very much that it would do anything other than allow people to misuse this device for discrimination.

I was interested in the comments of the gentleman from Vermont about being on C-SPAN and getting a call from a person who was a polygrapher for law enforcement, and where the gentleman described taking a number of applicants, screening them down to four that he knew of the myriad of applicants he got that were honest.

In my city the individual doing the polygraph, after receiving an education in polygraphing from one of the finest schools back here in the East, used this to discriminate against employees.

It was determined after an investigation of his activities as a polygrapher that the applicants that were being denied were those of Hispanic descent, and that was the only basis on which he was using the polygraph for evaluating these people coming under those applications.

There is a lot of area for abuse, and the one thing that must be kept in mind, when we talk about protecting people's rights, we have to understand that we are trying to protect the employees' rights, or people that are applying for jobs and their rights; and there is no way that anybody can really justifiably make the argument that it is going to protect their rights.

They are victims of the failure factor of this machine and process, and it will not protect their rights. It gives the ability of the bias of the polygrapher an opportunity to manipulate a situation to his like or dislike, and for that reason I do not think it should be used for anything more than incident-specific after a situation has occurred, and only as a part of a total investigation, and where there is some determination, some direction they can go with that investigation, something they gather from that, so that they might bring to the front the hard evidence that actually determines whether this person is guilty or innocent.

Mr. BARTLETT. Mr. Chairman, will the gentleman yield?

Mr. MARTINEZ. I yield to the gentleman from Texas.

Mr. BARTLETT. Mr. Chairman, I thank the gentleman for yielding to me.

I want to inquire what the gentleman meant. Did the gentleman mean

to say that the gentleman would then support an incident-specific exception, so that the polygraph could be used if there was a specific incident, because an amendment will be offered later by the gentleman from Wisconsin [Mr. GUNDARSON] for incident-specific testing?

Mr. MARTINEZ. As the gentleman read from the bill earlier, the bill provides for the use only as a part of a total investigation.

I supported that portion of the bill and offered that as an amendment in committee which indicates my support for the use in specific incidents.

Mr. BARTLETT. If the gentleman would further yield, because I am trying to clarify for the House, the bill as currently drafted coming out of committee, H.R. 1212, as I read it, does not provide for any use of polygraphs, except by a Government agency, and does not provide for an incident-specific test.

I respect the gentleman saying that he would support an incident-specific use.

Mr. MARTINEZ. Yes.

Mr. BARTLETT. I would comment to the gentleman that later in the debate, probably way towards the end, the gentleman from Wisconsin [Mr. GUNDARSON] will have a very specific amendment that will permit incident-specific testing or postemployment; and I would commend that to the gentleman from California.

Mr. SHAW. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I doubt that I will consume my full 5 minutes. The debate seems to be going along the lines of those who are voting against this particular amendment, those speaking against it, those that have voted already. Unfortunately, the majority has voted on the wrong side of the amendment of the gentleman from Florida [Mr. YOUNG], which was a very good amendment.

In looking at this as to the object of what we are talking about, you are looking at the rights of the employee and what the rights of the employer should be. One cannot look only that far.

We have to look to the general public, to the good of the entire community. We have to look to what are the rights of those that live near an atomic plant to know that these employees who are in charge of the security of that atomic plant have gone through every bit of screening that they could possibly be subjected to.

We are talking about when someone entrusts his money to a carrier, that those employees have been screened in every way possible. Yes, there is going to be abuses. Yes, there will be abuses.

There was one cited for discrimination by the gentleman from California. We cannot legislate to address the worst among us, but we must always address the rights of the safety of individuals.

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9563

In my district office we are protected by private security firms. I want to know that my people working in my office, and my constituents who are coming in, my elderly who are visiting their Social Security offices, which are also in that Federal building, I want to know that they are being protected.

This is a most important amendment, and I compliment the gentlewoman from New Jersey for having offered it.

It is very fair and very narrow, and we are not talking about doing great harm to this legislation, even though I feel very strongly that the legislation itself is ill-advised.

Mrs. ROUKEMA. Mr. Chairman, will the gentleman yield?

Mr. SHAW. I yield to the gentlewoman from New Jersey.

Mrs. ROUKEMA. Mr. Chairman, I thank the gentleman for yielding to me.

The gentleman from Florida has made an excellent point here. The gentleman referred to the fact that this amendment is carefully drawn.

The gentleman asked the question, are we going to say we do not want the best possible people properly screened to guard nuclear powerplants? Do we not want properly screened personnel protecting water supplies?

Can you believe the deleterious effects of some person getting at a public water supply? That is not beyond one person's imagination.

Included also in this amendment are those persons that are involved in the shipment and storage of radioactive or other toxic waste materials.

The gentlemen and I know how we have worked so hard on legislation in this Congress to protect the radioactive and toxic wastes. We know what emotions break out in communities if there is any hint of a toxic waste problem.

Can you imagine what the American public's reaction is going to be to learn that we cannot even give employers the right to use a polygraph as one tool in screening the employees that have responsibility for toxic wastes and radioactive wastes?

I thank the gentleman for the gentleman's contribution.

Mr. SHAW. The gentlewoman from New Jersey is making some wonderful points.

The gentlewoman is trying to correct something by this particular amendment. What this bill does in its present form, it does not create rights. We cannot create rights.

We can merely redistribute them. Sometimes they need to be redistributed; but in this instance, one is talking about the water supply or an atomic plant, the rights are being taken away from the consumer and the general public, simply to protect the rights which have in very minor instances been abused of the employee.

This one is wrong. I hope that the Members of the House will vote yes for the amendment of the gentlewoman

from New Jersey [Mrs. ROUKEMA]. It is a most important amendment.

Mr. VALENTINE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I do not suppose there is much that I can add to this discussion that would not repeat or, I hope, underscore some of the arguments that have been made previously.

I rise in strong support of this amendment, Mr. Chairman.

□ 1505

I rise to express to my colleagues a grave concern which I have concerning this proposed legislation and a lot of other matters which have come before the U.S. House of Representatives in the 5 years that I have been privileged to serve here.

Do we really believe that American business does not understand what we are about, what some elements here are about as we here in this legislation say to them that we do not have enough confidence in you to entrust into your hands an instrumentality, a mechanism, a machine, which is okay for us to use in the Federal Government? We can use it all we want to. We passed legislation recently which says in no uncertain terms that the U.S. Government is free to use a polygraph or lie detector in many different sets of circumstances, yet we have elected to say to American business here today that we do not think you gentlemen collectively have got enough sense to use it.

We say to the young proprietor or old proprietor of a jewelry store that if he has a handful of diamonds that are missing, you know, you could put him into bankruptcy by the wealth that you could hold in one hand, that this instrumentality which some say is faulty and is an instrument of the devil, he can not use it, but Uncle Sam can use it all he wants to.

One final comment. I have great respect for all the gentlemen who have testified here and for those who sponsored this legislation. They are my friends, I hope, but it is strange to me, maybe some of the rest of you understand this, but it is strange to me that the sponsors of this legislation could stand up here and tell us what a sorry useless unreliable contraption this is, but say that not only can the Government use it, but with the legislation that came up for consideration in 1986, and I hold in my hand a copy of the CONGRESSIONAL RECORD, they accepted, after having cursed this device so vehemently, they accepted an amendment which permitted the use of polygraph examinations for current and prospective employees in the pharmaceutical industry, for example. They accepted the use of polygraph examinations for employees who work as security personnel protecting facilities. They accepted an amendment which permitted the use of polygraph examinations for employees at public

utilities and they accepted the amendment which was voted down by this body a few minutes ago.

Now what does all this mean? What are the folks back home looking at me and looking at the rest of us, what are they to make of that? We come here and say that this dastardly contraption, that you can not use it in American business, with certain exceptions, but that we in the Government can use it all we want to.

I suggest that we ought to give this more serious consideration, Mr. Chairman. We ought to support this amendment and the other amendments which seek to liberalize this legislation and then defeat the legislation and adopt the substitute which gives us some reasonable, meaningful, sensible relief.

Mr. Chairman, although it is clear that H.R. 1212 has widespread support, I hope my colleagues will reconsider their positions on the bill and on the Young-Darden substitute.

As I stated last year during House consideration of a similar bill, if polygraphs are so unreliable, so wrong, and if their use violates individual rights, then their use should be made unlawful in all situations and by all citizens. Instead, H.R. 1212 will exempt large numbers of Government employees as well as certain private consultants, contractors, and employees of contractors doing business with the Federal Government.

So far this year, the House has given overwhelming approval to a random counterintelligence polygraph program at the Department of Defense, and to a similar polygraph program for diplomatic and embassy security personnel as a part of the State Department authorization bill that passed the House unanimously. If the use of polygraphs is acceptable in these situations, then I believe private industry should be allowed to utilize polygraphs under certain conditions and with strong safeguards as a security tool.

On the other hand, if polygraphs are unreliable, why should we use them to test those who are entrusted with our most sensitive secrets? Are they unreliable in detecting shoplifting but all right for espionage? I fail to see the logic in our position.

The Young-Darden substitute would provide for the use of polygraphs only under carefully regulated conditions, with protection for those taking the tests, and impose standards for test examiners. This is a much fairer approach than the blanket prohibition of H.R. 1212.

If the Young-Darden substitute is voted down and H.R. 1212 is passed without exempting amendments, then the House will be saying to the American people that it is perfectly all right, even commendable, for Government to use polygraphs but that the private sector must not touch them.

Do we really want to administer this slap in the face to the private sector? Think about it.

Mr. BARTLETT. Mr. Chairman, I move to strike the requisite number of words.

(Mr. BARTLETT asked and was given permission to revise and extend his remarks.)

Mr. BARTLETT. Mr. Chairman, I rise to speak in favor of this amendment. In speaking in favor of the

H 9564

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

amendment I want to call to the attention of the House that this is a different issue and a different amendment than the issues we have been debating all day; that is to say that the gentleman from New Jersey has constructed a very narrow amendment that should have been accepted by the sponsors of the legislation.

Now, there is a fundamental disagreement within this body about the need to eliminate the use of the polygraph as a whole, and we all understand that and from the last vote it is apparent that at least a majority so far in the debate would choose to do that and a minority would not choose to do that; but the gentleman from New Jersey [Mrs. Roukema] is offering an amendment that those who favor the bill can and ought to vote for. I have gotten a copy of the amendment and I want to walk through it, describing for the House how narrow this amendment is. The Roukema amendment would set out to protect the public from some rather serious and dangerous instances of potential abuse without permitting any abuse whatsoever of the polygraph of those potential employees.

Now, the amendment is narrow. The gentleman has very explicitly drafted the amendment so that it permits, or does not prohibit the use of a polygraph on employees by a private employer only if that private employer is an employer whose business consists of providing armored car personnel, personnel engaged in the design, installation, and maintenance of security alarm systems, or other uniformed or plainclothes security personnel and whose function includes the direct protection of the public in specific ways, including only—and it is a limited list—including only the health or safety of any State or political subdivision and, if that involves the transmission or distribution of nuclear power or electric power, public water supply facilities, shipments, or storage of radioactive or other toxic waste materials, and public transportation. The other possibility is the transmittal or protection of currency or negotiable securities or precious commodities or instruments.

The Roukema amendment—what I am trying to bring to the attention of the House is that it is not unlimited. It is a very narrow amendment that only applies to armored car personnel and security personnel involved in those activities.

Further, the Roukema amendment says that the result of that polygraph cannot be used as the sole determinant, and further the results cannot be used on an employee unless the employee or prospective employee is employed directly to protect the facilities, materials, operations, or assets that are set out in the bill. So the Roukema amendment is drafted so carefully, it seems to me, as to eliminate all the arguments that have been used against amendments in the past.

It is far more narrow than even the Government exemption that we have in the rest of the bill.

Mrs. ROUKEMA. Mr. Chairman, will the gentleman yield?

Mr. BARTLETT. I yield to the gentleman from New Jersey.

Mrs. ROUKEMA. Mr. Chairman, I thank the gentleman from Texas for his explanation and the stress that he has put quite properly on the definition and the limitations of the amendment.

I think the corollary of what the gentleman has just said should also be stressed, which is that there is a protection carefully devised here in this amendment against abuse. The polygraph cannot under my amendment be used as the sole vehicle or instrument for making a determination on employment, promotion, dismissal, or any other factor pertaining to the applicant or the employee, and I think that is equally important, because one of the arguments that we hear is that we are going to somehow be using polygraphs as the sole instrument to hang the employee or hand the innocent applicant. This is not the case and it is expressly prohibited in my amendment.

Mr. BARTLETT. Mr. Chairman, the gentleman is correct.

Mr. WILLIAMS. Mr. Chairman, I move to strike the requisite number of words. I rise in opposition to the amendment.

Mr. Chairman, the gentleman has attempted to specifically draw her amendment. I think she has probably done it as well as it could be done; however, to vote for this, you first have to believe that the gadget works. You first have to accept that there is universal physiological response shared by all liars, that they all perspire about the same rate, their respiration increases when they start lying, all at about the same rate; the heart rate increases by a certain amount. You have to accept that this metal box can pick out the liars from the nonliars, and there is no scientific evidence that that is true.

Now, specifically with regard to the language that the gentleman has drawn, I would say that I do not want my colleagues to misunderstand this amendment. It is not limited to just security guards guarding, for example, nuclear powerplants. In fact, it is not limited to just security guards at all. It also includes the engineer who is working quietly in the laboratory trying to develop a new circuit system to be used for alarm systems or for electronic fences. Those people if they want a job, those engineers, could have to undergo a lie detector test.

This amendment is not just limited to certain security guards who are guarding airports. It also includes that electrician who comes by your house to install security alarm, just the electrician is also included in this amendment.

If a private company hires a plainclothes man to ride on Metro, those plainclothes men to get a job would have to undergo a lie detector test; so I say again, it is not limited to security guards.

You know, we are starting that part of the process now which I guess we could call the butchers, bakers and candlestick makers, amendments. I mean, every industry in the United States, security guards, the electrical industry, plainclothes people, the day care operators, the nursing home operators, the bankers, the butchers, the bakers and the candlestick makers are all going to come before us now with amendments asking that they be exempted from this bill.

I think it is wrong to start trying to pick and choose those industries or those individuals that we should give this phony lie detector gadget test to.

So I oppose the gentleman's amendment and I do so knowing that she made an attempt to craft it carefully, but (a) the lie detector does not work, and (b) it is not crafted all that carefully. If it only included, if the amendment only included security guards and private police and private protective service people, it would mean that more than half a million Americans would be subjected to this gadget for which there is no scientific evidence that it works.

Mr. BARTLETT. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS. Yes; I am pleased to yield to the gentleman from Texas.

Mr. BARTLETT. Mr. Chairman, I thank the gentleman for yielding.

Again, to clarify the amendment, the amendment does not require that anyone use a polygraph, but only that the Federal law not prohibit the use of the polygraph, just as in the last amendment.

I do want to call the gentleman's attention to the last paragraph of the amendment on page 2 beginning on line 19. It is a limiting paragraph. It limits the rest of the amendment, and I will read it very slowly.

The exemption provided under this subsection shall not apply if the test is administered to an employee or prospective employee who is not or would not be employed to protect facilities, materials, operations, or assets referred to in paragraph (1).

So in fact the amendment does not apply to people who are not used to protect those facilities. It is only those employees who are engaged in the direct protection of those facilities. The amendment does not cover secretaries and gardeners and maintenance workers and people who raise the flag, as has been previously discussed.

The CHAIRMAN. The time of the gentleman from Montana has expired. (By unanimous consent, Mr. WILLIAMS was allowed to proceed for 1 additional minute.)

Mr. WILLIAMS. Mr. Chairman, I understand that the gentleman is precisely correct. I would only read to the

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9565

gentleman the first paragraph, subsection (d), which indicates that the lie detector test can be used, quoting from the amendment now, on employees or prospective employees of a private employer whose primary business purpose consists of providing armored car personnel, personnel engaged in the design, installation, and maintenance of security alarm systems.

Mrs. ROUKEMA. Mr. Chairman, will my good friend, the gentleman from Montana, yield?

Mr. WILLIAMS. Yes; I am pleased to yield to the author of the amendment, the gentleman from New Jersey.

□ 1520

Mrs. ROUKEMA. Mr. Chairman, I believe the gentleman from Montana [Mr. WILLIAMS] should read that first section and that should be understood in conjunction with the exemption provided on page 2, section 3, line 12.

The CHAIRMAN. The time of the gentleman from Montana [Mr. WILLIAMS] has expired.

(On the request of Mrs. ROUKEMA, and by unanimous consent, Mr. WILLIAMS was allowed to proceed for 1 additional minute.)

Mrs. ROUKEMA. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS. I yield to the gentleman from New Jersey.

Mrs. ROUKEMA. Section 3 at line 12 on page 2 says, "the exemption provided under this subsection shall not apply," and then are two sections. As the gentleman from Texas [Mr. BAARLETT] has said, part B is the limiting section. That limits the application to only those personnel that are directly involved.

I think the gentleman from Montana [Mr. WILLIAMS] should remember that last year we worked together on the development of this amendment and we had hoped together to reach that kind of an agreement that would be limiting and would be very specific as to its application.

Mr. WILLIAMS. Mr. Chairman, reclaiming my time, finally I again want to express my and the committee's opposition to this amendment which would be the beginning of opening up this bill, and once the opening up of this legislation starts for security guards or electricians or the people who maintain or prepare alarm systems, there will be no stopping it.

I urge my colleagues to vote "no."

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Jersey [Mrs. ROUKEMA].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. WILLIAMS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 210, noes 209, not voting 14, as follows:

(Roll No. 4081)

AYES—210

Anderson
Andrews
Archer
Armey
Badham
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Bennett
Bentley
Bereuter
Bilbrakis
Billie
Boutler
Broomfield
Buechner
Bunnings
Burton
Byron
Callahan
Cardin
Chandler
Chapman
Chappell
Cheney
Clarke
Coats
Coble
Coleman (MO)
Combest
Courtar
Craig
Daniel
Dannemeyer
Darden
Daub
de la Garza
DeFay
DeWine
Dickinson
DioGuardi
Dorman (CA)
Dreier
Edwards (OK)
Emerson
English
Erdreich
Fawell
Fields
Fish
Filippo
Foghtetta
Ford (TN)
Frenzel
Gallegly
Gallo
Gekas
Gingrich
Goodling
Gradison
Grant
Green
Gregg
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt

Ackerman
Alaska
Alexander
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Bates
Belkenson
Berman
Bevill
Blibray
Boehert
Boggs
Boland
Bonior
Bonker
Boski
Bozza
Boucher
Boxer

Hansen
Hastert
Hatcher
Hayes (LA)
Hefley
Heiner
Herger
Hiffer
HoRoway
Hopkins
Horton
Houghton
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jenkins
Jones (NC)
Jones (TN)
Kasich
Kolbe
Kosanga
Kyl
Lagomarsino
Lancaster
Latta
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lloyd
Lott
Lowery (CA)
Lujan
Lukens, Thomas
Lukens, Donald
Lungren
Mack
Madigan
Marlenee
Martin (IL)
Martin (NY)
Mazoli
McCandless
McCollum
McCurdy
McDade
McEwen
McGrath
McMillan (NC)
Meyers
Mica
Michel
Miller (OH)
Molinaro
Montgomery
Moorhead
Morrison (WA)
Murphy
Myers
Nelson
Nichols
Nielson
Ortiz
Oxley
Packard
Parris

NOES—209

Brennan
Brooks
Bruce
Bryant
Bustamante
Campbell
Carper
Carr
Clay
Chinger
Coelho
Coleman (TX)
Collins
Conte
Coryea
Cooper
Coughlin
Coyne
Crockett
Davis (IL)
Davis (MI)
DeFazio
Dellums

Pashayan
Patri
Pickett
Pickle
Polar
Price (NC)
Quillen
Ravenel
Ras
Regula
Rhodes
Richardson
Ritter
Roberts
Roe
Rogers
Roe
Roth
Roukema
Rowland (GA)
Saki
Saxton
Schaefer
Schauer
Schwartz
Schulze
Sensenbrenner
Shaw
Shawway
Shuster
Siskiy
Skeem
Slattery
Slaughter (VA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny
(OR)
Smith, Robert
(NH)
Smith, Robert
(OR)
Snow
Solomon
Spence
Spratt
Stangeland
Stenholm
Stump
Sundquist
Sweeney
Swindall
Tamin
Taylor
Thomas (CA)
Thomas (GA)
Torrice
Upton
Valentine
Vander Jagt
Vucanovich
Walker
Weber
Weldon
Whittaker
Wolf
Wortley
Wylie
Young (FL)

Ford (MI)
Frank
Frost
Garcia
Gaydos
Geddeson
Gibbons
Gillman
Glickman
Gonzalez
Gordon
Grandy
Gray (IL)
Gray (PA)
Guarini
Harris
Hawkins
Hayes (IL)
Henry
Hertel
Hochbruckner
Hoyer
Hubbard
Jacobs
Jeffords
Johnson (CT)
Johnson (SD)
Jontz
Kanjorski
Kastenmeier
Kennedy
Kennedy
Kildee
Kleczka
Kolter
Kostmayer
LaPalce
Lantes
Leach (IA)
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Lowry (WA)

NOT VOTING—14

Baggi
Brown (CA)
Brown (CO)
Crane
Duncan
Gephardt
Howard
Kaptur
Kemp
Leath (TX)
Mineta
Owens (UT)
Roemer
Stratton

□ 1530

The Clerk announced the following pair:

On this vote:

Mr. Brown of Colorado for, with Ms Kaptur against.

Messrs. DERRICK, MORRISON of Connecticut, AuCOIN, HAYES of Illinois, and PANETTA changed their votes from "aye" to "no."

Messrs. ANDREWS, MOORHEAD, DE LA GARZA, and FLIPPO changed their votes from "no" to "aye."

So the amendment was agreed to. The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MRS. ROUKEMA

Mrs. ROUKEMA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mrs. ROUKEMA: Page 8, after line 12, insert the following new subsection:

(d) EXEMPTION FOR FINANCIALLY REGULATED FINANCIAL INSTITUTIONS.—(1) Subject to paragraph (3), this Act shall not prohibit the use of a lie detector test on employees or prospective employees of a financial institution (as defined in section 7(4)).

(2) The exemption provided under paragraph (1) shall not diminish an employer's obligation to comply with—

(A) applicable State and local law, and

H 9566

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

(B) any negotiated collective bargaining agreement, which limit or prohibit the use of lie detector tests on such employees.

(3) The exemption provided under this subsection shall not apply if the results of an analysis of lie detector charts are used as the sole basis upon which an employee or prospective employee is discharged, dismissed, disciplined in any manner, or denied employment or promotion. Nothing in this paragraph shall be construed to prohibit the temporary reassignment of any employee for such period as is necessary for a speedy and thorough investigation concerning potential criminal activity which involves the operations of the employer.

Page 9, line 2, strike "and".

Page 9, line 5, strike the period at the end of such line and insert "; and".

Page 9, after line 5, add the following new paragraph:

(4) the term "financial institution" means—

(A) an insured bank, as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));

(B) an insured institution, as defined in section 408(a)(1) of the National Housing Act (12 U.S.C. 1730a(a)(1));

(C) an insured credit union, as defined in section 101(7) of the Federal Credit Union Act (12 U.S.C. 1752(7)); or

(D) an exchange, broker, dealer, investment company, securities information processor, clearing agency, municipal securities broker, municipal securities dealer, government securities broker, or government securities dealer, as such terms are defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), or an exchange member subject to section 15(e) of such Act (15 U.S.C. 78o(e)).

Mrs. ROUKEMA (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from New Jersey?

There was no objection.

Mrs. ROUKEMA. Mr. Chairman, I offer an amendment to exempt federally insured or federally regulated financial institutions from the bill's ban on the use of polygraphs. This amendment has the same logic and commonsense as the previous exemptions.

As you know, last year the House very nearly passed an exemption for financial institutions. The amendment failed because some felt it was too broad—it included pawnbrokers, telegraph companies, and travel agencies. I recognize these Members concern with confining any such exemption to those institutions which truly have a compelling need for retaining the use of the polygraph. Therefore, I emphasize that I have carefully drafted my amendment to apply only to federally insured banks and financial institutions and stock exchanges and investment companies regulated pursuant to the Securities Exchange Act.

American financial institutions handle an enormous amount of cash and securities every day, with many employees—from the lowest clerk to the highest executive—having access to these funds. Unfortunately, losses from internal fraud and embezzlement

are enormous. According to the FBI, over \$1.1 billion was lost by banks, savings and loans, and credit unions last year. The sad fact is that over 80 percent of these losses have been attributed to employee theft. Employees, in fact, are responsible for greater losses than all robberies, burglaries, and larcenies combined. What's worse, these losses have greatly increased in the last few years. In 1981, the losses totaled less than \$200 million; by 1986, they shot up to over a billion dollars. With such an alarming trend taking place, it would be totally irresponsible for us to prohibit the use of a tool which helps detect embezzlers, particularly when you realize that today's computerized operations make it possible to divert millions of dollars in an instant if the confidentiality of computer codes is compromised.

These are the exact reasons why financial institutions are highly regulated by the Federal Government. Let me give you some examples of the extensive regulation.

The Bank Protection Act of 1968 requires the establishment of comprehensive security programs.

The Federal Deposit Insurance Act prohibits federally insured banks from employing anyone convicted of "any criminal offense involving dishonesty or a breach of trust" without first obtaining the written approval of the FDIC.

SEC regulations require fingerprinting of securities industry personnel to help identify people with criminal records.

Other Federal laws and regulations require the investigation of suspected thefts, embezzlements, unexplained shortages of funds, and so forth. Findings must be reported to the Federal Reserve, Comptroller of the Currency, or FDIC. Reports must also be made to the FBI and other law enforcement agencies.

I ask you: How can the Federal Government on the one hand place such stringent duties and requirements on financial institutions, and on the other hand prohibit the use of one of the methods of carrying out these requirements?

For these reasons the Chairman of the Securities and Exchange Commission has written a letter of support for this amendment.

For these reasons the Chairman of the Federal Deposit Insurance Corporation has written a letter of support for this amendment.

I know many of you are concerned about the validity of polygraph exams. You are reluctant to exempt specific industries because of the basic question of whether or not polygraphs are valid indicators of honesty. I point out, however, that often in the law we use a balancing test. We recognize that the need for something is so great that we use the best helpful means at our disposal, even though it may not be perfect. Such a balancing test has already been recognized by the sponsors

of this bill because exemptions have been included for all State, local, and Federal Government employers and for defense and FBI contractors. Financial institutions similarly have a compelling need to use the polygraph in certain situations. With the events occurring in the stock market in the last few weeks, this is no time to enact any laws which could raise the least doubts about the securities industry or other financial institutions.

I urge your support.

□ 1545

Mr. WYLIE. Mr. Chairman, I move to strike the last word, and I rise in support of the amendment.

(Mr. WYLIE asked and was given permission to revise and extend this remarks.)

Mr. WYLIE. Mr. Chairman, I am glad to rise in support of the amendment offered by my colleague from New Jersey, Mrs. ROUKEMA. This amendment which would exempt financial institutions from H.R. 1212's ban on the use of polygraph tests is an appropriate measure to protect the integrity of savings, lending, and trading institutions that are at the heart of our economy.

Through membership on the Banking Committee I have learned that employees of banks and other securities houses handle enormous amounts of cash and other valuable items each day and that there are many possibilities for fraud, embezzlement and theft. Just a few statistics show the scope of the problem.

The FBI estimates that banks, savings and loan, and credit unions lost more than \$1.1 billion in 1986 through employee losses from banks, savings and loan, and credit unions. Losses attributable to employees are greater than losses caused by robberies, burglaries, and larcenies. In fact, the difference is overwhelming. Over 80 percent of the losses that these financial institutions suffered were the result of employee theft.

As the gentleman from Kansas mentioned a little earlier, we are deciding here where and when the polygraph test is appropriate. The ability to use all available screening and investigative tools is critical to maintaining security at financial institutions.

As Mrs. ROUKEMA mentioned a little earlier, both the Chairman of the FDIC, Mr. Seidman and the Chairman of the SEC, Mr. Ruder, have recognized the importance of employee theft and have stated their support for an exemption that would allow financial institutions to use the polygraph.

We considered and almost passed a similar amendment last year. The problem with the amendment that was offered last year was that it was too broad; it would have granted exemptions to travel agents and pawn brokers among others. These businesses are not federally insured and they are

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9567

not federally regulated like banks and other savings institutions.

This amendment is much more carefully drawn and narrowly drafted. There is a Federal nexus here. The amendment covers only financial institutions insured under Federal law or regulated under the Securities and Exchange Act.

I was once a prosecuting attorney myself and I can tell you that a polygraph test can be useful in helping solve crime. I believe that use of the polygraph test can be an important and proper security measure and can be used as an ounce of prevention in these cases. So I enthusiastically support the amendment and urge an "aye" vote on the amendment.

Mr. BARNARD. Mr. Chairman, will the gentleman yield?

Mr. WYLIE. I yield to the gentleman from Georgia.

Mr. BARNARD. I thank the gentleman for yielding.

Mr. Chairman, I rise in support of the amendment offered by my colleague from New Jersey allowing financial institutions to continue to utilize polygraph examinations as one tool in their continued fight against white collar crime, crime which all too often places a heavy burden on the safety and soundness of our Nation's financial institutions when they can least afford it.

Since 1984, the subcommittee which I chair has held extensive hearings on insider abuse and criminal misconduct in financial institutions and found that losses from fraud and other criminal activities have amounted to billions of dollars. Many of these losses occur at smaller institutions which are the least able to afford them and which can suffer the greatest impact. In 1986, over one-third of the 138 bank failures that occurred were due to fraud and embezzlement, according to FBI statistics. These losses occur at the upper management levels and are not by any means confined to lower echelon employees. Polygraphs are needed for all levels of employment in the financial services industry. In many of the fraud cases, a polygraph exam would have indicated the need for further research of a person's background.

The Roukema amendment is narrowly drawn and consistent with the exemptions already included in the bill for various governmental agencies and private companies that are national security contractors. No industry has a higher fiduciary responsibility than our federally insured financial institutions. I urge my colleagues to support the amendment and the availability of polygraphs as one arrow in the quiver of defenses against criminal misconduct in our financial services industry.

Mr. WYLIE. I thank the gentleman for his contribution.

Financial institutions do occupy a very special place in our economy. Banks do have the responsibility to

maintain appropriate security and I think this very carefully, well-drawn amendment will help them with that charge.

Mr. Chairman, I yield back the balance of my time.

Mr. McCANDLESS. Mr. Chairman, I move to strike the requisite number of words and I rise in support of the amendment.

Mr. Chairman, as a member of the Banking Committee, I support the gentleman from New Jersey's important amendment to create an exemption for financial institutions such as banks, savings and loan, and the security industry. I rise in support of this measure because the financial institutions protected by the amendment are a distinct part of our economy.

Deposits at banks, savings and loan, and credit unions are insured by the Federal Government. Losses at these institutions are therefore costly to the Federal Government. That is why the Government imposes security requirements on savings institutions. The security requirements are strict and exacting. To comply with Federal regulations, a great many savings institutions use the polygraph as one important element in their overall security program.

Similarly, the securities industry is heavily regulated by the Federal Government. For instance, securities firms are prohibited from hiring anyone who has a felony conviction. Therefore, securities firms find that the polygraph is a useful tool in complying with Federal Law.

In light of the Federal regulatory requirements on financial institutions, it is particularly noteworthy that the heads of the principal regulatory agencies, the FDIC and the SEC, have written to the Members of the House expressing their support for the Roukema amendment to exempt financial institutions from H.R. 1212.

In the final analysis, for the Government to require security programs at financial institutions, and then take away those institutions' ability to use a vital security tool would be nonsensical. For this reason, I strongly support the amendment under consideration, and I urge you to join me.

Mr. MILLER of Washington. Mr. Chairman, I move to strike the requisite number of words.

(Mr. MILLER of Washington asked and was given permission to revise and extend his remarks.)

Mr. MILLER of Washington. Mr. Chairman, as a cosponsor of H.R. 1212, I hope that we do not amend this bill to death.

Let us remember the polygraph machine does not measure mendacity, it measures stress. The widely misnamed lie detector cannot detect lies or for that matter the truth. Yet there are those who argue that the jobs, reputations, and integrity of thousands of truthful Americans workers should

depend on the outcome of these stress tests.

Mr. Chairman, courts of law in this country protect criminal defendants from taking these tests. Yet there are those who would compel thousands of law abiding American workers to submit to these discredited proceedings.

Finally, Mr. Chairman, every American enjoys constitutional protection from self-incrimination and arbitrary searches and seizures devoid of probable cause. Yet there are those who would play with this most basic constitutional right to privacy in order to use a pseudo technology only slightly more accurate in assessing truth than a Ouija board.

I urge my colleagues to support the passage of H.R. 1212.

Mr. PERKINS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, this entire discussion today strikes me as pretty ludicrous. The question is: Do polygraphs, do lie detectors work or not? They do not work.

I was an attorney in the real world for a period of time. Some people here have had that same experience.

I was a criminal attorney. I had people who dealt with things like murder, arson, drugs, kidnaping; you name it, at one time or another I probably either defended or prosecuted them in some fashion or another.

The question became time and time again what happened if they took the lie detector test?

Let me tell you, the people that took the lie detector test, those guys, those people were smooth, they were able to stand there with steel nerves and lie, control their breathing. They got through the thing.

Time and time again I would see the police drop the case on the outcome of what happened with that lie detector test and then they would come back later and say, "Yeah, I did it."

□ 1605

What we are talking about with this entire exercise is a stress test. We are talking about whether or not you can handle that stress test or not. We are not talking about a lie detector test. That is a misnomer. So this entire exercise we are going through today is just a complete exercise in futility.

Mr. GUNDERSON. Mr. Chairman, will the gentleman yield?

Mr. PERKINS. I yield to the gentleman from Wisconsin.

Mr. GUNDERSON. Mr. Chairman, I appreciate my good friend, the gentleman from Kentucky, yielding to me.

Mr. Chairman, I am just curious about this. If the lie detector never works, why did the gentleman vote in the majority when we created a permanent polygraph program for national defense agencies?

Mr. PERKINS. I take no issue at all with that, and quite frankly, if I voted

H 9568

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

that way, I made a big mistake. I will stand here and tell that to the gentleman.

Mr. GUNDERSON. Mr. Chairman, will the gentleman yield again?

Mr. PERKINS. I will yield further to the gentleman, and I hope the gentleman extends the same courtesy to me when my time expires.

Mr. GUNDERSON. I will get more time for the gentleman.

Mr. PERKINS. All right.

Mr. GUNDERSON. Why did the gentleman on June 16 of this year vote with the majority again when an amendment was offered by the gentleman from Florida [Mr. MICA] dealing with the Department of State authorization bill to allow the use of the polygraph and other means of investigation for embassy and diplomatic security? If this machine is so bad, why did the gentleman vote for that? Anybody can make a mistake once, but twice the gentleman voted for it. Why?

Mr. PERKINS. Let me tell the gentleman that the machine does not work.

Mr. GUNDERSON. But I ask, why?

Mr. PERKINS. The gentleman can read idiosyncrasies in my record, and I can say that I make mistakes. But the fact of the matter is that the machine does not work. Consistently, when you look and see the results of the tests, you will find the machine does not work.

I saw these clients who would come in and literally stand there and tell me they committed the crime, and the police just did not even bother to continue afterwards with the investigations, after they got off, because the police relied on this test.

This test is an excuse for laziness. It is an excuse for not investigating and not paying any attention to the results and really do some more investigation.

This entire series of amendments, in my opinion is a farce. The bill is an excellent bill because it says this is a farce. We cannot allow this as a divining rod, and that is what we are talking about, a divining rod. That is the entire situation.

Mr. MARTINEZ. Mr. Chairman, will the gentleman yield?

Mr. PERKINS. I am pleased to yield to the gentleman from California.

Mr. MARTINEZ. Mr. Chairman, what I hear the gentleman saying is so evident, if we would really listen to what we have all said. Nobody has said that this machine is a perfect machine other than in measuring nerves and stress. The problem is that there is that human factor the gentleman is talking about.

The gentleman made a mistake in the way he voted, and he admits it, but the polygrapher never admits when he makes a mistake because he always says the machine said so and the machine is a perfect tool because the machine is infallible. But where the machine may not be infallible in its readings, he is infallible because he is trained to read the results of that,

and most polygraphers do not have either the training or the background in psychiatry or anything else to understand the emotions of the person they are testing.

This country does not have standards for polygraphers, and the Darden amendment would not create those kinds of standards that require polygraphers to be trained or educated and have the background to do that kind of a job that needs to be done in evaluating what that person is going through under the polygraph.

So where you and I are human and make mistakes and we can admit it, the polygrapher, because he depends on that machine, does not do it; is that not right?

Mr. PERKINS. I am sure that I agree with my colleague.

Mr. Chairman, I would like to say this in closing because I realize a lot of Members want to continue in this exercise in futility.

The CHAIRMAN. The time of the gentleman from Kentucky [Mr. PERKINS] has expired.

(By unanimous consent, Mr. PERKINS was allowed to proceed for 2 additional minutes.)

Mr. PERKINS. Mr. Chairman, this is, as I say, an exercise in futility. If we want to impinge on the American public with a divining rod and go in and try to take away constitutional rights based on the flip of a coin, we can go ahead and do it. We have the ability to do it by passing these amendments here today.

But if we want to use legitimate investigation techniques, we could get out and do some hard work, we could get out and find some good evidence as to whether or not this person should be hired in a particular industry or not and find some good evidence as to whether this person is an individual we would want working for us or not.

Let us not rely on the flip of a coin. The machine does not work, and it is not admitted in any criminal court in this country. It is ridiculous. I ask the Members to vote against all these amendments. Let us pass the bill and give the American people some protection here. That is what we need.

Mr. McCOLLUM. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

(Mr. McCOLLUM asked and was given permission to revise and extend his remarks.)

Mr. McCOLLUM. Mr. Chairman, I have listened to a lot of this debate and participated in part of it this afternoon, and I do not think any of us who advocate some exceptions to this bill believe that the polygraph is a perfect machine. We do not believe that the system is going to be errorless, and we do not think the way it is conducted in the cases around the country today is always right. But the fact is that it is, by the testimony of those who are experts in this—at least a good number of them that I have

read—something that, 80 percent of the time, 90 or 70 percent of the time, is right and is accurate, and if you do have a good polygraph test giver, a polygraph machine expert, you can produce results for screening and pre-screening of employment applications that will aid, not give a definitive answer but aid the person making employment decisions in making that decision.

I think the question is not one of whether or not we totally do away with the polygraph examination, but what areas do we limit it to. That is what this legislation is all about. What restrictions do we place on it? What areas do we limit it to?

It was already decided when this bill came forward that the Defense Department and the national security areas of our country were still going to be able to use this machine. I think if this body had determined that this machine was absolutely not valuable in any way, we would not have even agreed to that. Though some do not agree with it and there are isolated instances of those speaking today who do not think we ought to have it at all, I think the body has made that decision. The body has also, I think, decided that there are other exceptions.

We just did one a few minutes ago. It was a close vote, but it was something we decided in the last Congress and we decided it this time, that in the case of security guards and armored personnel guards, those who carry money and are involved in guarding private businesses, we ought to screen those applicants or at least allow the polygraph to be used by those who screen applicants and make employment decisions.

So the issue here is on the amendment offered by the gentlewoman from New Jersey [Mrs. ROUKEMA] as to whether or not we should give this same exemption that we just gave to the security guards to the banks, the savings and loans, the credit unions, and some security industry folks. That is a question of judgment, a question of balance and reasonableness on whether or not we want to make this particular exception. It is not a question of whether the polygraph works or does not work. It is not a question either of whether or not somebody is harassed or whether there can be abuse, because indeed there can be, and there ought to be restrictions and limitations and guidelines, maybe more than those that are here. Many of us have argued for those. The question, though, now that we ought to address ourselves, it seems to me, is, should we grant this exemption to the banking community, to the financial services community, as narrowly defined?

I offered an amendment similar to this a Congress ago. It was broader. It was defeated by about 10 votes. It seems to me the complaints made by a few Members about that ought to

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9569

bring them aboard, and we ought to pass this amendment.

The fact is that the money that we are concerned about being embezzled or taken away by the push of a button in this electronic world of banking today is not the banks' money. It is my money, it is your money, it is the money of the constituents of every Member of this body. We are the people and our constituents are the people who deposit our funds in the banks of this country, in the savings and loans, in the credit unions, and with the securities industry people, and we are the ones as a whole, the whole public, that have to be worried that somebody is going to go out and take this money by the push of a button somewhere.

I submit to my colleagues that we have a paramount fiduciary duty in this case as Congressmen and Congresswoman to pass this exception to allow this tool to be one more of a number used by those in employment, making decisions in the financial services area so they can have the opportunity of making better decisions on which 10 out of 100 people who apply for a banking job are going to be hired. This will not necessarily be the deciding criteria, but it ought to be a tool available if we are going to get some of this fraud out of the industry.

Let me make one other point. In the banking world today, unfortunately, there is another great abuse that some employees take of our money system, and we all too well know about this if we think about it for a minute. That is in the area of drug trafficking and money laundering. We passed a major drug trafficking bill last year, trying to get at that tremendous problem for our citizenry. As part of that, we passed a bill dealing with the new crime of money laundering. That cannot possibly be enforced or it cannot work if we do not have a system of screening out the people in the financial services institutions who might be prone to be involved in the shady transactions that are involved in the process of hiding their sources of crime and money dealing in drugs.

I submit to my colleagues, if we really want to fight drug trafficking, we have got to get at it in a number of ways, and one of the key ways is to stop money laundering.

The CHAIRMAN. The time of the gentleman from Florida [Mr. McCOLLUM] has expired.

(By unanimous consent, Mr. McCOLLUM was allowed to proceed by 2 additional minutes.)

Mr. McCOLLUM. Mr. Chairman, if we are going to be effective in fighting the war on drugs, it requires that we have at our disposal not only the law on the books to make something a crime but the ability on the part of those who are managing our financial institutions to screen out those who might become employees who would push those computer buttons around to aid and abet the criminal element

who would like to pass millions of dollars through our institutions in various ways, although we have now passed laws saying that they should not. In other words, we are not going to catch all those people simply because we have a law on the books. We have got to have honest people at the teller window, we have got to have honest people dealing with the funds, and it seems to me it makes no sense to pass a bill like this one and pass an exception to it that says the guard who is transporting the money between two banks is going to be exempt, or the employer of that guard is exempt, but the teller or the person at the computer desk or the computer station may not be someone the employer has screened as well. That makes no sense to me at all if we are going to protect the financial interests of our citizenry.

Mrs. ROUKEMA. Mr. Chairman, will the gentleman yield?

Mr. McCOLLUM. I am glad to yield to my colleague, the gentlewoman from New Jersey.

Mrs. ROUKEMA. Mr. Chairman, I thank the gentleman for yielding to me.

I wanted to commend the gentleman from Florida [Mr. McCOLLUM], a distinguished member of the Committee on Banking, Finance and Urban Affairs, and one who worked very hard on this amendment last year.

The gentleman alluded to a point that should be stressed for the Members, and it is a compelling reason for passing this amendment. The gentleman alluded to the fact that we are talking about banks that have federally insured deposits. This is full faith and credit of the U.S. Government, and ultimately it may actually back up to the taxpayers.

This is a compelling reason why this is a legitimate inclusion in this bill.

Second, the Security Exchange Act controls here. We have highly regulated institutions, and they should be under the provisions of this act and should be given all the tools they need.

Mr. McCOLLUM. The gentlewoman's amendment to exclude certain banks, financial institutions, certain securities outfits needs to be passed, if we are going to have a truly fair bill to protect the interests of the American deposit holder in our banking institutions.

Mr. MARTINEZ. Mr. Chairman, I move to strike the requisite number of words.

I doubt very much that the banking institution is going to change its way of doing business or reduce any of its losses that take place because of polygraphing employees.

The banking institution has adequate measures now to screen employees, test employees for employment there.

I have had family members who have worked for the banks, and I have some familiarity with their procedures

for hiring. I do not think they really need the polygraph. It will not do anything for them.

The kind of abuse that the gentleman from Florida is concerned about is taking place at a higher level, and where those people are able to make a decision whether they would use polygraphs on that level of employee or not, and I doubt very much if they would, if they are going to be nefarious about their business operations and contemplate anything that would be illegal. That is a moot point.

It gets back down to the basic thing we have been arguing. Is there enough margin of error in the procedure that it merits penalizing people in applying for employment, and does it merit invading people's rights?

Does it merit violating civil rights, people having to prove themselves innocent when they have not been accused of a crime, and all of the things we have argued, and we are beginning to get redundant on?

I urge the Members to oppose the amendment.

Mr. PARRIS. Mr. Chairman, I move to strike the requisite number of words.

(Mr. PARRIS asked and was given permission to revise and extend his remarks.)

Mr. PARRIS. Mr. Chairman, I want to take this time to congratulate the gentlewoman from New Jersey on her amendment.

It is very carefully drawn and is an important improvement and a contribution to this legislation.

Let me quickly reiterate that this measure would exempt federally insured banks, credit unions, and securities firms regulated by the Securities and Exchange Commission from this legislation. It does not preempt local or State law on the use of these kinds of tests, and cannot be used as the sole basis for an employment decision; but it is and should be an important tool in that process.

Let me ask the Members to use a little common sense here. The famous bank robber, Willie Sutton, when asked, why do you rob banks? Answered: "Because that is where the money is."

Where do you suppose the money is in our society? Where do you suppose the people that are inclined to steal money from an institution will find it? In an insured bank or other financial institution in this Nation is where.

They have the opportunity to make enormous impacts on not just the system itself but on individual depositors' financial assets, so I suggest to the Members, what more logical place to use a lie detector test than in an institution where there are huge amounts of cash laying around all over the place, with an opportunity for a person criminally inclined to take advantage of that fact.

They do not make nuts and bolts in banks. They deal with money, and

H 9570

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

they ought to be able to use polygraph tests to determine whether or not as an element of an employment decision, this or that applicant for employment is the kind of person that ought to be given the opportunity to be in that environment, and to be exposed to that situation.

I would simply emphasize for this industry particularly, this exemption is a very good idea. It deserves our support.

I hope the Members will support it.

Mr. WILLIAMS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, are we all in favor of honest bank and financial institution employees? Of course, we are.

The question before the Members is, how do we achieve that. I do not think we achieve it by making it convenient and quick for the banks to hire people, and financial institutions to hire people without going through a good personnel security check.

Why does American businesses want to use the lie detector? It cannot be because the scientific evidence is there that it works, because it is not. It is because it is convenient.

It is easier to use the lie detector than it is to raise the wage, minimum wage, or create a good personnel department to really do a good personnel check on the bank tellers.

Lie-detector gadgets are not going to improve security fraud and bank theft, because we have them now in the United States.

The banks use them now, and the banks tell us, some of them at least, that they are hemorrhaging because of illegal acts of some of their employees.

This is when they use the lie-detector gadget. It does not work. Maybe the banks are just looking in the wrong place.

Our Department of Justice indicates they are. The research arm of the Department of Justice called the National Institute of Justice estimates that here is the reason there is a hemorrhage from banks and other financial institutions in the United States, because of security fraud, corporate kickback, and insurance fraud estimated by the Department of Justice to be three times the loss than is employee pilferage.

Corporate kickbacks, insurance fraud, securities fraud being conducted not by bank tellers, the people that are going to have to take these tests, but being conducted illegally by the captains of this industry. That is our problem on Wall Street.

That is our problem in the financial institutions of this country; and while the gentlewoman's amendment allows the presidents of these financial institutions to be strapped in and the box plugged in, how many of the Members believe that they are going to be strapped in? How many? How many people does this amendment include?

The best estimates I can get say that it includes a lot more than we might originally anticipate.

I am told by folks over at the Congressional Research Service who tried to count it for me, that if this amendment passes, it is going to include 3,152,000's of people who could be made susceptible to this gadget.

Does it affect credit unions? Sure. When we get off the subway down here, we are liable to go past a long line of our employees in the Wright Patman Federal Credit Union who are lining up to take the lie detector test, sure, because they are going to be subjected to this, and so are people who are called securities information processors.

I did not know what security information processors were, so I checked the law.

A securities information processor means any person engaged in the business of, first, collecting, processing, or preparing for distribution or publication, or assisting, participating in or coordinating the distribution or publication of information with respect to transactions in or quotations from any security, or distributing or publishing, whether by means of tickertape or any other communications network on a current and continuing basis, information with respect to such transaction or quotations.

Probably most of the Members listening to that are, as I am, somewhat confused by what it means; but it obviously includes thousands of people who are involved in the distribution of or publication of information about quotations or securities.

The amendment also covers clearing agencies.

The CHAIRMAN. The time of the gentleman from Montana [Mr. WILLIAMS] has expired.

(By unanimous consent, Mr. WILLIAMS was allowed to proceed for 2 additional minutes.)

Mr. WILLIAMS. When you check to see what clearing agencies are, clearing agencies mean any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of the data respecting the terms of settlement of securities transactions, and it goes on.

The point is that you can drive the financial community of the United States through the loophole being created by this bill.

Again, do we want honesty in the financial institutions of the United States? Yes. Are we going to get it with this outdated, timeworn, unscientific device called a lie detector gadget? No. That is not how we are going to get it, and I urge the Members to oppose this amendment.

Mr. GUNDERSON. Mr. Chairman, I move to strike the requisite number of words.

(Mr. GUNDERSON asked and was given permission to revise and extend his remarks.)

Mr. GUNDERSON. Mr. Chairman, listening to the gentleman from Montana, the next thing we are going to do is outlaw in this country any kind of a preemployment interview, because they are unscientific.

The gentlewoman from New Jersey is suggesting here that a polygraph cannot be the sole determinant of whether you hire someone or whether you do not hire them. That is very clear.

I would suggest that, if anything, this is going to almost be an advantage to an applicant for work in the financial industries. This says that if you require the use of a polygraph, then comprehensive consideration of that application is also required. And do not forget: it is the gentleman from Montana who has imposed in this bill a fine of up to \$10,000 for a violation.

Do the Members think any bank, any financial institution in this country is going to turn around and somehow slap a polygraph test on someone, use that as the sole determinant, say no to hiring them with the full knowledge that if that person goes out and sues, they will be fined up to \$10,000?

Let us use a little common sense and recognize what we are dealing with in this amendment. Then the gentleman from Montana says that if this amendment is approved, we will open it up to some 3,152,000 potential employees who will be subject to the polygraph. Now, come on.

The facts are, and we all agree, that there are no more than at the maximum 2 million tests conducted per year. Let us use a little common sense.

We are also aware of the fact, and every one of the Members can go to any local financial institution in their district and be reassured, that when employers are not about to spend anywhere from \$75 to \$125 just to mandate that every one of these people, whether it be tellers or clerical employees, has to take a polygraph test, especially in light of the other requirements of the bill which would suggest that if they give them a polygraph, they must be fully prepared to prove that that is not the sole determinant for an employment action.

□ 1630

I mean, it is almost like if you use the polygraph test, you better hire me, because if you do not, you are probably going to have to pay at least half my annual wages in a penalty to the Federal Government for not hiring me because it may be the sole determinant for your action.

I really call upon my colleagues. The one thing the American people ask of us when we come here is not be Democrat, not be Republican, not be liberal, not be conservative. They say, "For gosh sakes, can you please go to Wash-

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9571

ington and use a little common sense in government?"

I think that is what this amendment is all about. I hope we support it.

Mr. ST GERMAIN. Mr. Chairman, I move to strike the requisite number of words.

(Mr. ST GERMAIN asked and was given permission to proceed for an additional 2 minutes.)

The CHAIRMAN. The gentleman from Rhode Island is recognized for a total of 7 minutes.

(Mr. ST GERMAIN asked and was given permission to revise and extend his remarks.)

Mr. ST GERMAIN. Mr. Chairman, I rise in opposition to the amendment of the gentlewoman from New Jersey.

As chairman of the Committee on Banking, there is not a soul in this House that I will take a back seat to when it comes to discussing the reasons for bank failures, fraud, embezzlement.

Money laundering—my God, I am one who is responsible for the legislation that requires reporting of transactions of over \$10,000 and of the amendments thereto in the recent past. I take a back seat to no one.

I will tell you right now, a polygraph test will do nothing about money laundering.

Mr. Chairman, the amendment we are considering would deny workers employed by financial institutions the protections contained in this bill.

As a result, every person employed by a financial institution—and, I might add, that is a term which is quite broadly defined—would be accorded a lesser degree of personal privacy and a greater presumption of complicity than other workers.

The amendment suffers a fatal flaw in that it makes no distinction between a bank president, whose actions can and have threatened the safety, and in some instances brought about the collapse of an entire institution, and an underpaid janitor or receptionist or a clerk-typist.

Over the past few years, the Banking Committee has conducted exhaustive hearings into the causes of the failure of a financial institution. Certainly economic factors such as the downturn in the agricultural and energy sectors have been a major cause.

Just as important have been insider abuse and mismanagement—sometimes criminal mismanagement. However, nowhere in our hearings did we find that polygraph testing of employees would have reduced bank failures or reduced losses suffered by our deposit insurance fund.

In the case of financial institutions, we would simply be fooling ourselves if we make bank employees the scapegoat.

Instead, banks and other financial institutions must initiate greater internal control, if needed, and Federal and State regulators must use the powers Congress and State legislatures have

given them to protect our Nation's financial institutions.

The bill before us today provides prudent exceptions which I support. In matters involving national security or in instances such as nuclear science, where the potential for disaster is great, balancing the public good against the privacy of an employee, it is clear that the potential risks to the public far outweigh the potential damage to an individual.

However, the proponents of this amendment have not made a case that employees of a credit union, for example, many of whom are volunteers, mind you, they serve without pay, have any greater propensity for committing a crime than any other person. Nor have they been able to prove that any crime committed in a credit union by such as employee would be likely to have cataclysmic consequences.

I understand the concern of the gentlewoman from New Jersey, but I believe she has not provided sufficient justification to subject one class of workers to a lesser degree of personal freedom and privacy simply because they work for financial institutions.

Nothing whatsoever has been shown that suggest that employees of financial institutions have any greater opportunity for crime, or a greater disposition to commit crimes.

Nor has it been shown that bank crime so threatens the public good that we must treat all bank employees as second-class citizens and deny them their right to privacy, due process and the presumption of innocence.

For these reasons I must oppose an amendment which would deny people an opportunity for employment or perhaps ruin a career based upon a polygraph's reading, and as has been stated here today, that is of very questionable value.

Mr. Chairman, the problem with money laundering and banks that were fined by the Department of Justice was because that the principals, the executives in these financial institutions, did not communicate to the employees what their duties and responsibilities were under the reporting requirements of legislation designed to protect our institutions from being used as laundromats for drug traffickers.

Again I repeat, Mr. Chairman, I take a back seat to no one on that one, because I have been in the forefront of that fight throughout.

Mr. Seidman wrote in support of the amendment, frankly, what he should do is upgrade the supervision and regulation of financial institutions, rather than talk about polygraph testing if he wants to save money for the insuring fund.

I will tell you, after my hearings, there is a lot of room for improvement there.

Now, let me finish by saying this. If polygraph testing is so good, so efficient, so wonderful in the area of fi-

ancial institutions, how come over a billion dollars, we were told earlier in this debate, was lost by employee fraud and embezzlement?

The CHAIRMAN. The time of the gentleman from Rhode Island has expired.

(By unanimous consent, Mr. ST GERMAIN was allowed to proceed for 1 additional minute.)

Mr. ST GERMAIN. Frankly, Mr. Chairman, the polygraph has not done much good, has it?

I really do not think that the uncertainty involved and the case that has been made for this amendment warrants the invasion of privacy and subjecting these innocent people to a polygraph test of questionable value.

Mrs. ROUKEMA. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. Without objection, the gentlewoman from New Jersey is recognized for 5 minutes.

There was no objection.

Mrs. ROUKEMA. I do not know if there will be other speakers, Mr. Chairman, but in conclusion for my part, I would like to make some final observations on my amendment, because I think we have gone pretty far afield from the amendment.

I would like to again clearly state that this is an amendment that is carefully defined. It is not the same amendment as was presented in the previous Congress. It is clearly limited to only federally insured institutions and securities firms that are regulated by the SEC.

It does not preempt any State or local laws and it cannot be used as the sole basis for an employment decision or of demotion or of promotion or any other kind of action on behalf of an employee.

Finally, Mr. Chairman, I want to say that somehow it has been intimated here by the previous speakers that financial institutions and banks do not know what is in their own best interests. It has been indicated here that banks and these institutions do not know how to conduct their business and that they do not know that it is not in their best interests to properly screen employees.

Now, I just ask my colleagues, if it is not in their best interests to screen their employees in many ways, including the polygraph as one tool, then why would they want this ability, an expensive procedure, I might add, why would they want the ability to go through this expensive procedure unless they felt it was in their own best interests to do so?

I would suggest that these people know what they are doing and that if the theft numbers are mounting, and they are alarmingly, that one should not say therefore the polygraph has failed. One can also say imagine how great the problem would have been had they not been able to use the polygraph.

H 9572

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

Mr. WYLIE. Mr. Chairman, will the gentlewoman yield?

Mrs. ROUKEMA. I yield to the distinguished ranking member of the Banking Committee, the gentleman from Ohio.

Mr. WYLIE. Mr. Chairman, I thank the gentlewoman again for yielding and for her amendment.

We do not say that this is the final word. We say that this is one more tool in checking and recognizing that there are certain exemptions already included in this bill and that financial institutions are held to a special responsibility, to a higher standard, if you please, than some other institutions in our society.

Now, it was mentioned a little while ago that perhaps volunteer employees of credit unions would be subjected to a polygraph test. I doubt if there are very many voluntary employees in credit unions anymore, but that would be all the more reason why would an employee volunteer to be an employee of a credit union? Maybe they ought to be the ones who would be checked; but financial institutions are required by law to carefully screen prospective employees and that recognizes that certain persons with criminal records might want to go to work in financial institutions to take care of an expensive drug habit or maybe to take care of a gaming debt or something else.

I think this is a good amendment. Financial institutions are required by law to establish comprehensive security programs. That includes their hiring practices. This is just one more tool it seems to me that they ought to have.

Mrs. ROUKEMA. Mr. Chairman, I thank the distinguished ranking member of the Banking Committee.

I would simply conclude by saying that I think the financial institutions' people understand their own industry and they understand their needs and they are being overwhelmed by theft. I think this will go far to help them in dealing with their problem.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Jersey (Mrs. ROUKEMA).

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. MARTINEZ. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 184, noes 237, not voting 12, as follows:

[Roll No. 409]

AYES—184

Anderson	Bennett	Callahan
Archer	Bereuter	Chandler
Army	Bihakis	Chapman
Badham	Billey	Chappell
Baker	Boulier	Cheney
Ballenger	Broomfield	Coats
Barnard	Buechner	Coble
Bartlett	Bunning	Coleman (MO)
Barton	Burton	Combest
Bateman	Byron	Courter

Craig	Kasich	Rogers	Mavroules	Perkins	Snowe
Dannemeyer	Kolbe	Rose	McCloskey	Petri	Solarz
Darden	Konnyu	Roth	McCurdy	Pickle	Spratt
Daub	Kyl	Roukema	McDade	Price (IL)	St Germain
de la Garza	Lagomarsino	Rowland (GA)	McHugh	Price (NC)	Staggers
DeLay	Lancaster	Salki	McMillen (MD)	Pursell	Stallings
DeWine	Latta	Saxton	Mfume	Rahall	Stark
Dickinson	Leath (TX)	Schaefer	Miller (CA)	Rangel	Stokes
DiGuardi	Lent	Schuetz	Miller (WA)	Richardson	Studds
Dornan (CA)	Lewis (CA)	Schulze	Mineta	Ridge	Swift
Dreier	Lewis (FL)	Sensenbrenner	Moakley	Rinaldo	Synar
Edwards (OK)	Lightfoot	Shaw	Mollohan	Robinson	Tallon
Emerson	Livingston	Shumway	Moody	Rodino	Tauke
English	Lott	Shuster	Morella	Roce	Torres
Erdreich	Lowery (CA)	Slaisky	Morrison (CT)	Rostenkowski	Towns
Fawell	Lujan	Skeen	Mrazek	Rowland (CT)	Trafficant
Fields	Lukens, Donald	Slaughter (VA)	Murphy	Roybal	Traxler
Fish	Lungren	Smith (NE)	Murtha	Russo	Udall
Flippo	Mack	Smith (TX)	Nagle	Sabo	Vento
Frenzel	Madigan	Smith, Denny	Natcher	Savage	Visclosky
Galleghy	Marlenee	(OR)	Neal	Sawyer	Volkmer
Gallo	Martin (IL)	Smith, Robert	Nielson	Scheuer	Walgren
Gekas	Martin (NY)	(NH)	Nowak	Schneider	Watkins
Gingrich	Mazzoli	Smith, Robert	Oaker	Schroeder	Waxman
Goodfing	McCandless	(OR)	Oberstar	Schumer	Welas
Gordon	McCollum	Solomon	Obey	Sharp	Wheat
Gradison	McEwen	Spence	Olin	Shays	Whitten
Grant	McGrath	Stangeland	Ortiz	Stokrot	Williams
Green	McMillan (NC)	Stenholm	Owens (NY)	Staggs	Wilson
Gregg	Meyers	Stratton	Panetta	Skelton	Wise
Gunderson	Mica	Stamp	Patterson	Slattery	Wolpe
Hall (OH)	Michel	Sundquist	Pease	Slaughter (NY)	Wyden
Hall (TX)	Miller (OH)	Sweeney	Pelosi	Smith (FL)	Yates
Hammerschmidt	Molinari	Swindall	Penny	Smith (IA)	Yatron
Hansen	Montgomery	Tauzin	Pepper	Smith (NJ)	Young (AK)
Harris	Moorhead	Taylor			
Hastert	Morrison (WA)	Thomas (CA)			
Hatcher	Myers	Thomas (GA)			
Hayes (LA)	Nelson	Torricelli	Biaggi	Daniel	Kaptur
Hefley	Nichols	Upton	Brown (CA)	Duncan	Kemp
Heger	Oxley	Valentine	Brown (CO)	Gephardt	Owens (UT)
Hiler	Packard	Vander Jagt	Crane	Howard	Roemer
Holloway	Parris	Vucanovich			
Hopkins	Pashayan	Walker			
Hubbard	Pickett	Weber			
Huckaby	Porter	Weldon			
Hunter	Quillen	Whittaker			
Hutto	Ravenel	Wolf			
Hyde	Ray	Wortley			
Inhofe	Regula	Wyle			
Ireland	Rhodes	Young (FL)			
Jones (NC)	Ritter				
Jones (TN)	Roberts				

NOES—237

Ackerman	Coyne	Guarini
Akaka	Crockett	Hamilton
Alexander	Davis (IL)	Hawkins
Andrews	Davis (MI)	Hayes (IL)
Annunzio	DeFazio	Hefner
Anthony	Dellums	Henry
Applegate	Derrick	Hertel
Aspin	Dicks	Hochbrueckner
Atkins	Dingell	Horton
AuCoin	Dixon	Houghton
Bates	Donnelly	Hoyer
Beilenson	Dorgan (ND)	Hughes
Bentley	Dowdy	Jacobs
Berman	Downey	Jeffords
Bevill	Durbin	Jenkins
Bilbray	Dwyer	Johnson (CT)
Boehert	Dymally	Johnson (SD)
Boggs	Dyson	Jontz
Boland	Early	Kanjorski
Bonior	Eckart	Kastenmeier
Bonker	Edwards (CA)	Kennedy
Borski	Espy	Kennedy
Bosco	Evans	Kildee
Boucher	Fascell	Kleczka
Boxer	Fazio	Kolter
Brennan	Feighan	Kostmayer
Brooks	Flake	LaFalce
Bruce	Florio	Lantos
Bryant	Foglietta	Leach (IA)
Bustamante	Foley	Lehman (CA)
Campbell	Ford (MI)	Lehman (FL)
Cardin	Ford (TN)	Leland
Carper	Frank	Levin (MI)
Carr	Frost	Levine (CA)
Clarke	Garcia	Lewis (GA)
Clay	Gaydos	Lipinski
Clinger	Gejdenson	Lloyd
Coelho	Gibbons	Lowry (WA)
Coleman (TX)	Gillman	Luken, Thomas
Collins	Glickman	MacKay
Conte	Gonsoles	Manton
Conyers	Grandy	Markey
Cooper	Gray (IL)	Martinez
Coughlin	Gray (PA)	Matsui

NOT VOTING—12

Biaggi	Daniel	Kaptur
Brown (CA)	Duncan	Kemp
Brown (CO)	Gephardt	Owens (UT)
Crane	Howard	Roemer

□ 1656

The Clerk announced the following pair:

On this vote:

Mr. Brown of Colorado for, with Ms. KAPTUR against.

Mr. BEREUTER and Mr. STRATTON changed their votes from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. RICHARDSON

Mr. RICHARDSON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. RICHARDSON: Page 8, after line 13, insert the following new subsection:

(d) EXEMPTION FOR DRUG SECURITY, DRUG THEFT, OR DRUG DIVERSION INVESTIGATIONS.—This Act shall not prohibit the use of a lie detector test by any employer authorized to manufacture, distribute, or dispense a controlled substance listed in schedule I, II, III, or IV pursuant to section 202 of the Controlled Substances Act (21 U.S.C. 812) to the extent that—

(1) such use is consistent with—

(A) applicable State and local law, and
(B) any negotiated collective bargaining agreement,

that explicitly or implicitly limits or prohibits the use of lie detector tests by such employer;

(2) the test is administered only to an employee who has, or a prospective employee who would have, direct access to the manufacture, storage, distribution, or sale of any such controlled substance; and

(3) the results of an analysis of lie detector charts are not used as the sole basis upon which any employee or prospective employee is discharged, dismissed, disciplined in any manner, or denied employment or promotion.

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9573

Mr. RICHARDSON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New Mexico?

There was no objection.

(Mr. RICHARDSON asked and was given permission to revise and extend his remarks.)

Mr. RICHARDSON. Mr. Chairman, I rise to offer an amendment for myself and Mr. HUGHES. Our amendment will counter the problems of the theft and diversion of controlled substances into the illegal drug market.

The Richardson-Hughes amendment specifically exempts those companies authorized by the Federal Government to manufacture, distribute, or dispense controlled substances from the polygraph ban. Its intent is to minimize the theft and diversion of dangerous drugs and narcotics from legitimate sources in the United States. The exemption provided by this amendment is narrowly drawn: the test can only be administered to employees who have, or prospective employees who would have, direct access to the manufacture, storage, distribution, or sale of controlled substances. More importantly, the amendment explicitly prohibits polygraph test results from being used as the sole determining factor in the hiring, disciplining, or firing of any employee. Finally, this amendment is the exact, word for word language that was adopted by the House when we debated the polygraph ban in the 99th Congress.

Each year, large volumes of prescription drugs are stolen or diverted into illicit channels. The Drug Enforcement Administration (DEA) and the General Accounting Office estimate that 250 million to 270 million dosage units of legally manufactured drugs are stolen or diverted into illicit channels annually. There is a justified need for a pharmaceutical exemption. The DEA reports losses in the retail chain which includes retail pharmacies, warehouses, and trucks in transit of between 500,000 and 1 million dosage units yearly.

More importantly, these losses are solely attributed to employee theft. In other words, employee theft accounts for 60 percent of all losses incurred by the chain drug industry. There is, however, another meaning to these DEA figures: employee theft and diversion results in direct and substantial dollar losses to the involved industries. Retail corporate drug stores alone lose over \$480 million annually due to internal theft. I believe these statistics indicate that there is a legitimate requirement for the Richardson-Hughes exemption from the polygraph ban.

In addition to economic reasons however, there are valid social policy arguments that support passage of this amendment. I am convinced this

amendment is a public health and safety amendment addressing the problems of drug abuse and the safety of this Nation's prescription drugs. The incentive for illicit drug trading looms large when a capsule or pill which retails for 50 cents can command \$25 to \$35 on the black market. This presents a clear and present danger for manufacturers and distributors who must guarantee the security, safety, and integrity of prescription drugs. While this amendment won't stop drug trafficking, it will present a clear deterrent to those who would steal or divert prescription drugs.

Lastly and perhaps most importantly, the Richardson-Hughes amendment will help combat this Nation's drug abuse problem. Drug abuse is pervasive in the United States. An estimated 40 million abuse illegal or legitimately controlled drugs. Drug addiction not only takes its toll in lost productivity—absenteeism, crime, and medical expenses from drug dependencies cost the U.S. economy \$230 billion each year—but in human lives and suffering. Stopping the flow of drugs into the black market is essential to combating this Nation's drug abuse problem and I believe this amendment will act as a deterrent—helping to stop the flow of controlled substances into illicit channels.

□ 1710

Mr. ARMEY. Mr. Chairman, I move to strike the last word.

Mr. Chairman proponents of H.R. 1212 claim that the business community is requiring individuals and employees to take too many polygraph tests. According to my friend from Montana, Mr. WILLIAMS, some 2 million tests are given every year in the private sector.

In my view, this number pales in comparison to the number of Americans who are abusing addictive drugs and illicit substances. According to a number of sources, 40 million people in the United States regularly use illegal drugs or abuse legitimate controlled substances. In other words, America has a serious, widespread drug problem.

When we consider that there are some 1 million jobs among drug manufacturing companies, wholesalers and retail pharmacies, the odds that an individual with a chemical dependency problem or a history of drug related crimes seeking employment with one of these businesses is fairly substantial.

Congress would be making a terrible mistake if we do not provide an exemption on the controlled substance issue. To reject the Richardson amendment will mean that we will have created a gaping loophole in our war against drugs and drug-related crimes. Moreover, rejecting this amendment will mean we'll lose a valuable procedure available to companies in their efforts to minimize and deter losses of controlled drugs.

No matter what your perspective is on lie detector tests, I believe that it is imperative in the name of national security as well as public health and safety to carve out an exemption so that drug thefts and diversion from legitimate sources do not escalate any further.

Mr. Chairman, we agreed to this very same amendment in the last Congress because we, sadly, acknowledged we have a terrible drug abuse/drug theft problem. I strongly urge the House to adopt this important amendment.

Let me say, Mr. Chairman, that I want to express my appreciation to the framer of this amendment. I think it is very carefully thought out.

We agreed to this a year ago. I think the need is very apparent. It has been especially seen by this Congress.

We have an opportunity here to provide an extra element of protection to our young children from those who would abuse their employment privilege by stealing drugs and making them available to our school children.

I urge everybody to support this amendment.

Mr. OXLEY. Mr. Chairman, will the gentleman yield?

Mr. ARMEY. I yield to the gentleman from Ohio (Mr. OXLEY).

Mr. OXLEY. I thank the gentleman for yielding.

Mr. Chairman, I too want to join Congressman RICHARDSON and Congressman HUGHES in support of this amendment. This is the amendment that passed the last time this bill was up. I think it makes a great deal of sense. Our committee, the Oversight and Investigations Subcommittee of the Committee on Energy and Commerce have had numerous hearings on the whole question of drug diversion. It is a very, very serious problem in this country. Many of the drugs that are diverted are caused by theft, which eventually get into the illicit market.

So it is very important that we have this tool.

As the gentleman from New Mexico said, this is not the be-all, end-all, it is not going to solve the total problem, but it is a tool which these companies can use, and these pharmacies can use to determine what kind of people they have working for them.

So it is a well-crafted amendment.

Mr. HUGHES and I are both on the Select Committee on Narcotics Abuse and Control. We understand the real problem of drugs in our country. This is a small step that we can use in providing the exemption which is provided for in the amendment by the gentleman from New Mexico.

Mr. ECKART. Mr. Chairman, will the gentleman yield to me?

Mr. ARMEY. I yield to the gentleman from Ohio (Mr. ECKART).

Mr. ECKART. I thank the gentleman for yielding.

H 9574

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

My colleague from Ohio and I have worked together on the Subcommittee on Oversight and Investigations on this matter. It was a year ago that this was the Arney-Eckart amendment that the House passed. It is my understanding that the gentleman's representations are true. I wish to be associated with them. It does include our direct access language and makes clear we want to focus on those employees who are in those circumstances.

So I wish to associate myself with the gentleman's remarks and thank him for yielding to me.

Mr. ARMEY. I thank both of the gentlemen.

Let me say as I did say, as Mr. ECKART pointed out this is a well crafted amendment. Let me say to the body at large that a "yes" vote on the Richardson amendment is a vote for the safety and health of your children.

I applaud the gentleman from New Mexico once again for his concern and in bringing this amendment.

Mr. MARTINEZ. Mr. Chairman, I move to strike the requisite number of words.

Mr. OWENS of New York. Mr. Chairman, will the gentleman yield?

Mr. MARTINEZ. I yield to the gentleman from New York.

(Mr. OWENS of New York asked and was given permission to revise and extend his remarks.)

Mr. OWENS of New York. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in strong support of the Employee Polygraph Protection Act (H.R. 1212) and against the many amendments which will be offered today to gut the bill. Polygraph screening does not work, cannot work, and does not belong in the American workplace.

One of the things that has made this country great is our boundless faith in science and technology, but sometimes it can get us into trouble. We have seen so many miracles made possible in our lives through science that it does not seem implausible to us that a little electronic box really could tell whether or not we are telling the truth. But the reality is that polygraph screening is essentially a quack science which should enjoy about as much credibility as the "x-ray specs" advertised in the back pages of comic books. It does not measure truthfulness; it measures physiological indicators of stress—changes in our blood pressure, breathing, and perspiration. Sometimes those signals of stress can mean you are lying, but they can also mean any number of other things as well, including simply that having electrodes strapped to your head and being interrogated like a criminal makes you very nervous. Study after study has found that there is absolutely no scientific basis for the idea that polygraph exams can reliably identify lies and deception.

We tolerate many foolish practices in our society and if polygraphs were used as benignly as comic book "x-ray specs" they would be of no concern to us. That is not the case, however. Despite the dearth of scientific evidence to support its reliability, the use of polygraph screening by employers is now epidemic and it is hurting too many of our con-

stituents. Every year, hundreds of thousands of American workers—innocent, honest, decent people—are being denied jobs and turned into unemployable pariahs on the basis of this bogus, pseudoscientific exam. Because the polygraph measures physiological functions, persons with physical and mental disabilities or ailments are particularly vulnerable to being unfairly and incorrectly identified as "liars" by the exam. For similar reasons, as well as because the interpretation of polygraph results is inevitably subjective and prone to bias, there is also evidence that polygraph screening unfairly discriminates against black Americans and other ethnic minorities; if you are black, in other words, the polygraph is far more likely to tag you as a liar than if you are white. And most perversely of all, the greatest discriminatory impact of polygraph screening falls on precisely those of our constituents who are the most scrupulously honest because their understandable indignation, surprise, and anger at being interrogated is likely to create the kind of stress the polygraph treats as a signal of deception.

The opponents of H.R. 1212 and those who support industry-specific exemptions to the legislation would have you believe that the polygraph is necessary to combat employee theft—even employee "terrorism"—and are trying hard to cast this debate as some kind of referendum on the crime in the workplace. This is absurd. There is simply no evidence to support their claim that the pseudoscience of polygraph screening is an effective, much less an essential tool against employee crime. Businesses in those States which have banned the use of the polygraph experience no higher rate of theft and other crimes by employees than businesses in those States where polygraph use is unregulated and has been allowed to flourish. Indeed, the National Institute of Justice Study on Employee Theft found that employers who use polygraph screening actually experienced a higher rate of employee theft than those who did not.

Other opponents of H.R. 1212 have argued that instead of banning the use of the polygraph in private employment we should first try to regulate its use in the workplace. Unfortunately, advocates of this approach seem to have missed the point. Since polygraph screening does not work, trying to regulate its use makes about as much sense as trying to regulate numerology or palm-reading—it is an utterly pointless exercise which is inherently unworkable. Moreover, the few States that have tried this approach have demonstrated little success in stopping what even polygraph advocates agree are abuses of the device. In fact, during the subcommittee's consideration of H.R. 1212, one of the most frightening stories we heard about employer abuse and misuse of the polygraph was told by a worker who was purportedly "protected" by one of the State laws upon which the Darden substitute has been modeled. Polygraph regulation was of no use to this man and would be of no use to other American workers either.

The massive polygraph screening now taking place in American workplaces is an abomination and it must be halted. If thousands of our constituents were being branded liars and denied employment on the basis of their horoscopes, we would not hesitate to outlaw the practice. The polygraph is no more useful or valid in detecting deception than astrology, but we have tolerated its use because

it looks somehow scientific with its tangle of wires and electrodes and its charts of colorful, squiggly lines. It is long past time for us to end this absurd masquerade and to provide the protection American workers need from the dangerous quackery of the polygraph. Pass H.R. 1212 and defeat the weakening amendments.

Mr. MARTINEZ. Mr. Chairman, I do not know how all of a sudden the legislation becomes a panacea to curb all the abuses in banking, in child care, in care of the elderly and all of the amendments that we have heard so far. I do not believe that security measures for the safekeeping of drugs or for keeping them out of the hands of drug dealers should depend on the reliability of a machine that is questionable.

The credibility of the machine and the track record of the machine is not such that we should depend on it for our security measures to keep drugs out of the hands of drug dealers. If we are reduced to that kind of thinking then we ought to turn over the key to the cabinet to the drug dealers because it is not going to do the job.

The polygraph is not a security measure. Twenty to forty percent of the time the machines are wrong. If this amendment passes it is just leading us down the primrose path of a false sense of security.

AMENDMENT OFFERED BY MR. HUGHES TO THE AMENDMENT OFFERED BY MR. RICHARDSON

Mr. HUGHES. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. HUGHES to the amendment offered by Mr. RICHARDSON: In the matter proposed to be inserted by the amendment offered by the Gentleman from New Mexico, strike out "and" at the end of paragraph (2); strike out the period at the end of paragraph (3) and insert in lieu thereof "; and"; and after such paragraph insert the following new paragraph:

(4) if the test is administered to a current employee—

(A) the test is administered only in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacture, distribution, or dispensing of any such controlled substance by such employer; and

(B) the employee had access to the person or property which is the subject of the investigation.

Mr. HUGHES (during the reading). Mr. Chairman, I ask unanimous consent that the amendment to the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. HUGHES. Mr. Chairman, I rise in very strong support of the Richardson amendment which creates a narrow exception from the prohibition in the bill in the case of the traffic in controlled substances. The amendment I am offering improves the Richardson amendment by limiting its cov-

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9575

erage in investigative uses of polygraph testing.

The first question of course is, Do we need a special exception in this bill to fight drug trafficking and drug abuse? I think that this House is on record singling out the importance of comprehensively attacking the drug abuse problem on every front.

In fact it was just over a year ago, on October 27, 1986, that President Reagan signed the Anti-Drug Abuse Act, which originated in this House, the most massive legislative assault and comprehensive attack upon the problems of drug abuse in this Nation.

Certain drugs are well known to the public and extensively covered in the news media—drugs such as heroin, cocaine, and marijuana. However, there are other drugs which have legitimate medical uses which are even more widely abused. Throughout the 1970's and 1980's these drugs were responsible for three-quarters of all the deaths and injuries due to drug abuse in the United States. They were responsible for more deaths than heroin and cocaine combined. Only in the last 2 years, because the tidal wave of "crack" cocaine has engulfed our cities' youth, has the percentage of deaths and injuries due to legitimate drugs gone down. Legitimate drugs are produced here in the United States. We can't blame anyone else for the thousands of deaths and tens of thousands of hospital admissions from these drugs.

In the past 3 years this House has taken the lead in strengthening our ability to prevent the diversion of legitimate drugs from channels of medical distribution to the blackmarket. We have appropriated additional funds for the drug enforcement administration to investigate these cases. We have strengthened the laws to allow the revocation of registrations of manufacturers, distributors, and medical practitioners who are involved in diversion. We made the robbery and burglary of controlled substances from a registrant a separate Federal crime.

Recent estimates by DEA of the quantities of drugs diverted run as high as 700 million doses per year. It's a very serious problem. These pills are widely distributed to children because they are easy to take. They don't need to be injected or smoked. They look like medicine because they are medicine, but they are very dangerous, and when offered to children they are a specially dangerous temptation.

These legitimate drugs—powerful painkillers, tranquilizers, and stimulants—are widely sought in the blackmarket. A single 4 milligram pill of a painkiller such as dilaudid sells for between \$30 and \$65 on the blackmarket. This is easy money for the unscrupulous employee who pilfers drugs, and big money for more sophisticated criminals who try to infiltrate wholesale drug distribution operations.

The Richardson amendment gives us a critical tool to prevent the organized

crime rings from infiltrating drug companies and distributors. My amendment narrows the Richardson amendment. In the case of current employees, a polygraph can only be used in connection with an ongoing investigation or criminal or other misconduct involving the manufacture, distribution, or dispensing of controlled substances, and only if the employee had access to the person or property which is the subject of the investigation. There can be no random polygraph testing of current employees under this amendment. Indeed, the industry has told us that they don't need random testing.

There are Members who may have been reluctant to support the Richardson exception. In light of my amendment, which narrows and focuses the Richardson amendment, I urge these Members to take another look at the Richardson amendment.

I urge my colleagues to support both my amendment and the Richardson amendment.

□ 1725

Mr. RICHARDSON. Mr. Chairman, will the gentleman yield?

Mr. HUGHES. I am happy to yield to the gentleman from New Mexico.

Mr. RICHARDSON. Mr. Chairman, I want to commend the gentleman for offering his amendment. I think it improves the one that I offered. It narrows the scope, it creates a threshold, and I would just like to advise the gentleman that I would be pleased to accept his amendment.

Mr. HUGHES. Mr. Chairman, I thank the gentleman for his support.

Mr. WILLIAMS. Mr. Chairman, will the gentleman yield?

Mr. HUGHES. I am happy to yield to the gentleman from Montana.

Mr. WILLIAMS. Mr. Chairman, I want to be sure I understand the gentleman's amendment. The gentleman is eliminating the postemployment random nature of the Richardson amendment and substituting for that the use of the lie detector in an incident-only matter?

Mr. HUGHES. That is correct.

The CHAIRMAN. The time of the gentleman from New Jersey [Mr. HUGHES] has expired.

(By unanimous consent, Mr. HUGHES was allowed to proceed for 2 additional minutes.)

Mr. WILLIAMS. Mr. Chairman, if the gentleman will yield, let me ask this question:

Does the gentleman's amendment continue to allow all preemployment testing to go forward, or has it eliminated the preemployment testing in the Richardson amendment?

Mr. HUGHES. No, the preemployment testing is permitted under my amendment.

Mr. WILLIAMS. Mr. Chairman, I thank the gentleman.

Mr. HUGHES. Mr. Chairman, let me say that the only thing it does is it focuses the postemployment testing on

those incidents which in fact result in an ongoing criminal or civil investigation.

Let me make one additional point if I might before I yield back the balance of my time.

Mr. Chairman, we make an exception for the law enforcement community. The law enforcement community, in using the polygraph, basically is exposed to a very small amount of controlled substances. Here we are talking about millions and millions and millions of dosage units that are being handled by these pharmaceutical companies and distributors, and this is where we really need to have the polygraph testing for diversion.

So I urge my colleagues, if they are persuaded that law enforcement has needs in the area of controlled substances, they certainly a fortiori have to argue that we need it in this particular area.

Mr. Chairman, I urge my colleagues to support my amendment and to support the Richardson amendment, which is an excellent amendment. I can tell my colleagues that I would have a hard time supporting this legislation if this amendment does not carry.

Mr. Chairman, I yield back the balance of my time.

Mr. LUNGREN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think that the Members ought to realize that for the greatest period of the history of the FBI they did not involve themselves in drug cases. They specifically were prohibited from being involved in drug cases because J. Edgar Hoover, seeing the tremendous amounts of money to be gained in the illegal use of drugs, was afraid it was such a corrosive, corruptive influence on even law enforcement that it would be extremely difficult for him to maintain the purity, so to speak, of the FBI.

A number of years ago, in conjunction with this administration, we made the decision and the administration made the decision to remove the barrier to investigation by the FBI, to have them work with the DEA. In fact, some of J. Edgar Hoover's worst thoughts came to the fore. We have had for the first time in the history of the FBI, some FBI agents who went bad, and we have had some prosecutions of FBI agents. Nonetheless, we thought that risk was appropriate because of the enormity of the drug problem facing the Nation.

Is it too much to believe that with all the requirements we make prospective FBI agents go through, when even then some of them succumb to the temptations in this area, therefore, some of the people working in the pharmaceutical industry would not be tempted to fall to the illegal perpetrators of drugs? I think if we looked at it realistically, we know that is happening. Not only is the illegal

H 9576

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

manufacture and distribution of drugs a problem, as the gentleman from New Jersey [Mr. HUGHES] has pointed out, but the illegal diversion of drugs which are controlled, having been produced legally, is a problem in this country. If we believe it is a continuing major problem why should we remove one of the most valuable tools that law enforcement has found in policing itself from private industry?

I heard my friend, the gentleman from California, say a little earlier that Members who support this amendment believe this gadget is the panacea, and I would say to my friend, the gentleman from California, that he misstates our position. This is not the panacea, but it is a tool, an effective tool, as seen by law enforcement, that we are without this amendment taking away from the private sector, those who produce, manufacture and distribute controlled substances. It is not a panacea, but it is an effective tool.

Others have said, "Wait a second. This involves the constitutional rights of individual Americans." I would say, if we look at the 5th and 14th amendments of the Constitution, we would find that they talk about State action. They talk about prohibiting unreasonable searches and seizures by the State, that is, by Government officials. Here we have made that exception, a blanket exception in that regard.

What we are asking is this: What should be the case in the private sector, in the private employer-employee relationships? All I would say is, if we are going to be true to the feelings of the floor of the House that were expressed last year in support of the antidrug bill, truly a bipartisan approach fighting the drug problem in this country, we ought to support the amendment. It is more narrowly drawn now, with the Hughes amendment, so we do not have to fear random polygraph tests being administered to already existing employees, but it does continue to allow preemployment screening and having the polygraph as part of that, not the total thing but part of it.

Mr. Chairman, it seems to me that this is a reasonable amendment. It is something we ought to adopt. It is something that is not to be feared. It is something we should accept as reasonable under the circumstances.

Mr. WILLIAMS. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I wonder if the author of the amendment would answer a few questions to clarify my understanding of the amendment. Does the amendment include the polygraphing of people who transport drugs, that is, truck drivers?

Mr. RICHARDSON. Mr. Chairman, if the gentleman will yield, the answer to the question is no.

Mr. WILLIAMS. Mr. Chairman, let me ask, what does the gentleman

mean in his amendment when he says, "distribution"?

Mr. RICHARDSON. What I mean by "distribution" is the normal procedure of drug manufacturers and distributors. Once again, it would preclude the trucker's ability to have direct access to controlled substances. Trucks transporting controlled substances are locked before leaving the loading dock and unlocked at the point of destination by authorized personnel.

In answer to the second question, I mean anybody involved in the entire process in the channel of controlled substances.

Mr. WILLIAMS. Except truckers?

Mr. RICHARDSON. Yes.

Mr. WILLIAMS. Mr. Chairman, if the gentleman will answer another question, so it is the gentleman's purpose that those who haul drugs or transport drugs are not included in his amendment?

Mr. RICHARDSON. That is correct.

Mr. WILLIAMS. How about those people who store drugs or are involved in warehousing drugs on their way to the pharmacy?

Mr. RICHARDSON. Let me just make this case: Those that are registered with the DEA, those that store and are registered with the DEA are included. So storage operators are included.

Mr. BARTLETT. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS. I yield to the gentleman from Texas.

Mr. BARTLETT. Mr. Chairman, I thank the gentleman for yielding, because I think the gentleman is doing the House a service in pointing out what the Richardson amendment includes.

I think it is important to read paragraph 2 of the amendment. It would be administered or permitted to be administered only to an employee or prospective employee who would have direct access to the manufacture, storage, distribution, or sale of controlled substances. So whether it is a truck driver or a pharmacy or a pharmacist or anyone else, it is only employees who have direct access to the substance itself. I think that is a fair place to draw the line. A truck driver who does not have access to the controlled substance is no threat, and, therefore, this amendment would not apply to him.

Mr. WILLIAMS. Mr. Chairman, let me reclaim my time. I appreciate the gentleman's assistance and his explanation.

Relating to these substances in schedules 1, 2, 3, and 4, which apparently are the only controlled substances the gentleman's amendment covers, are those substances always sealed? Are they always in a certain state of security by having been sealed as they are transported and stored according to DEA's regulations?

Mr. RICHARDSON. Mr. Chairman, if the gentleman will yield, that is cor-

rect. They are also sealed within the truck, meaning that controlled substances are doubled-sealed during transportation.

Mr. WILLIAMS. So as those substances come across the country and are put in a warehouse, does the manner in which they are sealed mean that the people dealing with them in the warehouse are not subject to a lie detector examination under the gentleman's amendment?

Mr. RICHARDSON. They are covered under the bill.

Mr. WILLIAMS. So the truck driver would not be the person who unloads the truck and stores the drugs, so he would not be subject to examination?

Mr. RICHARDSON. The gentleman is correct.

Mr. WILLIAMS. Mr. Chairman, if the author of the amendment will continue to respond, let me say that I appreciate his willingness to engage in this colloquy.

Does the author of the amendment know what the position of the American Pharmaceutical Association is on the gentleman's amendment?

Mr. RICHARDSON. Mr. Chairman, my understanding is that the entire pharmaceutical industry, the drug manufacturers and distributors, are in support of the legislation.

Mr. WILLIAMS. Mr. Chairman, the gentleman is wrong. Let me read from a letter to me from the American Pharmaceutical Association. I will read only the one sentence which sums up the association's position.

The CHAIRMAN. The time of the gentleman from Montana [Mr. WILLIAMS] has expired.

(By unanimous consent, Mr. WILLIAMS was allowed to proceed for 2 additional minutes.)

Mr. WILLIAMS. Mr. Chairman, let me say to my colleagues that I want to share this with them because I believe this is very important. The American Pharmaceutical Association has written this:

"The American Pharmaceutical Association's position is that polygraph tests should not be used as a means of preemployment screening in pharmacies, should not be used in pharmacies for routine security checking of employees"—and the amendment offered by the gentleman from New Jersey may have taken care of that—and finally, "should not be used in pharmacies in the course of investigation for causes."

The American Pharmaceutical Association itself is against this amendment. I ask, why is that? Because they know this gadget does not work. It creates a false sense of security, and they do not want it. They do not want the pharmacists and the drugstore owners of America to be relying on a gadget that does not work. The American Pharmaceutical Association knows that we cannot protect the American public when we let pharmacists and

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9577

drugstore owners depend upon this faulty gadget.

Mr. RICHARDSON. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS. I yield to the gentleman from New Mexico.

Mr. RICHARDSON. Mr. Chairman, I would like to make the point very clear that while the gentleman may have a letter from the American Pharmaceutical Association, they are very limited in being involved in the storing and distribution of drugs as prescribed in this amendment.

Let me just say that the National Association of Chain Dealer Drugs is supportive of this bill. Most drug manufacturers have sent many letters throughout the Congress in support of this legislation. Law enforcement agencies support it. Perhaps that small group that the gentleman mentions is not included.

The CHAIRMAN. The time of the gentleman from Montana [Mr. WILLIAMS] has again expired.

(By unanimous consent, Mr. WILLIAMS was allowed to proceed for 2 additional minutes.)

Mr. RICHARDSON. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS. I yield to the gentleman from New Mexico.

□ 1740

Mr. RICHARDSON. Mr. Chairman, I thank the gentleman for yielding.

The implication that the gentleman is trying to leave is that this is not supported by a wide group of people and companies in the drug business, and that is not the case.

I wanted to point that out to the gentleman.

Mr. WILLIAMS. The American Pharmaceutical Association was founded in 1852, and it is the leader in the professional and scientific advancement of this industry.

This gets at the point of it. Of course, we want to protect America from a misuse of these drugs, but here is the association that is most important for this matter saying do not allow the lie-detector gadget to be used to protect America from these drugs, because it is no good. It is faulty.

We use it now, and it does not work. It is part of the reason we have a hemorrhaging in our industry. Instead, they want to come up with good personnel practices. They want the respected official law enforcement agencies of the United States, the public agencies, to be investigating these matters, not the manager of Drug Fair. That is our problem now.

We are trying to tighten up this hemorrhaging in America with regard to the illegal use of drugs, but I submit, and the American Pharmaceutical Association agrees, that continued use of the lie detector will do the reverse of what the gentleman from New Mexico and others are trying to do here this evening.

Mr. SHAW. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think that the gentleman who just spoke is missing the point. We are not here to represent the American Pharmaceutical Association or any other employer, and we are not here to look at strictly protecting the rights of the employee.

We must not lose the big picture which is, if we are going to pass this bill, which I believe is ill-advised, that it has to be pared down to exempt certain categories.

We have done it earlier in areas that have security sensitivity by a very narrow vote. Now we are going to have an opportunity to do this again, and in casting your vote, do not talk about the American Pharmaceutical Association. Do not look at Dart Drug or Drug Fair, but look at the kids out there that are getting these drugs, the misguided drugs that are illegally coming onto the market and being diverted. It is a big problem.

The gentleman from New Jersey [Mr. HUGHES] said he did not think he could support this legislation without this very important amendment in it. Whereas I do not intend to support this legislation on final passage, we are very kindly cleaning it up and getting rid of some of the sensitive areas that must be addressed.

The gentleman from Montana has made numerous references like it is a piece of witchcraft. It is not.

Some 30 percent of the Fortune 500 companies in this country today use the polygraph test. It is not altogether correct, I know that; and there are some stopgaps and some guarantees that have to be put in it.

The gentleman from Florida [Mr. Young] will offer some of these protections to the employee later which will make a very, very positive addition to what is going on here this evening.

Addressing right now the amendment of the gentleman from New Mexico, the gentleman has pointed out a very important part of the economy and commerce that must be made an exception to.

Mr. RICHARDSON. Mr. Chairman, will the gentleman yield?

Mr. SHAW. I yield to the gentleman from New Mexico.

Mr. RICHARDSON. Mr. Chairman, I thank the gentleman for yielding to me.

I want to point out here a statement in support of the amendment by the National Wholesale Druggists Association.

Mr. SHAW. Mr. Chairman, in conclusion I would certainly hope that if we are going to have a vote on this particular issue, that it be an overwhelming "yes" vote.

We are going far beyond the rights of the employee at this particular point, and we are talking about the rights of America to be crime free and drug free as much as possible.

This is a very important amendment, an exception that I hope the Members will vote for.

Mr. JACOBS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Speaker, in speaking of the Spanish Inquisition, the author of the novel "Captains from Castille" spoke of a situation where, "no one was too innocent to be proved guilty."

I am thinking of an incident about a year ago when our incumbent Attorney General was before the other body for confirmation.

It was determined that his official financial report, which he had filed and signed, was false. The issue was whether it was consciously false or negligently false.

At that time some commentators suggested that Mr. Meese, being one of the leading advocates of the use of so-called polygraph or lie detector tests, take a dose of his own medicine, which might prove to be truth serum, in order that it be determined with some reliability whether his false financial statement was intentional or unintentional.

If I recall correctly, Mr. Meese declined to submit to a polygraph test. That raises an interesting question.

Did he decline to submit to the polygraph test because he thought the test was unreliable, or did he refuse to submit to that test, because he thought it was reliable?

Surely one must conclude one or the other.

The Good Book tells us among the Ten Commandments, that thou shall not bear false witness. I wonder if that only applies to humans, or also to the contraptions humans have contrived to manufacture.

If this mechanism is unreliable, and if we assume the honesty of our own Attorney General, we must assume that in his opinion the test is unreliable, then one must ask, how does it suddenly become reliable simply because it is drug abuse which one is trying to detect.

If a chicken cannot fly across the Ohio River to read poetry does it not follow then that a chicken cannot fly across the Ohio River to read prose?

If a Member is among those who believe that the polygraph test is inherently unreliable—as our courts have repeatedly held—how do drugs make it reliable?

If, on the other hand, a Member believes that it is reliable, then why not apply it to the detection of all crimes?

It is important to me that controlled substances not be put to illicit use. But that is not the issue here. The issue is whether the polygraph which the courts say is unreliable is somehow made reliable by a vote of the Congress.

One is reminded of the City Council which passed an ordinance which said, "Henceforth and hereafter pigeons shall not light on city hall."

H 9578

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

If this polygraph machine is unreliable, can an act by the Congress make it reliable? No.

Mr. HUGHES. Mr. Chairman, will the gentleman yield?

Mr. JACOBS. I yield to the gentleman from New Jersey.

Mr. HUGHES. Mr. Chairman, I thank the gentleman for yielding to me.

I thank the gentleman for the gentleman's statement, and I do not agree with the gentleman with regard to the use of the lie detector, the polygraph as a tool in law enforcement; but I would suggest that the gentleman would have problems with the bill, because the bill carves out exceptions for government, law enforcement, intelligence-gathering.

Mr. JACOBS. I would suggest, all of the Members should have problems with the logic discussed in the last couple of hours here.

I think this is definitely a case for consistency. Either the gun shoots bullets or blanks. If it shoots bullets, it may be useful; and if it shoots blanks and impugns the reputation of a thoroughly honest citizen, which I assume Mr. Meese considers himself to be when he did not take the test, then it is not useful.

Mr. GUNDERSON. Mr. Chairman, I move to strike the requisite number of words.

(Mr. GUNDERSON asked and was given permission to revise and extend his remarks.)

Mr. GUNDERSON. Mr. Chairman, I rise, first of all, to respond to the gentleman from Montana, who suggests that somehow because the American Pharmaceutical Association is opposed to this amendment, that it is a bad amendment.

The fact is that the Drug Enforcement Administration estimates that the employees are stealing between 500,000 to more than 1 million doses of dangerous drugs per year.

And let us be very blunt about it.

It is the American Pharmaceutical Association that apparently has some of their employees, not the majority, but some of their employees who are probably stealing those drugs who do not want to be subject to a lie-detector test. That is why they have taken that position.

The pharmaceutical manufacturers and distributors are in favor of it. Look as well at what the gentleman from Montana said last year on the floor of the House when we considered this legislation.

He stood up before the House and said, "Likewise, the bill before us provides exemptions for those private businesses that directly impact on our national security or public health. We will be accepting amendments to provide other exemptions regarding dangerous drugs, security guards, and the protection of electric and nuclear powerplants and public transportation. We will accept those amendments, because

they are a matter of protecting the national health and safety."

That is what we are talking about in this particular amendment. We are talking about the fact that we need to protect the health and safety of our young children, as the gentleman from Florida stated.

This is not a cure-all, but a tool. The amendment is very clear, and as the amendment by the gentleman from New Jersey says, when we are dealing with present employees, we make sure that testing is incident-specific, not random. And that harassment and other abuses are addressed.

If we cannot pass this amendment, then we are suggesting that the so-called war on drugs that this Congress waged last year was just a joke.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Jersey [Mr. HUGHES] to the amendment offered by the gentleman from New Mexico [Mr. RICHARDSON].

The amendment to the amendment was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Mexico [Mr. RICHARDSON], as amended.

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. RICHARDSON. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 313, noes 105, not voting 15, as follows:

[Roll No. 410]

AYES—313

Akaka	Carr	English
Alexander	Chandler	Erdreich
Anderson	Chapman	Espy
Andrews	Chappell	Fascell
Annunzio	Cheney	Fawell
Anthony	Clarke	Fazio
Archer	Coats	Felghan
Armye	Coble	Fields
Aspin	Coeilho	Flash
Badham	Coleman (MO)	Fliippo
Baker	Coleman (TX)	Florio
Ballenger	Combest	Foley
Barnard	Conte	Ford (TN)
Bartlett	Cooper	Frenzel
Barton	Coughlin	Frost
Bateman	Courter	Galleghy
Bennett	Craig	Gallo
Bentley	Danemeyer	Gaydos
Bereuter	Darden	Gekas
Bevill	Daub	Gibbons
Bilbray	Davis (IL)	Gilman
Billirakis	Davis (MI)	Gingrich
Bliley	de la Garza	Glickman
Boggs	DeLay	Goodling
Boland	Derrick	Gooding
Bonker	deWine	Gordon
Borski	Dickinson	Gradison
Bosco	Dicks	Grant
Boulter	Dingell	Gray (IL)
Brennan	DieGuardi	Green
Broomfield	Dixon	Gregg
Brown (CA)	Donnelly	Guarini
Bryant	Dorgan (ND)	Gunderson
Buechner	Dornan (CA)	Hall (OH)
Bunning	Dowdy	Hall (TX)
Burton	Driener	Hamilton
Bustamante	Dwyer	Hammerschmidt
Byron	Dyson	Hansen
Callahan	Early	Harris
Campbell	Eckart	Hastert
Cardin	Edwards (OK)	Hatcher
Carper	Emerson	Hayes (LA)
		Hefley

Hefner	Mfume	Shumway
Henry	Mica	Shuster
Herger	Michel	Sisk
Hiler	Miller (OH)	Skreen
Hochbrueckner	Molinar	Skelton
Holloway	Molohan	Slaughter
Hopkins	Montgomery	Slaughter (NY)
Horton	Moorhead	Slaughter (VA)
Houghton	Morrison (WA)	Smith (FL)
Hubbard	Mrazek	Smith (IA)
Huckaby	Murphy	Smith (NE)
Hughes	Murtha	Smith (NJ)
Hunter	Myers	Smith (TX)
Hutto	Nagle	Smith, Denny
Hyde	Natcher	(OR)
Inhofe	Nelson	Smith, Robert
Ireland	Nichols	(NE)
Jenkins	Nielson	Smith, Robert
Johnson (SD)	Nowak	(OR)
Jones (NC)	Olin	Snowe
Jones (TN)	Ortiz	Solomon
Kanjorski	Oxley	Spence
Kasich	Packard	Spratt
Kleczka	Panetta	St Germain
Kolbe	Parris	Staggers
Kolter	Pashayan	Stallings
Konnyu	Patterson	Stangeland
Kyl	Pepper	Stenholm
Lagomarsino	Petri	Stratton
Lancaster	Pickett	Stump
Lantos	Pickle	Sundquist
Latta	Porter	Sweeney
Leach (IA)	Price (IL)	Swindall
Leath (TX)	Price (NC)	Tallon
Lent	Purwell	Tauke
Lewis (CA)	Quillen	Tausin
Lewis (FL)	Rahall	Taylor
Lightfoot	Ravenel	Thomas (CA)
Livingston	Ray	Thomas (GA)
Lloyd	Regula	Torricelli
Lott	Rhodes	Trafficant
Lowery (CA)	Richardson	Udall
Lujan	Rinaldo	Upton
Lukens, Thomas	Ritter	Valentine
Lukens, Donald	Roberts	Vander Jagt
Lungren	Robinson	Volkmer
Mack	Roe	Vucanovich
Madigan	Rogers	Walkren
Marienee	Rose	Walker
Martin (IL)	Rostenkowski	Watkins
Martin (NY)	Roth	Weber
Martinez	Roukema	Weldon
Mavroules	Rowland (GA)	Whittaker
Mazzoli	Saiki	Whitten
McCandless	Sawyer	Wilson
McCollum	Saxton	Wise
McCurdy	Schaefer	Wolf
McDade	Schewe	Wortley
McEwen	Schneider	Wyle
McGrath	Schroeder	Yatron
McHugh	Schuetz	Young (AK)
McMillan (NC)	Schulze	Young (FL)
McMillan (MD)	Sensenbrenner	
Meyers	Shaw	

NOES—105

Ackerman	Hawkins	Owens (NY)
Applegate	Hayes (IL)	Pease
Atkins	Hertel	Pelosi
AuCoin	Hoyer	Penny
Bates	Jacobs	Perkins
Bellenson	Jeffords	Rangel
Berman	Johnson (CT)	Ridge
Boehliert	Jontz	Rodino
Bonior	Kastenmeier	Rowland (CT)
Boucher	Kennedy	Roybal
Boxer	Kennelly	Russo
Brooks	Kildee	Sabo
Bruce	Koestmeyer	Savage
Clay	LaFalce	Schumer
Clinger	Lehman (CA)	Shays
Collins	Lehman (FL)	Sikorski
Conyers	Leland	Skaggs
Coyns	Levin (MI)	Solarz
Crockett	Levine (CA)	Stark
DeFazio	Lewis (GA)	Stokes
Dellums	Lowry (WA)	Studds
Downey	Manton	Swift
Durbin	Markey	Syrar
Dymally	Mataui	Torres
Edwards (CA)	McCloskey	Towns
Evans	Miller (CA)	Traxler
Flake	Miller (WA)	Vento
Foglietta	Mineta	Viciano
Ford (MI)	Moakley	Waxman
Frank	Moody	Weiss
Garcia	Morella	Wheat
Gejdenson	Morrison (CT)	Williams
Gonzalez	Neal	Wolpe
Grandy	Oberstar	Wyden
Gray (PA)	Obey	Yates

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9579

NOT VOTING—15

Blaggi	Gephardt	MacKay
Brown (CO)	Howard	Oakar
Crane	Kaptur	Owens (UT)
Daniel	Kemp	Roemer
Duncan	Lipinski	Sharp

□ 1810

Messrs. EDWARDS of California, CLINGER, HOYER, ROYBAL, WAXMAN, OBEY, MANTON, HERTEL, and RUSSO changed their votes from "aye" to "no."

Messrs. MARTINEZ, MAVROULES, and ROBINSON changed their votes from "no" to "aye."

So the amendment, as amended, was agreed to.

The result of the vote was announced as above recorded.

AMENDMENTS OFFERED BY MR. GUNDERSON

Mr. GUNDERSON. Mr. Chairman, I offer several amendments.

The Clerk read as follows:

Amendments offered by Mr. GUNDERSON: Page 8, after line 13, insert the following new subsection:

(d) EXEMPTION FOR ONGOING INVESTIGATIONS.—Subject to section 7, this Act shall not prohibit any employer from requesting an employee to submit to a lie detector test if—

(1) the test is administered in connection with any ongoing investigation of criminal or other misconduct involving, or potentially involving, significant loss or injury to the employer's business;

(2) the employee had access to any person or property which is the subject of the investigation; and

(3) the employer has a reasonable suspicion that the employee was involved in the incident or activity under investigation.

Page 8, after line 13, insert the following new sections (and redesignate succeeding sections accordingly):

SEC. 7. RESTRICTIONS ON EXEMPTIONS.

(a) OBLIGATION TO COMPLY WITH CERTAIN LAWS AND AGREEMENTS.—Any exemption provided under section 6 (other than subsections (a), (b), and (c) of such section) shall not diminish an employer's obligation to comply with—

(1) applicable State and local law, and

(2) any negotiated collective bargaining agreement, which limit or prohibit the use of lie detector tests on such employees.

(b) TEST MAY NOT BE SOLE BASIS FOR ADVERSE EMPLOYMENT ACTION.—Any such exemption shall not apply unless the employer can demonstrate that the results of an analysis of lie detector charts are not used as the sole basis upon which an employee or prospective employee is discharged, dismissed, disciplined in any manner, or denied employment or promotion.

(c) RIGHTS OF EXAMINEE.—Such exemptions shall not apply unless the requirements described in paragraphs (1), (2), and (3) are met.

(1) PRETEST PHASE.—During the pretest phase the prospective examinee—

(A) is provided with reasonable written notice of the date, time, and location of the test, and of such examinee's right to obtain and consult with legal counsel throughout all phases of the test;

(B) is not subjected to prolonged interrogation;

(C) is informed of the nature and characteristics of the tests and of the instruments involved;

(D) is informed in writing as to whether (1) the testing area contains a two-way mirror, a camera, or any other device

through which the test can be observed, or (ii) the test will involve any other device, including any device for recording or monitoring the conversation;

(E) is informed of such examinee's privilege against self-incrimination under the Fifth Amendment of the Constitution of the United States;

(F) is provided an opportunity to review all questions (technical or relevant) to be asked during the test and is informed of the right to terminate the test at any time;

(G) signs a notice informing such examinee of—

(i) the limitations imposed under this section; and

(ii) the legal rights and remedies available to the examinee if the lie detector test is not conducted in accordance with this Act.

(2) ACTUAL TESTING PHASE.—During the actual testing phase—

(A) the examinee is not asked any questions by the examiner concerning—

(i) religious beliefs or affiliations;

(ii) beliefs or opinions regarding racial matters;

(iii) political beliefs or affiliations;

(iv) any matter relating to sexual behavior or any sexual behavior of such employee or prospective employee, unless sexual behavior is specifically related to job performance or inquiry into such behavior is required under State law; and

(v) beliefs, affiliations, or opinions regarding unions or labor organizations;

(B) the examinee is permitted to terminate the test at any time;

(C) the examiner does not ask such examinee any question (technical or relevant) during the test which was not presented in writing for review to such examinee before the test;

(D) the examiner does not ask technical questions of the examinee in a manner which is designed to embarrass, degrade, or needlessly intrude upon the examinee; and

(E) the examiner does not conduct a test on an examinee who, in the opinion of the examiner, is inhibited from responding coherently to the test because of—

(i) mental or physical fatigue,

(ii) undue emotional stress or intoxication due to excessive use of alcohol, sedatives, stimulants, or tranquilizers,

(iii) addiction to narcotics,

(iv) known mental disorder, or

(v) significant physical discomfort or physical disability that, in and of itself, might cause abnormal responses during the test.

(3) POST-TEST PHASE.—During the post-test phase, the examinee—

(A) is further interviewed on the basis of the results of the test; and

(B) is provided with a written copy of—

(i) any opinion and conclusion rendered as a result of the test,

(ii) questions asked during the test, presented along with the corresponding charted responses, and

(iii) upon the request of the employee, a written description of the incident or activity in connection with which the test is administered.

(d) QUALIFICATIONS OF EXAMINER.—Such exemptions shall not apply unless the individual who conducts the lie detector test—

(1) is at least twenty-one years of age;

(2) is a citizen of the United States;

(3) is a person of good moral character;

(4) has complied with all required laws and regulations established by licensing and regulatory authorities in the State in which the test is to be conducted;

(5)(A) has successfully completed a formal training course regarding the use of lie detector tests that has been approved by the

State in which the test is to be conducted or by the Secretary of Labor; and

(B) has completed a lie detector test internship of not less than 6 months duration under the direct supervision of an examiner who has met the requirements of this section;

(6) maintains a minimum of \$50,000 bonding or an equivalent amount of professional liability coverage;

(7) uses an instrument that records continuously, visually, permanently, and simultaneously changes in the cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards;

(8) bases an opinion of deception indicated upon evaluation of changes in physiological activity or reactivity in the cardiovascular, respiratory, and electrodermal patterns on the lie detector charts;

(9) renders any opinion or conclusion regarding the test—

(A) in writing and solely on the basis of an analysis of the lie detector charts;

(B) which does not contain information other than admissions, information, case facts, and interpretation of the charts relevant to the purpose and stated objectives of the test; and

(C) which does not include any recommendation concerning the employment of the examinee;

(10) does not conduct and complete more than 6 lie detector tests on the calendar day on which the test is given and does not conduct any such test for less than a 90-minute duration; and

(11) maintains all opinions, reports, charts, written questions, lists, and other records relating to the test for a minimum period of 2 years after administration of the test.

SEC. 8. DISCLOSURE OF INFORMATION.

(a) IN GENERAL.—A person, other than the examinee, may not disclose information obtained during a lie detector test, except as provided in this section.

(b) PERMITTED DISCLOSURES.—A polygraph examiner, polygraph trainee, or employee of a polygraph examiner may disclose information acquired from a lie detector test only to—

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the employer that requested the test; or

(3)(A) any person or any governmental agency that requested the test, or

(B) any person, as required by due process of law, who obtained a warrant to obtain such information in a court of competent jurisdiction.

(c) DISCLOSURE BY EMPLOYER.—An employer (other than an employer covered under section 6(a), 6(b), or 6(c), for whom a lie detector test is conducted may disclose information from the test only to a person described in subsection (b).

Page 8, strike lines 16 through 22, and insert the following:

(1) the term "lie detector test" includes—

(A) any examination involving the use of any polygraph, deception, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical or electrical) which is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty of an individual; and

(B) the testing phases described in paragraphs (1), (2), and (3) of section 7(c);

Page 9, line 2, strike "and".

Page 9, line 5, strike the period and insert a semicolon.

H 9580

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

Page 9, after line 5, insert the following new subsections:

(4) the term "relevant question" means any lie detector test question which pertains directly to the matter under investigation with respect to which the examinee is being tested; and

(5) the term "technical question" means any control, symptomatic, or neutral question which, although not relevant, is designed to be used as a measure against which relevant responses may be measured.

Mr. GUNDERSON (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc, considered as read, and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

(Mr. GUNDERSON asked and was given permission to revise and extend his remarks.)

Mr. GUNDERSON. Mr. Chairman, the amendment that is now before the House is an amendment that is being offered by myself and the gentleman from Texas [Mr. STENHOLM] jointly. This amendment will provide and allow the use of the polygraph for investigative testing of current employees.

I want to make it very clear that what we are trying to do with this particular amendment is respond both to the legitimate needs of American business and industry and at the same time deal with the overuse and abuse of the polygraph.

How do we do that? First of all, at least 75 percent of all polygraph tests in this country are used for preemployment screening. I think most people will agree that perhaps the biggest concern over the polygraph is that it is used so extensively in preemployment screening, the polygraph is first, intimidating; and, No. 2, it tends to be the sole determinant of whether the job applicant is or is not hired or offered that job. Yet, as we go through the long litany of concerns here today, we talk about the climb of the exam's use in business.

The amendment before us, as I indicated, tries to respond to the particular concerns that I think many people have raised with regard to this legislation that is now before us. The amendment does so in a way that does not handicap or absolutely handcuff the ability of business and industry in this country to deal with the legitimate threat of internal theft and crimes within industry in this country. First of all there is great concern about whether or not the polygraph examination is ever accurate. I will point out that the scientific evidence clearly suggests, and the Office of Technology Assessment study indicates that the polygraph shows meaningful scientific evidence of validity when it is focused in the area of investigations of specific criminal activity.

That is exactly what this amendment focuses upon doing.

□ 1820

In addition to that, the amendment assures the fair conduct of polygraph testing by providing strict regulations on such testing that will guarantee that any polygraph examination that is used under this act will protect not only the rights of the employer but equally the rights of the employee.

So the legislation before us is what I would call the perfect middle ground. No. 1, it eliminates the abuse, No. 2, it eliminates the majority of the exams. Over 75 percent of the exams would be eliminated or not allowed with this particular amendment, and yet it also would be consistent with current government policies—saying if we are going to allow the use of the polygraph in specific incidents and specific cases here within the Federal Government, we would do the same in the private sector.

Mr. Chairman, I want to point out to my colleagues in closing that this amendment probably has broader support from the outside community than any other amendment that has been offered earlier today or will be offered from here on out. It is endorsed by the American Retail Federation which consists of 24 different groups, by the National Mass Retailing Institute, the Food Marketing Institute, the National Grocers Association, the National Association of Chain Drug Stores, and the National Retail Merchants Association.

I would also point out to my colleagues on the other side of the aisle that they should be aware that many people in the other body, including Senator KENNEDY, believe that this approach may be the proper middle ground. It bans the use of the polygraph for preemployment testing, but it clearly allows the use of the polygraph, not as the sole tool, but as one of many investigatory tools once a person is on the job, there is a specific incident, where that person is under reasonable suspicion, and yes, only when that person has a work history already on board.

I would encourage my colleagues to accept and support this particular amendment. It will make the legislation in front of us much, much better.

I would also suggest it would enhance the chances of enactment a great deal.

Mr. STENHOLM. Mr. Chairman, I move to strike the last word, and I rise in support of the amendment.

(Mr. STENHOLM asked and was given permission to revise and extend his remarks.)

Mr. STENHOLM. Mr. Chairman, I rise in support of this amendment and strongly urge my colleagues to vote for the Gunderson-Stenholm amendment.

If my colleagues are looking today for an amendment that is moderate and measured, that takes a thoughtful and circumspect approach, that maximizes the potential for beneficial polygraph testing while preventing abuses

and careless procedures, this, Mr. Chairman, is that amendment.

Far from offering a simple, hostile amendment, we are proposing changes that solve many of the problems created by the shotgun approach taken by H.R. 1212 and more than adequately address the problems that motivated the underlying bill. I commend my friend, STEVE GUNDERSON, for his hard work and his thoroughness in developing this amendment.

This amendment removes the randomness that the bill's supporters have attacked. We would allow testing that relates only to a specific incident of theft, criminal activity, or other misconduct, and would affect only those employees under reasonable suspicion of involvement.

In other words, rather than use as a prehire, screening device, our amendment focuses on testing as an investigative device relating only to current employees. Moreover, Congress' own Office of Technology Assessment has found that the accuracy and reliability of polygraph testing increases markedly with incident-specific applications.

And there are ample regulatory protections in our amendment to prevent the investigative device from going too far.

First, irrelevant personal questions are prohibited, such as those relating to religious, political, union, or other affiliation. All questions must pertain to the misconduct being investigated.

Employees would be counseled in advance on exactly what questions would be asked, what procedure would be used, and how the testing equipment works.

Employees would be provided immediately with a copy and discussion of test results and guaranteed complete confidentiality.

To guarantee that all testing is done in a thorough and deliberate manner, each test must last at least 90 minutes and no more than six tests could be administered in a single day by an examiner.

Finally, unlike H.R. 1212, which arbitrarily second-guesses those State legislatures that do not find a total polygraph ban to be in the public interest, the Gunderson-Stenholm amendment is a minimum standard—and a high-minimum standard, at that—and would not preempt States from enacting stricter laws.

This amendment goes much more than halfway toward meeting the concerns raised by supporters of H.R. 1212. At the same time, it would do much to allow the reasonable and constructive use of polygraph tests to continue protecting the property and personal safety of innocent individuals.

Mr. GRANDY. Mr. Chairman, I move to strike the requisite number of words and I rise in support of the amendment.

Mr. Chairman, this is the only amendment that I intend to support today, and I would like to speak to

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9581

those colleagues who are inclined to perhaps be somewhat questionable about the outcome of H.R. 1212, who are concerned about the polygraph from the worker point of view and from the businessman's point of view.

It seems to me this is the only amendment that strikes a balance. Prior to my addressing the Chamber, Mr. Chairman, a Member asked does this amendment penalize the worker in any way. One only has to read as far as line 3 to see that the employer must request an employee to submit to a test.

A Member asked me does this mean he will be fined if he does not. It does not mean that. The employee is protected here.

But I would say this: The American Medical Association, which does not support Young-Darden, which supports H.R. 1212, has said that it will not support the polygraph in industry or in the Federal agencies as a preemployment test.

In the same article it said the following: "Criminal investigations has often benefited from polygraph usage because the investigator can focus on the incident in question, using it as the basis for selecting relevant and controlled questions in the application of the test, in the full knowledge that the detection of deception will not be absolutely accurate." Nobody is arguing that it will be, but it is closer to accuracy than we will come otherwise. It is a management tool, one among many.

I encourage colleagues that have not supported any of the amendments and will continue to vote against the exemptions to vote for Gunderson-Stenholm. It provides an option to serve your business constituency and to not compromise the civil rights of American workers.

Mr. WILLIAMS. Mr. Chairman, I rise in opposition to the amendment.

My colleagues, let us be certain as to what this amendment does. It allows every employer in the United States to require their employee to take a lie detector test when that employee says that there has been some incident or other in that business.

Mr. GUNDERSON. Mr. Chairman, will the gentleman yield on that point?

Mr. WILLIAMS. I yield to the gentleman from Wisconsin.

Mr. GUNDERSON. Mr. Chairman, I am only going to ask the gentleman to read lines 2 and 3. That is absolutely not correct. "This amendment shall not prohibit an employer from requesting an employee to submit to a lie detector test." There is absolutely no mandate in this amendment. That is very, very important, and I appreciate the gentleman yielding.

Mr. WILLIAMS. Let me ask the author of the amendment, in case I misread his amendment, first, if he disagrees that this covers every single employee in the United States postincident?

Mr. GUNDERSON. Absolutely.

Mr. WILLIAMS. It does cover every employee in the United States?

Mr. GUNDERSON. If there is an incident; and there is no random testing. There has to be a specific crime.

Mr. WILLIAMS. In every industry with no exceptions?

Mr. GUNDERSON. That is correct.

Mr. WILLIAMS. Then I have a second question.

Mr. GUNDERSON. With one exception, if the gentleman will yield, with one exception. We do not preempt any State laws. Do not forget there are 41 States that have adopted their own legislation.

Mr. WILLIAMS. Yes; that has been true in every amendment that has been offered, of course. So what the gentleman is taking exception to is my indication that an employer can mandate the test to the employee?

The employee can say I will not take the test. Does the gentleman's amendment then protect that employee's job?

Mr. GUNDERSON. Sure it does, because we do not allow the lie detector to be the sole determinant. Therefore a refusal to take a lie detector test cannot be the basis on which one is dismissed.

Mr. WILLIAMS. I do not see the language where the gentleman disallows an employer from firing an employee who refuse to take the test.

Mr. GUNDERSON. The gentleman can certainly see the language on sole determinant because that is on page 2, and it states that the test may not be the sole basis for adverse employment action. It also puts the burden of proof on the employer.

Mr. WILLIAMS. I appreciate the gentleman's explanation.

So let us understand it now, an employer can request, mind you, of their employee, every employee in America, request them to take the lie detector test on any incident. The incident, mind you, does not have to be reported to the police. The incident, in fact, does not have to involve loss or injury to the employer, only potential loss or injury.

So do my colleagues see what is happening? Every employer in America, if this passes, can claim an incident has happened. They do not have to report it to the police. It does not have to become an official act on the part of the employer. They do not even have to demonstrate that the incident took place or that it created a loss to the employer, but they can say we would like you to volunteer. I admit the gentleman has that in the amendment, we would like you all to volunteer to take this lie detector test.

Would my colleagues want to be the one employee in America that does not agree to volunteer?

This opens this bill as wide, wider, than any amendment which has yet been offered, and I urge my colleagues to oppose it.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Wisconsin (Mr. Gunderson).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. GUNDERSON. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 197, noes 220, not voting 16, as follows:

[Roll No. 411]

AYES—197

Anderson	Hansen	Parris
Archer	Hastert	Pashayan
Badham	Hatcher	Patterson
Baker	Hayes (LA)	Petri
Bellenger	Hefley	Pickett
Barnard	Henry	Porter
Bartlett	Herger	Pursell
Barton	Hiler	Quillen
Bateman	Holloway	Ravanel
Bentley	Hopkins	Ray
Bereuter	Houghton	Regula
Bilirakis	Hubbard	Rhodes
Billey	Huckaby	Ritter
Boulter	Hughes	Roberts
Broomfield	Hunter	Rogers
Buechner	Hutto	Roth
Bunning	Hyde	Roukema
Burton	Inhofe	Rowland (GA)
Byron	Ireland	Saiki
Callahan	Jeffords	Saxton
Campbell	Johnson (CT)	Schaefer
Chandler	Jones (NC)	Schuette
Chapman	Jones (TN)	Schulze
Chappell	Kasich	Sensenbrenner
Cheney	Kolbe	Shaw
Clarke	Konnyu	Shumway
Clinger	Kyl	Shuster
Coats	Lagomarsino	Sislaky
Coble	Lancaster	Skeen
Coleman (MO)	Latta	Slaughter (VA)
Combest	Leath (TX)	Smith (ME)
Cooper	Lent	Smith (TX)
Courter	Lewis (CA)	Smith, Denny
Craig	Lewis (FL)	(OR)
Dannemeyer	Lightfoot	Smith, Robert
Darden	Livingston	(NH)
Daub	Lloyd	Smith, Robert
de la Garza	Lott	(OR)
DeLay	Lowery (CA)	Solomon
Derrick	Lujan	Spence
DeWine	Luken, Thomas	Spratt
Dickinson	Lukens, Donald	Stangeland
DioGuardi	Lungren	Steinhilber
Dorgan (ND)	Mack	Stratton
Dornan (CA)	MacKay	Stamp
Dreier	Madigan	Sundquist
Durbin	Marienne	Sweeney
Edwards (OK)	Martin (IL)	Swindall
Emerson	Martin (NY)	Tallon
English	McCandless	Tauzin
Fawell	McCollum	Taylor
Fields	McCurdy	Thomas (CA)
Fish	McEwen	Thomas (GA)
Frenzel	McGrath	Upton
Galleghy	McMillan (NC)	Valentine
Gallo	Mica	Vander Jagt
Gekas	Michel	Volkmer
Gingrich	Miller (OH)	Vucanovich
Goodling	Molinari	Walker
Gradison	Montgomery	Weber
Grandy	Moorhead	Weldon
Grant	Morrison (WA)	Whittaker
Gregg	Nelson	Wolf
Gunderson	Nichols	Wortley
Hall (OH)	Nielson	Wylie
Hall (TX)	Oxley	Young (FL)
Hammerschmidt	Packard	

NOES—220

Ackerman	AuCoin	Boland
Akaka	Bates	Bonior
Alexander	Bellenson	Bonker
Andrews	Bennett	Borski
Annunzio	Berman	Bosso
Anthony	Bevill	Boucher
Applegate	Bilbray	Boxer
Aspin	Boehert	Brennan
Atkins	Boggs	Brooks

H 9582

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

Brown (CA)	Horton	Price (IL)
Bruce	Hoyer	Price (NC)
Bryant	Jacobs	Rahall
Bustamante	Jenkins	Rangel
Cardin	Johnson (SD)	Richardson
Carper	Jontz	Ridge
Carr	Kanjorski	Rinaldo
Clay	Kastenmeier	Robinson
Coelho	Kennedy	Rodino
Coleman (TX)	Kennelly	Roe
Collins	Kildee	Rose
Conte	Kiecicka	Rostenkowski
Conyers	Kolter	Rowland (CT)
Coyne	Kostmayer	Roybal
Crockett	LaFalce	Russo
Davis (IL)	Lantos	Sabo
Davis (MI)	Leach (IA)	Savage
DeFazio	Lehman (CA)	Sawyer
Dellums	Lehman (FL)	Scheuer
Dicks	Leland	Schneider
Dingell	Levin (MI)	Schumer
Dixon	Levine (CA)	Shays
Donnelly	Lewis (GA)	Sikorski
Dowdy	Lowry (WA)	Skaggs
Downey	Manton	Skelton
Dwyer	Markey	Slattery
Dymally	Martinez	Slaughter (NY)
Dyson	Matsui	Smith (FL)
Early	Mavroules	Smith (IA)
Eckart	Mazzoli	Smith (NJ)
Edwards (CA)	McCloskey	Snowe
Erdreich	McDade	Solarz
Espy	McHugh	St Germain
Evans	McMillen (MD)	Staggers
Fascell	Meyers	Stallings
Fazio	Mfume	Stark
Feighan	Miller (CA)	Stokes
Flake	Miller (WA)	Studds
Flippo	Mineta	Swift
Florio	Moakley	Synar
Foglietta	Mollohan	Tauke
Foley	Moody	Torres
Ford (MI)	Morella	Torricelli
Ford (TN)	Morrison (CT)	Towns
Frank	Mrazek	Traficant
Frost	Murphy	Traxler
Garcia	Murtha	Udall
Gaydos	Myers	Vento
Gedjenson	Nagle	Visclosky
Gibbons	Natcher	Walgren
Gilman	Neal	Watkins
Glickman	Nowak	Waxman
Gonzales	Oakar	Weiss
Gordon	Oberstar	Wheat
Gray (IL)	Obey	Whitten
Gray (PA)	Olin	Williams
Green	Ortiz	Wilson
Guarini	Owens (NY)	Wise
Hamilton	Panetta	Wolpe
Harris	Pease	Wyden
Hawkins	Pelosi	Yates
Hayes (IL)	Penny	Yatron
Hefner	Pepper	Young (AK)
Hertel	Perkins	
Hochbrueckner	Pickle	

NOT VOTING—18

Army	Duncan	Owens (UT)
Biaggi	Gephardt	Roemer
Brown (CO)	Howard	Schroeder
Coughlin	Kaptur	Sharp
Crane	Kemp	
Daniel	Lipinski	

□ 1835

Mr. TALLON changed his vote from "no" to "aye."

So the amendments were rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. BARTLETT

Mr. BARTLETT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BARTLETT: On page 7, line 1, strike "United States Government," and insert in lieu thereof the following: "United States Government, except for the Congress of the United States insofar as it is engaged in functions not directly related to national security as determined by such Congress."

□ 1900

The sponsor of the bill, however, had not included that prohibition of Congress in his original bill. So the House by its vote tonight will be able to include the prohibition of the use of the polygraph on Congress as an employer, just the same as we would prohibit all other employers in the country from using the polygraph.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. BARTLETT. I yield to the gentleman from Pennsylvania, who originally brought this subject to the attention of the House.

Mr. WALKER. Mr. Chairman, I thank the gentleman for yielding.

Do I understand correctly now that if we pass the bill in the form that it is

Mr. ACKERMAN (during the reading). Mr. Chairman, I reserve the right to object.

Mr. BARTLETT. Mr. Chairman, a point of order. There is no unanimous-consent request before the House.

Mr. ACKERMAN. Mr. Chairman, I make a point of order that the amendment is not germane.

The CHAIRMAN. The gentleman's request will be addressed at the proper time as soon as the Clerk has reported the amendment.

The Clerk will read.

The Clerk concluded the reading of the amendment.

Mr. ACKERMAN. Mr. Chairman, I reserve a point of order on the amendment.

Mr. BARTLETT. Mr. Chairman, I offer an amendment that would essentially unexempt Congress as an employer from the exemption that is in this bill. This bill provides a prohibition of the use of polygraph examinations in all cases for all employers in private industry within this bill, in all cases whether it is preemployment or postemployment.

This bill however exempts Congress as an employer and would say—the irony of the bill today is that it would say that even though we would prohibit nursing home operators from using a polygraph examination as a screening tool or as a determinate device, even though we would prohibit other industries in other sensitive areas from the same thing, such as day care centers and others, we would continue to permit Congress as an employer to use a polygraph in preemployment screening and in post-employment-incident testing.

Now this issue came up earlier in the debate and it was during the debate that several examples of polygraphs that are used by Congress as an employer were interjected into the debate, at which point the sponsor of the legislation, the very honorable gentleman from Montana, announced that he would support the inclusion of Congress in this prohibition so as to prohibit Congress also from using the polygraph.

at present, we will be specifically saying that while employers cannot use polygraph techniques, we in Congress will be able to continue to use them just as we are now using them in the Capitol Police force in order to interview applicants and check their applications? Is that the gentleman's understanding?

Mr. BARTLETT. Mr. Chairman, the gentleman is correct. Indeed we could and no doubt would continue to use the polygraph in the House restaurant system, in our offices, and for committee staff and for other locations.

Mr. WALKER. Mr. Chairman, will the gentleman yield further?

Mr. BARTLETT. I yield further to the gentleman from Pennsylvania.

Mr. WALKER. So we will have made a decision as a Congress that nursing home operators cannot use it, but in our House restaurant system or in our Capitol Police force we can use it. It will be one more case where the hypocrisy of Congress would be very evident, that we require of others that which we are not willing to do on our own?

Mr. BARTLETT. Mr. Chairman, the gentleman is correct.

Mr. WALKER. Mr. Chairman, I find that most disturbing, and I find it very disturbing based upon the discussion that the gentleman mentioned, that we would now have a point of order raised against this amendment, because what we have now is another situation where, while during debate the sponsors of the legislation indicate, "Oh, yes, that sounds like a wonderful idea," they have this nice little gimmick of points of order, and the majority then comes back and says, "Oh, but I'm sorry, you can't offer that particular amendment."

I find it very disturbing that we will find ways to make certain that Congress is exempted from that which we are requiring of the rest of the country.

Mr. BARTLETT. The gentleman is correct. I have served on the Education and Labor Committee now for 5 years, and what happens is that when we have a bill in Congress that applies to employers, either I or someone on the committee offers an amendment to apply that provision to Congress as an employer, and that amendment is ruled nongermane because it is not within our committee's jurisdiction.

So we bring the bill onto the floor, and when that amendment is within the jurisdiction of the Congress as a whole, then we are told, "No, you can't offer that amendment because it has to go through the committee." So it is not germane in the committee because it has not gone to the floor, and it is not germane on the floor because it has not gone to the committee.

The gentleman is correct. This is not the first time that has happened. It is a catch-22 kind of trick to make sure that Congress exempts itself from all the laws we pass for everyone else.

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9583

Mr. WALKER. Mr. Chairman, will the gentleman yield further?

POINTS OF ORDER

Mr. FORD of Michigan. Mr. Chairman, I have a point of order.

The gentlemen are engaged in their own colloquy over there. They are not addressing the point of order.

The CHAIRMAN. The gentleman from Michigan [Mr. Ford] will state his point of order.

Mr. FORD of Michigan. Mr. Chairman, the gentlemen are out of order. They are not addressing the point of order. They are having an interesting discussion on the practices and procedures of the House.

The CHAIRMAN. The gentleman has failed to note that no point of order has been interjected.

Mr. FORD of Michigan. Mr. Chairman, the point of order has been reserved, and the gentleman was asked to explain his language.

The CHAIRMAN. The gentleman from Texas [Mr. BARTLETT], the author of the amendment, has yielded to the gentleman from Pennsylvania [Mr. WALKER] during his 5-minute explanation of the amendment.

Mr. FORD of Michigan. The Chair does not recognize that there is a reservation of a point of order pending at this time?

The CHAIRMAN. The gentleman from New York [Mr. ACKERMAN] is standing on his feet with his reservation. Nevertheless he has not interposed a point of order as yet. He has merely reserved a point of order.

Mr. BARTLETT. Mr. Chairman, given the hour, I yield back the balance of my time.

The CHAIRMAN. The gentleman from Texas [Mr. BARTLETT] yields back the balance of his time, and the Chair will inquire, does the gentleman from New York [Mr. ACKERMAN] still wish to reserve his point of order?

Mr. ACKERMAN. Mr. Chairman, I will state my point of order.

The CHAIRMAN. The Chair will hear the gentleman.

□ 1905

Mr. ACKERMAN. Mr. Chairman, I wish to pursue my point of order.

It appears to me that the amendment is not germane, because it broadens the scope of the coverage to Government employees; and at the present time, the bill only covers the private sector.

The CHAIRMAN. Has the gentleman concluded his statement?

Mr. ACKERMAN. It is as simple as that, Mr. Chairman.

The CHAIRMAN. Does the gentleman from Texas wish to be heard on the point of order?

Mr. BARTLETT. Mr. Chairman, I do wish to be heard on the point of order.

Mr. Chairman, I would cite in the rules of the House in section 10.10 on page 579 the rule of the House that states the following:

"To a bill extending benefits to a certain class of employees, an amend-

ment to extend those benefits to an additional category of employees within that class is germane"—is germane.

Mr. Chairman, my amendment takes the bill which extends to a class of employees which is cited in the definition in the bill on page 8, line 23, defining the term "employer" as all employers.

The sponsor of the bill listed the language directly out of the Fair Labor Standards Act amendments which includes all employers in this country, public and private alike.

I then would extend under rule 10.10 an amendment to extend those benefits to an additional category of employees within the class that is contained in the bill.

Mr. Chairman, I have an additional point as to why the amendment is in order in addition to the first one in this form; and that is that this amendment is to section 6, the exemptions.

The bill has established a class of employees of all employees, and then exempted all Government employees from that class.

I would then very narrowly remove a portion of the exemption as the category within the class that is being exempted, so if the bill exempts all Government employees, then the Congress can remove part of that exemption.

Either the exemption section is out of order, or my amendment is out of order.

Mr. WALKER. Mr. Chairman, I wish to be heard on the point of order.

The CHAIRMAN. Does the gentleman from New York wish to be heard further on the point of order?

Mr. ACKERMAN. Mr. Chairman, the operative words that we just heard here were not employees but rather "class of employees."

As described in the proposed legislation, the class pertains to private-sector employees, thereby exempting the entire class of public-sector employees.

Mr. WALKER. Mr. Chairman, I wish to be heard on the point of order.

The CHAIRMAN. The gentleman from Pennsylvania is recognized for that purpose.

Mr. WALKER. Mr. Chairman, I would hope the point of order would not be sustained.

If the Chair will examine the bill, the Chair will find in section 6 of the bill that there is indeed an exemption for all Government employees, and this was done to make certain the bill was sent only to the Committee on Education and Labor.

On page 7 of the bill, the Chair would find under part (2), (A)(1) any individual employed by, or assigned or detailed to, the National Security Agency or the Central Intelligence Agency; and in the bill itself they begin the process of defining certain Government employees.

The only people who can be employed by or particularly detailed are a class of certain Government employees, so in this bill we have defined cer-

tain Government employees that we single out for special treatment.

All the gentleman from Texas is doing is singling out another group of people who the gentleman is saying should not be exempted, so therefore, because the bill was broadened by the language on page 7, it is this gentleman's interpretation that the Chair should rule against the point of order raised by the gentleman from New York, because the bill already classifies Government employees in the same way that the gentleman from Texas seeks to classify Government employees.

The CHAIRMAN. Does the gentleman from New York wish to further discuss the point of order?

Mr. ACKERMAN. Mr. Chairman, I call for the ruling of the Chair.

The CHAIRMAN. The Chair will inform the gentleman from New York that that is within the discretion of the Chair, and the Chair is most anxious to get all aspects of the arguments on the point of order.

Does the gentleman from Texas wish to be heard further?

Mr. BARTLETT. Mr. Chairman, I rely on the fairness of the Chair, and the fairness of my fellow Texan.

What constitutes a class, I call to the Chair's attention page 3, section 3, lines 2 and 3 of the bill, in which the bill clearly establishes the class of employers that are covered.

The class of employers that are covered is established by the following one sentence:

"It shall be unlawful for any employer engaged in commerce or in the production of goods for commerce . . ."

The bill then later narrows, or takes that class and removes one category of that class. Therefore, my amendment is in order, because it applies to the same class that the bill covers; that is, any employer engaged in commerce or in the production of goods for commerce.

I rest on the Chairman's good judgment.

The CHAIRMAN. Does the gentleman from New York have any additional remarks by way of argument?

Mr. ACKERMAN. We await the decision of the Chair.

The CHAIRMAN (Mr. GONZALEZ). The Chair has carefully evaluated the arguments, having anticipated the same, and wishes to state that with reference to the citation that the gentleman from Texas [Mr. BARTLETT] referred to, section 10.10 chapter 28 of the Procedures in the House, the gentleman did not emphasize, and the Chair will read, "to a bill extending benefits to a certain class of employees, an amendment to extend those benefits to an additional category of employees within that class is germane."

Obviously, the Chair cannot select a narrow reading of one part of the bill, as the gentleman from Texas has just

H 9584

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

done, but must consider the bill as a whole.

In doing so, we find that both the thrust of the bill, as well as the report accompanying the bill explaining the bill, clearly define the range and scope of coverage to the private sector.

In the case of exemptions as put forth on page 14 of the report, section 6 exempts all governmental employers, whether Federal, State, local or a political subdivision.

This section consistent with this exemption also provides a rule of construction with respect to private-sector employers doing counterintelligence or intelligence work with the CIA, DOD, DOE atomic energy defense activities, FBI and NSA.

Clearly, the committee was trying to stay within the limits of its jurisdiction by attempting to legislate for the private sector employer/employee, and trying to stay within the limitations imposed by prior legislation by the Congress in which it had legislated with respect to the Defense Department, intelligence community and the like, so therefore, the Chair is prepared to rule that in light of the fact that intentionally, or unintentionally, the amendment of the gentleman from Texas [Mr. BARTLETT] would in effect do by indirection what cannot be done by direction, and therefore, is not in keeping with Jefferson's Manual and the citations following the germaneness rules, as well as Deschler's procedure, chapter 28, section 709 which clearly prohibits broadening of exemptions in cases such as this. Therefore, the Chair is compelled to sustain the point of order raised by the gentleman from New York.

Mr. WALKER. Mr. Chairman, I ask unanimous consent that the amendment of the gentleman from Texas be made in order.

Mr. ACKERMAN. Mr. Chairman, I object.

Mr. WALKER. Could the Chair state who made the objection?

Mr. ACKERMAN. Mr. Chairman, on the basis that the decision was left at the discretion of the Chair, and I would not allow anything that I can do while I am on my feet to impinge upon the discretion of the Chair as has been granted to the Chair, I will object.

The CHAIRMAN. Objection is heard to the unanimous consent request.

Are there other amendments to section 6?

AMENDMENT OFFERED BY MRS. VUCANOVICH

Mrs. VUCANOVICH. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mrs. VUCANOVICH: Page 8, after line 13, add the following new subsection:

(d) EXEMPTION FOR FINANCIAL INSTITUTIONS.—(1) Subject to paragraph (3), this Act shall not prohibit the use of a lie detector test or employees or prospective employees of a financial institution (as such term is defined in section 5312(a)(2) of title 31, United States Code, and as further defined in section 103.11(g) of title 31 of the Code of

Federal Regulations as in effect on the date of the enactment of this Act).

(2) The exemption provided under paragraph (1) shall not diminish an employer's obligation to comply with—

(A) applicable State and local law, and
(B) any negotiated collective bargaining agreement, which limit or prohibit the use of lie detector tests on such employees.

(3) The exemption provided under this subsection shall not apply if the results of an analysis of lie detector charts are used as the sole basis upon which an employee or prospective employee is discharged, dismissed, disciplined in any manner, or denied employment or promotion. Nothing in this paragraph shall be construed to prohibit the temporary reassignment of any employee for such period as is necessary for a speedy and thorough investigation concerning potential criminal activity with involves the operations of the employer.

Mrs. VUCANOVICH (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Nevada?

There was no objection.

Mr. MARTINEZ. Mr. Chairman, I ask unanimous consent to limit the debate on this amendment to 10 minutes, 5 minutes on each side.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. DELAY. Mr. Chairman, I object. The CHAIRMAN. Objection is heard.

The gentlewoman from Nevada [Mrs. VUCANOVICH] is recognized for 5 minutes.

Mrs. VUCANOVICH. Mr. Chairman, my amendment is simple—to exempt financial institutions from restrictions against the use of polygraphs, with "financial institution" being defined as under title 31 of the United States Code, section 5312(a), subject to currency transaction regulations as further defined under 31 Code of Federal Regulations, part 103.

As we all know, the reporting requirements for these financial institutions are very strict, and failure to comply or errors in reporting subject the institution to severe civil and criminal penalties. For this reason, it is critical that these financial institutions be exempt from the ban against polygraphs. Without the use of the polygraph, they are at tremendous risk. It is essential that employees who handle large sums of money make the transaction properly. There is a terrific burden on financial institutions, and their accountability is vital.

One of the purposes of the strict currency reporting regulations for financial institutions is to help track down drug traffickers. In the last congress we reinforced this goal when we passed the Omnibus Drug Enforcement Act of 1986, which strengthened the currency reporting provisions.

Financial institutions handle enormous sums of money every day, and many people have access to these

funds. Embezzlement and internal fraud cause billions of dollars in losses each year. In fact, the losses amount to more than losses from robberies, burglaries, and larcenies combined. Use of the polygraph as an investigative tool is absolutely essential to these entities.

This amendment is critical to constituents in each and every one of our districts. Do you have loan or finance companies in your district? Is there a Western Union office there? A Jeweler? The polygraph can make the difference in whether or not they stay in business.

The toll extracted due to internal theft in these businesses is great. These losses cause many businesses to close their doors, resulting in unemployment for many workers. The losses are also reflected in higher costs for consumers, as employers raise prices on goods and services to recoup their losses.

Unquestionably, there are places and occasions where polygraph testing is vital. This body officially acknowledged its legitimacy in the last Congress and again more recently when we overwhelmingly endorsed the use of polygraph testing for national security purposes.

We cannot acknowledge the usefulness—the essential role of polygraph testing as a legitimate and effective tool for the Government to use, and yet deny its credibility and efficacy for the private sector. Obviously, the polygraph test has a proper place in both Government and private business.

□ 1920

Mr. WILLIAMS. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this is a rewrite of an amendment that just a couple hours ago the House rejected by a vote of 184 to 237, only this time the exemption is even wider than the exemption that the House has already rejected.

The gentlewoman's amendment refers to financial institutions as defined in section 5312(a)(2) of title 31 of the United States Codes. Let me share with the House the definition of financial institutions under that section:

All insured banks, all commercial banks, all trust companies, all private banks, all thrift institutions, all brokers or dealers in securities, all operators of credit card systems, all insurance companies, all pawn brokers, all loan companies, all travel agencies, all telegraph companies.

Those are the definitions of a financial institution.

The gentlewoman also refers to a certain regulation of law which includes all casinos or gambling casinos. This amendment would include every person in the United States literally who works in a financial institution, including pawn brokers, insurance companies, and people that make credit cards.

This is an extremely broad amendment and one which myself and the committee wholeheartedly oppose.

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9585

Mr. ST GERMAIN. Mr. Chairman, I move to strike the last word. I rise in opposition to the amendment.

Mr. Chairman, this amendment when compared to the amendment that was previously defeated that had reference to federally insured financial institutions, that was bad enough, but my God, here we are going to impose this upon branches of foreign banks. They are not federally insured.

I mean, I cannot believe the scope of this amendment. Very frankly, in keeping with the consideration of the gentleman from Texas [Mr. BARTLETT] earlier when he recognized the hour, I would say this amendment is one whose hour has not arrived and it should be summarily dismissed, as was done with the previous amendment referring to financial institutions.

Mr. Chairman, I would call for a "no" vote on this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Nevada [Mrs. VUCANOVICH].

The amendment was rejected.

AMENDMENT OFFERED BY MR. DELAY

Mr. DELAY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DELAY: Page 8, after line 13, insert the following new subsections:

(d) EXEMPTION FOR SERVICES CONDUCTED IN PERSONAL RESIDENCES.—This Act shall not prohibit the use of a lie detector test by an employer whose business consists of providing services in private residences and whose employees obtain access to such residences, to the extent that—

(1) such use is consistent with—

(A) applicable State and local law, and

(B) any negotiated collective bargaining agreement,

that explicitly or implicitly limits or prohibits the use of lie detector tests by such employer;

(2) the test is administered only to employees who have, or prospective employees who would have, reasonable access to the private residence of any customer of the employer; and

(3) the results of an analysis of lie detector charts are not used as the sole basis upon which any employee or prospective employee is discharged, dismissed, disciplined in any manner, or denied employment or promotion.

Mr. DELAY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

[Mr. DELAY addressed the Committee. His remarks will appear hereafter in the Extensions of Remarks.]

The CHAIRMAN. The time of the gentleman from Texas has expired.

The question is on the amendment offered by the gentleman from Texas [Mr. DELAY].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. DELAY. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 147, noes 268, not voting 18, as follows:

[Roll No. 412]

AYES—147

Archer	Hansen	Pickett
Arney	Hastert	Porter
Badham	Hatcher	Quillen
Baker	Hefley	Ravenel
Ballenger	Herger	Ray
Bartlett	Hiller	Rhodes
Barton	Holloway	Roberts
Bateman	Hopkins	Rogers
Bennett	Hubbard	Roth
Bereuter	Hunter	Rowland (GA)
Bilirakis	Hutto	Salki
Bliley	Hyde	Saxton
Boulter	Inhofe	Schaefer
Broomfield	Ireland	Schuette
Bryant	Kasich	Schulze
Bunning	Konnyu	Sensenbrenner
Burton	Kyl	Shaw
Byron	Lagomarsino	Shumway
Callahan	Latta	Shuster
Chandler	Leath (TX)	Skeen
Chappell	Lewis (FL)	Slaughter (VA)
Cheney	Lightfoot	Smith (NE)
Coats	Livingston	Smith (TX)
Coble	Lott	Smith, Denny
Combust	Lowery (CA)	(OR)
Craig	Lujan	Smith, Robert
Dannemeyer	Lukens, Donald	(NH)
Darden	Lungren	Smith, Robert
Daub	Mack	(OR)
de la Garza	Madigan	Solomon
DeLay	Marlenee	Spence
DeWine	Martin (IL)	Stangeland
Dickinson	Martin (NY)	Stenholm
DioGuardi	McCandless	Stump
Dornan (CA)	McColium	Sundquist
Dreier	McEwen	Sweeney
Edwards (OK)	McMillan (NC)	Swindall
Emerson	Meyers	Tauzin
Fawell	Mica	Taylor
Fields	Michel	Thomas (CA)
Frenzel	Miller (OH)	Thomas (GA)
Galleghy	Montgomery	Valentine
Gekas	Morrison (WA)	Vander Jagt
Gingrich	Myers	Vucanovich
Goodling	Nelson	Walker
Gradison	Nichols	Weldon
Grant	Oxley	Whittaker
Hall (OH)	Packard	Wolf
Hall (TX)	Parris	Wylie
Hammerschmidt	Pashayan	Young (FL)

NOES—268

Ackerman	Carper	Edwards (CA)
Akaka	Carr	English
Alexander	Chapman	Erdreich
Anderson	Clarke	Espy
Andrews	Clay	Evans
Annuozio	Clinger	Fascell
Anthony	Coelho	Fazio
Applegate	Coleman (MO)	Feighan
Aspin	Coleman (TX)	Fish
Atkins	Collins	Flake
AuCoin	Conte	Flippo
Barnard	Conyers	Florio
Bates	Cooper	Foglietta
Bellenson	Coughlin	Foley
Bentley	Courter	Ford (MI)
Berman	Coyne	Ford (TN)
Beverly	Crockett	Frank
Bilbray	Davis (IL)	Frust
Boehlert	Davis (MI)	Gallo
Boggs	DeFazio	Garcia
Boland	Dellums	Gaydos
Bonior	Derrick	Gejdenson
Bonker	Dicks	Gilman
Borsari	Dingell	Glickman
Bosco	Dixon	Gonzalez
Boucher	Donnelly	Gordon
Boxer	Dorgan (ND)	Grandy
Brennan	Dowdy	Gray (IL)
Brooks	Downey	Gray (PA)
Brown (CA)	Durbin	Green
Bruce	Dwyer	Gregg
Buechner	Dymally	Guarini
Bustamante	Dyson	Gunderson
Campbell	Early	Hamilton
Cardin	Eckart	Harris

Hawkins	Mfume	Sawyer
Hayes (IL)	Miller (CA)	Scheuer
Hayes (LA)	Miller (WA)	Schneider
Hefner	Mineta	Schroeder
Henry	Moakley	Schumer
Hertel	Molinar	Shays
Hochbrueckner	Mollohan	Sikorski
Horton	Moody	Siskiy
Houghton	Moorhead	Skaggs
Hoyer	Morella	Skelton
Huckaby	Morrison (CT)	Slattery
Hughes	Mrazek	Slaughter (NY)
Jacobs	Murphy	Smith (FL)
Jeffords	Murtha	Smith (IA)
Jenkins	Nagle	Smith (NJ)
Johnson (CT)	Natcher	Snowe
Johnson (SD)	Neal	Solarz
Jones (TN)	Nielson	Spratt
Jontz	Nowak	St Germain
Kanjorski	Oakar	Staggers
Kastenmeier	Oberstar	Stallings
Kennedy	Obey	Stark
Kennelly	Olin	Stokes
Kildee	Ortiz	Stratton
Kleczka	Owens (NY)	Studds
Kolbe	Panetta	Swift
Kolter	Patterson	Synar
Kostmayer	Pease	Tallon
LaFalce	Pelosi	Tauke
Lancaster	Penny	Torres
Lantos	Pepper	Torricelli
Leach (IA)	Perkins	Towns
Lehman (CA)	Petri	Trafiacant
Lehman (FL)	Pickle	Traxler
Leland	Price (IL)	Upton
Lent	Price (NC)	Visclosky
Levin (MI)	Purseil	Volkmer
Levine (CA)	Rahall	Walgren
Lewis (GA)	Rangel	Watkins
Lloyd	Regula	Waxman
Lowry (WA)	Richardson	Weber
Luken, Thomas	Ridge	Weiss
MacKay	Rinaldo	Wheat
Manton	Ritter	Whitten
Markey	Robinson	Williams
Martinez	Rodino	Wilson
Matsui	Roe	Wise
Mavroules	Rose	Wolpe
Mazzoli	Rostenkowski	Wortley
McCloskey	Roukema	Wyden
McCurdy	Rowland (CT)	Yates
McDade	Roybal	Yatron
McGrath	Russo	Young (AK)
McHugh	Sabo	
McMillen (MD)	Savage	

NOT VOTING—18

Biaggi	Gibbons	Lipinski
Brown (CO)	Howard	Owens (UT)
Crane	Jones (NC)	Roemer
Daniel	Kaptur	Sharp
Duncan	Kemp	Udall
Gephardt	Lewis (CA)	Vento

□ 1945

Mr. PORTER changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. MARTINEZ. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I yield to the gentleman from Texas [Mr. BARTLETT] for the purposes of entering into a colloquy with the gentleman from Montana [Mr. WILLIAMS].

Mr. Chairman, the gentleman from Montana [Mr. WILLIAMS] has seen a copy of the colloquy. What I would do is just read an abbreviated version of the questions and answers, Mr. Chairman, and enter the entire colloquy into the RECORD at the conclusion of that abbreviated version.

The CHAIRMAN. The Chair must advise our distinguished colleague from Texas [Mr. BARTLETT] that colloquies may not be entered in the RECORD according to the rules during

H 9586

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

deliberations in the Committee of the Whole.

Mr. BARTLETT. Mr. Chairman, I would inquire of the gentleman from Montana and would like to ask him a few questions concerning the meaning of the term lie detector as used in the bill in order to clarify what is and what is not included in the definition. I ask the gentleman if the definition of lie detector as contained in the bill before us would in any way be interpreted to include drug tests within its scope?

Mr. WILLIAMS. Mr. Chairman, will the gentleman yield?

Mr. MARTINEZ. I yield to the gentleman from Montana.

Mr. WILLIAMS. Mr. Chairman, I answer my friend from Texas by saying that if his understanding is that the modified definition of lie detector does not include tests which are administered to detect the presence or absence of a drug in a person's body, the gentleman is correct. As the gentleman knows, the original definition of lie detector was never intended to include drug testing. Nevertheless, I did not object to the amendment added in committee which further clarified that drug tests were not included within the scope of the meaning of the term lie detector.

I am not expressing an opinion on whether or not I am for drug testing, but that is not the purpose of this legislation.

Mr. BARTLETT. I thank the gentleman.

The definition still includes the term "mechanical or electrical devices." Because of that, some have argued that it could be broad enough to include routine preemployment or employment physical examinations, thus prohibiting most employers from administering such examinations. Does the definition include employment and preemployment physical examinations?

Mr. WILLIAMS. The answer is no.

Mr. BARTLETT. I thank the gentleman for the colloquy.

The CHAIRMAN. Are there further amendments to section 6?

If not, the Clerk will designate section 7.

The text of section 7 is as follows:

SEC. 7. DEFINITIONS.

As used in this Act—

(1) the term "lie detector test" includes any examination involving the use of any polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical or electrical) which is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty of an individual;

(2) the term "employer" includes an agent, independent contractor, employee, or any other person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee; and

(3) the term "commerce" has the meaning provided by section 3(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(b)).

The CHAIRMAN. Are there any amendments to section 7?

If not, the Clerk will designate section 8.

The text of section 8 is as follows:

SEC. 8. EFFECTIVE DATE.

This Act shall take effect 6 months after the date of its enactment.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. YOUNG OF FLORIDA

Mr. YOUNG of Florida. Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. Young of Florida: Strike all after the enacting clause and insert the following:

SHORT TITLE

Section 1. This Act may be cited as the "Polygraph Reform Act of 1987".

POLYGRAPH EXAMINATIONS

Sec. 2. The Fair Labor Standards Act of 1938 (29 U.S.C. et seq.) is amended—

(1) by inserting above the heading of Section 2 the following:

"TITLE I—FAIR LABOR STANDARDS";

(2) by striking out "this Act" each place it appears (other than in the first section) and inserting in lieu thereof "this title"; and

(3) by adding at the end thereof the following new title:

"TITLE II—POLYGRAPH EXAMINATIONS

"LIMITATIONS ON THE USE OF POLYGRAPH EXAMINATIONS

"Sec. 201. (a) Unless the examination is given in accordance with section 202, no employer or any other person engaged in or affecting commerce, not any agent or representative thereof may—

"(1) directly or indirectly require, request, suggest, permit, or cause any employee, agent, prospective employee, or prospective agent to take or submit to any polygraph examination for any purpose; or

"(2) use, accept, or refer to the results of any polygraph examination of any employee, agent, prospective employee, or prospective agent for any purpose.

"(3) No employer may discharge, dismiss, discipline, or deny employment or promotion to; or threaten to discharge, dismiss, discipline, or deny employment or promotion to any employee, agent, prospective employee, or prospective agent who refuses, declines, or fails to take or submit to any polygraph examination.

"(c) No employer may discharge, dismiss, discipline, or deny employment or promotion to; or threaten to discharge, dismiss, discipline, or deny employment or promotion to; an employee or applicant based solely on the opinions or conclusions of a polygraph examiner reached by analysis of the results of a polygraph examination of the employee or applicant for employment given in accordance with section 202. If a polygraph examiner concludes, based on an analysis of the results of a polygraph examination given in accordance with section 202, that an employee or applicant for employment was deceptive, the employee or applicant for employment must be provided an opportunity to rebut such conclusion.

"MINIMUM STANDARDS FOR CONDUCTING POLYGRAPH EXAMINATIONS

"Sec. 202. (a) The Secretary shall establish standards of conduct and qualifications for persons who wish to conduct polygraph examinations. The standards shall include the requirements set forth in subsections (b) through (k).

"(b) Subject to subsection (c), no polygraph examination shall be conducted by an individual unless the individual—

"(1) is at least twenty one years of age;

"(2) is a citizen of the United States;

"(3) is a person of good moral character;

"(4) has complied with all required laws, rules, and regulations established by the Secretary and other polygraph licensing and regulatory authorities in the state in which the examination is to be conducted; and

"(5)(A) has successfully completed a formal training course regarding the use of polygraphs that has been approved under (4) above or by the Secretary; and

"(B) has completed a polygraph examiner internship of at least six months duration under the direct supervision of a polygraph examiner who has met the requirements of this section.

"(c) The Secretary shall establish standards governing individuals who, on the date of enactment of the Polygraph Reform Act of 1987, are qualified to conduct polygraph examinations in accordance with applicable State law. Such standards shall not be satisfied merely because an individual has conducted a specific number of polygraph examinations in the past.

"(d)(1) When conducting a polygraph examination, a polygraph examiner may not ask a question during the actual examination unless such a question is in writing and has been reviewed with the examinee prior to such examination.

"(2) A polygraph examiner may not inquire into—

"(A) religious beliefs or affiliations;

"(B) racial beliefs or opinions;

"(C) political beliefs or affiliations;

"(D) sexual preferences or activities, unless such information regarding sexual preferences or activities is required by State law, or is directly job-related; or

"(E) beliefs, affirmations, or opinions regarding unions or labor organizations.

"(e)(1) Each prospective examinee shall be required to sign a notice before the beginning of each polygraph examination that the examinee understands—

"(A) the limitations imposed on polygraph examinations in subsection (d);

"(B) that the examinee may terminate the examination at any time; and

"(C) that the examinee has legal rights and remedies if the polygraph examination is not conducted, or the results of the examinations are not used, in accordance with this title.

"(2) Each examinee shall be provided with a written copy of any opinion or conclusion rendered as a result of the examination upon written request by the examinee and upon payment of a reasonable fee by such examinee.

"(f) A polygraph examiner may not, in any calendar day, conduct and complete more than ten polygraph examinations which are subject to the requirements of this title. A polygraph examination subject to the limitation of this subsection shall consist of a full and complete pretest interview, recording of physiological chart data, analysis of recorded chart data, and post-test interview as required. The examiner shall schedule not less than one hour to conduct an examination of an examinee as defined in this subsection.

"(g)(1) Each polygraph examiner shall—

"(A) use an instrument that records continuously, visually, permanently, and simultaneously changes in cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards; and

"(B) base an opinion of deception indicated or no deception indicated upon evaluation

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9587

tion of changes in physiological activity or reactivity in the cardiovascular, respiratory, and electrodermal patterns on the polygraph charts.

"(2) A polygraph examiner may use an instrument that records additional physiological patterns as specified in paragraph (1) and may consider such additional patterns in furnishing an opinion.

"(h) All conclusions or opinions of the polygraph examiner arising from a polygraph examination shall—

"(1) be in writing and based solely upon polygraph chart analysis;

"(2) contain no information other than admissions, information, case facts, and interpretation of the chart data relevant to the purpose and stated objectives of the examination; and

"(3) contain no recommendation regarding the prospective or continued employment of an examinee.

"(i) A polygraph examiner shall maintain all opinions, reports, charts, questions, lists, and all other records relating to the polygraph examination for a minimum of two years after administering such examination.

"(j) Any polygraph examiner conducting a polygraph examination shall acquire and maintain a minimum of \$50,000 bonding or an equivalent amount of professional liability insurance coverage.

"(k) An employer may not use voice stress analyzers, psychological stress evaluators or any other similar device for the purpose of detecting deception or verifying the truth of statements. An employer may not use or cause to be used any such device (as described in this subsection) with any employee or prospective employee interview, or use or cause to be used any recording which at any time is subjected to analysis by any voice stress analyzer, psychological stress evaluator, or any other similar device, the results of which are reported to any employer.

"DISCLOSURE OF INFORMATION

"Sec. 203. (a) A person, other than an examinee, may not disclose information obtained during a polygraph examination, except as provided in this section.

"(b) A polygraph examiner may disclose information acquired from a polygraph examination only to—

"(1) another polygraph examiner in private consultation, the examinee, or any other person or firm specifically designated in writing by the examinee;

"(2) the employer that requested the examination;

"(3) a person or governmental agency that requested the examination or others as required by due process of law who obtained a warrant to obtain such information in a court of competent jurisdiction; or

"(4) appropriately licensed or chartered polygraph licensing boards or polygraph professional associations upon written request in connection with a complaint filed against an examiner pursuant to a grievance procedure.

"(c) An employer for whom a polygraph examination is conducted may disclose information from the examination only to a person described in subsection (b).

"WAIVER OF RIGHTS PROHIBITED

"Sec. 204. The rights and procedures provided pursuant to this title may not be waived by contract or otherwise. No polygraph examiner may request an examinee to waive any such right or procedure.

"ADMINISTRATION

"Sec. 205. The Secretary shall—

"(1) issue such rules and regulations as may be necessary or appropriate for carrying out this title; and

"(2) cooperate with regional, State, local, and other agencies, and cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to carry out this title.

"RECORDKEEPING, INVESTIGATIONS, AND ENFORCEMENT

"Sec. 206. (a) The Secretary shall have the power to make investigations and require the keeping of records necessary or appropriate for the administration of this title in accordance with the powers and procedures provided in sections 9 and 11.

"(b)(1) This Act shall be enforced in accordance with the powers, remedies, and procedures provided in sections 11(b), 16 (except for subsection (a) thereof), and 17, and subsection (c).

"(2) Any act prohibited under section 201 or 202 shall be deemed to be a prohibited act under section 15.

"(3) Amounts owing to a person as a result of a violation of this title shall be deemed to be unpaid minimum wages or unpaid overtime compensation for purposes of sections 16 and 17, except that liquidated damages shall be payable only in cases of willful violations of this title.

"(4) In any action brought to enforce this title, the court shall have jurisdiction to grant such legal or equitable relief as may be appropriate to carry out this title, including judgments compelling employment, reinstatement or promotion, or enforcement of liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation under this section.

"(5) Before instituting any section under this section, the Secretary shall attempt—

"(A) to eliminate the practice or practices alleged; and

"(B) to effect voluntary compliance with the requirements of this title through informal methods of conciliation, conference, and persuasion.

"(c)(1) Subject to the limitations stated in section 207, any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this title, except that the right of any person to bring such action shall terminate on the commencement of an action by the Secretary to enforce the right of such person under this title.

"(2) In an action brought under paragraph (1), a person shall be entitled to a trial by jury with respect to any issue of fact in any such action for recovery of amounts owing as a result of a violation of this title, regardless of whether equitable relief is sought by any party in such action.

"(d)(1) No civil action may be commenced by an individual under this section until sixty days after a charge alleging a violation of this title has been filed with the Secretary.

"(2) Such a charge shall be filed—

"(A) within one hundred and eighty days after the alleged violation occurred; or

"(B) in a case to which section 207 applies—

"(i) within three hundred days after the alleged violation occurred; or

"(ii) within thirty days after receipt by the individual of notice of termination of proceedings under State law, whichever is earlier.

"(3) On receiving such a charge, the Secretary shall promptly—

"(A) notify all persons named in such charge as prospective defendants in the action; and

"(B) seek to eliminate any alleged violation by informal methods of conciliation, conference, and persuasion.

"(e)(1) Sections 6 and 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 255 and 259) shall apply to actions under this title.

"(2) For the period during which the Secretary is attempting to effect voluntary compliance with requirements of this title through informal methods of conciliation, conference, and persuasion pursuant to subsection (b), the statute of limitations as provided in section 6 of such Act shall be tolled, but in no event for a period in excess of one year.

"EFFECT OF STATE LAW

"Sec. 207. (a) It is the express intent of Congress that the States may regulate polygraph examinations in a manner that is consistent with the standards set forth in this title.

"(b)(1) Any State or political subdivision thereof which desires to develop and enforce standards for the use of polygraphs by employers and polygraph examiners may submit an administrative plan to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require. Such plan shall—

"(A) identify the State agency designated as responsible for administering the plan;

"(B) describe the standards in the administrative plan governing polygraph examiners and the use of polygraph examinations by employers;

"(C) provide assurances through a written certification that such standards, and the enforcement of such standards, will be at least as effective as the standards set out in this Act; and

"(D) explain the manner in which the standards in such plan will be administered and enforced by the State agency to assure compliance with this Act.

"(2) An administrative plan meeting the requirements of subsection (b)(1) shall be deemed approved by the Secretary.

"(3) The Secretary shall make a continuing evaluation of each administrative plan which has been approved. If the Secretary finds that a plan is not being administered in a manner that assures substantial compliance with the standards of this Act, the Secretary shall notify the State or political subdivision thereof which submitted such plan that approval of such plan is being withdrawn and, upon receipt of such notice, such plan shall cease to be in effect.

"(4) Review of a decision of the Secretary to withdraw approval of an administrative plan under this section may be obtained in the United States court of appeals for the circuit in which the State or political subdivision thereof is located by filing a petition for review with such court within thirty days after receipt of the notice of withdrawal of approval.

"(5) The prohibitions contained in sections 201 and 202 of this title shall not apply to any polygraph examiner or any employer engaged in any business in or affecting interstate commerce, or any agent or representative of such polygraph examiner or employer, in any State or political subdivision which has adopted an administrative plan pursuant to subsection (b).

"(c) Nothing in this title shall be construed to require regulation by a State or to prohibit a State from establishing a standard that prohibits an employer from—

"(1) taking any action against an employee or a prospective employee based on the results of a polygraph examination; or

"(2) making an employee or prospective employee submit to a polygraph examination against his or her will.

"(d)(1) Subject to paragraph (2), in the case of an alleged violation of this title oc-

H 9588

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

curring in a State that has an approved administrative plan regulating polygraph examinations in a manner that is at least as stringent as the requirements of this title, or that has a standard referred to in subparagraph (c)(2), no suit may be brought under section 206 sooner than sixty days after proceedings have been commenced under the State law or standard, unless such proceedings have been earlier terminated.

"(2) Such sixty-day period shall be extended to one hundred twenty days during the first year after the effective date of such State law or standard.

"(3) For purposes of this subsection, a State proceeding shall be deemed to have commenced at the time it is deemed to have commenced under State law.

"(e) Nothing in this title shall be construed to apply the provisions of this title to the United States Government, to any agency or agent of the United States Government, to any State governmental agency or agent of any State governmental agency, or to any law enforcement agency or agent of any law enforcement agency.

DEFINITIONS

"Sec. 208. As used in this title—

"(1) the term 'commerce' has the meaning provided by section 3(b);

"(2) the term 'employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee;

"(3) the term 'Secretary' means the Secretary of Labor;

"(4) the term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any political subdivision thereof;

"(5) the term 'polygraph examination' means any interview or examination of any employee or prospective employee of an employer—

"(A) involving the use of any polygraph, deceptograph, or any other similar device not otherwise prohibited by this Act which is used primarily for the purpose of detecting deception, verifying the truth of statements, or any similar purpose; or

"(B) which is subject to at any time to analysis by any polygraph, deceptograph (G&I), or any other similar device the results of which are ever reported to any employer; and

"(6) the term 'polygraph examiner' means any person who conducts a polygraph examination as defined in paragraph (5) of this section."

EFFECTIVE DATE

Sec. 3. (a) Except as provided in subsection (b), this Act and the amendments made by this Act shall become effective six months after the termination of the first legislative session of each State that occurs after the date of enactment of this Act.

(b) The Secretary of Labor shall issue such rules and regulations as may be necessary or appropriate for carrying out title II of the Fair Labor Standards Act of 1938 (as added by section 2 of this Act) not later than one hundred and eighty days after the date of enactment of this Act.

Mr. YOUNG of Florida (during the reading). Mr. Chairman, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. YOUNG of Florida. Mr. Chairman, this is a very serious substitute.

Last year it received a very large vote in this House of Representatives. It is presented to our colleagues today on behalf of myself and the gentleman from Georgia (Mr. DARDEN).

In an effort to save time, I asked that we not read the full amendment because it is lengthy. I might also tell our colleagues, Mr. Chairman, that the gentleman from Georgia (Mr. DARDEN), and I had 11 other amendments at the desk, but in an attempt to accommodate the Members and to keep the proceedings from going on too late this evening, we have agreed not to offer those amendments. But we would like a serious discussion of this very important substitute before us today at this point.

The bill before us now, Mr. Chairman, allows the use of polygraph by the Federal Government, State governments, local government, political subdivisions of those local governments, contractors to the FBI, those who are involved in the security guard business, those who are involved in the drug business. It prohibits the use of polygraph for those who work in nursing homes or financial institutions, or those who are involved in a business where some specific incident has taken place, or in the delivery of home health care or the delivery of other home type services.

So on one hand this bill said it is OK to use the polygraph; on the other hand it says no, you cannot use the polygraph.

□ 2000

Now there is something just a little inconsistent about that argument. But during most of this debate today, Mr. Chairman, it has been suggested that using the polygraph harassed people, that it was used by gracks or that it was a gadget that did not work and the list of allegations and accusations go on and on.

Well, Mr. Chairman, the substitute that we present here this evening solves every problem that was mentioned by every Member today in that debate. Just for example, there is nothing in the bill before us that protects the right of the employer or the employee or the prospective employee from being fired, dismissed or disciplined because he did not take a lie detector test or a polygraph test if you will.

Our substitute says that no employer may discharge, dismiss, discipline or deny employment or promotion to or threaten to discharge, dismiss, discipline or deny employment or promotion to any employee, agent, prospective employee or prospective agent who refuses, declines, or fails to take or submit to any polygraph examination.

Mr. Chairman, this protection is not in the bill H.R. 1212. Further it says no employer may discharge, discipline, dismiss, and so forth, or deny employment based solely on the opinions or conclusions of a polygraph examiner.

Further, Mr. Chairman, this Darden-Young substitute says no employer may dismiss, discipline, and so forth, any employee because of the opinions or conclusions of a polygraph examiner.

Mr. Chairman, there is no such protection in H.R. 1212.

Mr. Chairman, this substitute provides that an employee who feels that he has been abused by the polygraph examination is given an opportunity to rebut any conclusion made by anyone in conjunction with that polygraph examination. There is no such protection in the bill H.R. 1212.

Mr. Chairman, it has been said so many times that this is a machine, it is a gadget. We concede that it is mechanical. The polygraph examination is only going to be as good as the examiner who gives it. In our bill we provide that the examiner, amongst other things, must comply with all laws, Federal, State or local; must be licensed; must have completed a formal training course regarding the use of polygraphs which has been approved by the Secretary; must have completed a polygraph examiner internship for at least 6 months. It goes on, listing the qualifications of the examiner. No such protection in the Williams bill, H.R. 1212.

Under that bill all of those people that I mention, those millions of Americans who could be polygraphed under H.R. 1212, could have fit done to them in a slipshod, or quickie fashion, under their bill the polygraph exam could be done without any kind of a professional atmosphere and without any legal protection for the person being examined.

The Darden-Young substitute provides those protections. Listen to this: We include a bill of rights for the examinee and it includes such things as the polygraph examiner may not inquire into religious beliefs or affiliations, racial beliefs, and so forth.

The CHAIRMAN. The time of the gentleman from Florida (Mr. Young) has expired.

(By unanimous consent, Mr. Young of Florida was allowed to proceed for 3 additional minutes.)

Mr. YOUNG of Florida. Let me repeat, a polygraph examiner may not inquire into racial beliefs or opinions, political beliefs or affiliations, sexual preferences or activities, beliefs, affiliations, or opinions regarding unions or labor organizations. Each prospective examinee shall be required to sign a notice before the beginning of each polygraph examination that he understands the limitations imposed upon the examiner; he understands his rights as an examinee; he understands that he may terminate the polygraph examination at any time and that he has legal rights under this substitute, if the polygraph examination is not conducted in accordance with this title.

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9589

We provide that the polygraph examiner must schedule at least an hour to conduct the examination. We provide that the questions to the examinee must be in writing and must be discussed with the examinee prior to the time that the polygraph actually takes place.

We make every one of these protections and more, and none of these protections, not the first one of these protections that I think you would all want in the case of any polygraph, not one of them is included in the main bill, H.R. 1212 as presented to this House.

There will be many polygraph exams under this bill because the exemptions are there, and I listed the many exemptions. It will apply to millions of Americans. The exemptions are there.

There will be polygraph exams in America whether this bill passes or not or whether this bill is amended or not.

So if you are going polygraph, why not do it right; let us do it with examiners who know what they are doing, who have been trained, who have been educated and who meet certain criteria under the law.

Second, Mr. Chairman, and more importantly let us write into the law protection for the examinee. He is going to be examined under the Williams bill. So why not make sure that he has a bill of rights, the protection provided by the Darden-Young substitute. That is what we are asking. There is going to be polygraph examinations in America, no matter what we do on this bill; pass it or do not pass it, you are going to polygraph. Let us make sure it is done right. Let us protect the people who are having the polygraph done to them.

Mr. LAGOMARSINO. Mr. Chairman, will the gentleman yield?

Mr. YOUNG of Florida. I yield to the gentleman from California [Mr. LAGOMARSINO].

(Mr. LAGOMARSINO asked and was given permission to revise and extend his remarks.)

Mr. LAGOMARSINO. I thank the gentleman for yielding.

Mr. Chairman, I commend the gentleman for his statement, I join in strong support of the substitute. I think it is a practical answer, a practical solution to this problem.

Mr. Chairman, I rise in support of the Young-Darden substitute amendment to H.R. 1212. This amendment is identical to legislation I have cosponsored, H.R. 1536, the Polygraph Reform Act.

While I recognize the potential for abuse and actual abuse of the polygraph test and the need to establish standards for its use, I do not believe that a total ban is the solution. In fact, as we have seen from the language of the bill and the string of amendments attempting to exempt various industries, a total ban is not even possible. We are inevitably faced with the question of where to draw the line. Do we want to make use of the polygraph to protect our money and not our children? Or

allow its use by companies authorized to manufacture and distribute controlled substances while not permitting it to be utilized in protecting nursing home residents from abuse?

The substitute would allow business and industry to continue making use of the polygraph to protect their customers and assets, while protecting those who are asked to take polygraph exams to make sure that the tests are administered fairly and accurately. I believe it is the proper approach and urge my colleagues to support the substitute.

Mr. YOUNG of Florida. I thank the gentleman for his contribution and support and I yield back the balance of my time.

Mr. MARTINEZ. Mr. Chairman, I move to strike the last word and rise in opposition to the amendment.

Mr. Chairman, the hour is late, the debate is becoming redundant. I would simply like to say that it scares me when the gentleman from Florida says we are going to have polygraphing whether we like it or not and we might as well do it right. It has not been proven yet that it can be done right.

I would simply say this is the substitute, the same substitute pretty much as offered in 1986. We voted it down then, we should vote it down now and vote for the bill as presented with the amendments accepted by the committee.

Mr. Chairman, I urge my colleagues to resist the substitute amendment.

Mr. DARDEN. Mr. Chairman, I move to strike the requisite number of words.

(Mr. DARDEN asked and was given permission to revise and extend his remarks.)

Mr. DARDEN. Mr. Chairman, first of all I want to thank you for the fair manner in which you have presided over the Committee of the Whole today and to my colleagues for the kind attention and consideration that they have given our substitute as well as the entire debate that we have heard.

What Mr. Young from Florida and I have done, quite frankly, we have taken a different approach than has been taken by the committee. We think that we have built a better mousetrap. We think that we have a solution here to the problem of polygraph abuse. We content, as well as the committee, that there have been abuses of the polygraph in the past. Certainly there have. But you do not correct the abuses or eliminate the abuses by eliminating the system itself. So what we have done, Mr. Chairman, is to provide and devise a way to regulate the polygraph and to eliminate the abuses of which the committee complains.

Mr. Chairman, what we have done is we have provided regulations in two particular areas: First of all we have provided that the scope of the examination will be limited. It will be limited solely to issues clearly relevant to the employment that is sought or the incident that is being investigated.

Second, no person may be required to take a polygraph examination. But if that person does take a polygraph examination, that examination and its contents will be explained to that person before it is taken numerous times so there is no possibility for abuse or even mispronouncement of where the person was born, as one of our colleagues said, would cause the machine to go bad.

Well, in addition to providing certain inherent rights to the person taking the examination, Mr. Chairman, we have also provided in our bill some very strict requirements for the examiner. The examiner must meet certain minimum Federal requirements. But in addition to that, Mr. Chairman, we have not preempted State law in any way. If your State does prohibit the use of the polygraph in the private sector then your State will not be affected because you have the right in your State to go beyond the minimum Federal standards that we set forth here today.

Let me touch on several differences between our approach and that of the committee bill. First of all, the committee bill constitutes a total ban while our substitute represents thoughtful regulation. Our substitute recognizes the problems of huge losses suffered each year by merchants and manufacturers and the need for them to have tools for screening employees in positions of trust.

Our substitute recognizes that the polygraph can be used to vindicate the innocent as well as to indicate the guilty. I think perhaps this is something that has been overlooked and needs to be emphasized over and over again.

Mr. SWINDALL. Mr. Chairman, will the gentleman yield?

Mr. DARDEN. I yield to the gentleman from Georgia [Mr. SWINDALL].

Mr. SWINDALL. I thank the gentleman for yielding.

Mr. Chairman, I would like to ask the gentleman about one of his comments because it concerns me greatly. Is the gentleman saying that in the event an employee, unless they fall into one of the exempted areas under the committee bill, if an employee desires to have a lie detector test to vindicate himself but under the committee's bill that type of activity would be prohibited?

Mr. DARDEN. The gentleman is absolutely correct. An innocent person can be breaking the door down to take a polygraph examination too, assert his or her innocence and would be prohibited under the committee bill from proclaiming their innocence, shouting from the rooftops.

Mr. SWINDALL. Mr. Chairman, as the gentleman knows I used to be in the furniture business back in Georgia. On occasion I would hire convicted felons because I for one think that folks can make mistakes but they

H 9590

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

ought not to be preempted from the job market afterward.

This is a true story. One of the convicted felons whom I hired was working at our store at the time of the theft loss that was obviously internal. I came to that individual and said, "I want you to know that a number of your fellow employees are saying you did it." And I said, I asked him if he would mind submitting to a polygraph test. And he said not only would he not mind, he wanted to because he felt very strongly about his character and he also knew that if he lost that job he would go back into the slammer because it was absolutely a condition to his parole that he have a job.

So he went and he took the polygraph and it did vindicate him.

My point is that without the gentleman's substitute that type of opportunity for individuals that would otherwise be preempted most likely from finding a job and having a second chance, would really be hurt very badly.

So I want to first of all commend the gentleman on the substitute because I think it does strike a balance between some of the concerns that individuals have with respect to rights of privacy and the professional quality of these examinations.

The CHAIRMAN. The time of the gentleman from Georgia [Mr. DARDEN] has expired.

(By unanimous consent, Mr. DARDEN was allowed to proceed for 1 additional minute.)

Mr. DARDEN. I yield further to the gentleman from Georgia [Mr. SWINDALL].

Mr. SWINDALL. I thank the gentleman for yielding further.

Moreover, it recognizes the very important need in the marketplace to protect workers who would desire to vindicate their good name because of their past circumstances in the sense that they would be the first suspected and they will be basically stripped of the opportunity to show that they were not the person that was guilty and unquestionably suspicion would be theirs.

Mr. DARDEN. I thank the gentleman for dramatizing the point for me and demonstrating it so well.

I will say in conclusion, my colleagues, everywhere I go throughout this district, I ask people what they want me to be concerned about and how they want to be represented. They say "do one thing for us: Leave us alone, get the Government off our backs."

□ 2015

Mr. Chairman, this is one more example of this Congress and this House, I truly believe, getting on the backs of our constituents and private business in general. As far as I am concerned, if the polygraph is good enough for the U.S. Government, for the State of Georgia and local governments, it is good enough for the private sector.

Mr. THOMAS of Georgia. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, H.R. 1212 would essentially outlaw the use of the polygraph in most American businesses—except those few that might gain an exemption from the ban. During the debate on this issue, others have talked about how the ban would hurt businesses and consumers and about the unfortunate double standard that the Williams bill would create. I would like to talk briefly about how it could hurt American workers.

If we were to ban the polygraph, companies would change their policies to adapt to the ban. Instead of using the polygraph as a screening device, they would most likely rely more extensively on background checks, employment histories, and so forth. Those who oppose the use of the polygraph, in fact, advocate these alternative methods of personnel screening.

But let's think for a moment about the long-term consequences of this change. Employers who could not use the polygraph would hire workers with long and verifiable work histories. They would increasingly look for people with strong family ties, with ties to their community, and give even greater preference to those with a proven track record.

This policy would enable most companies to continue to hire competent, reliable workers, although the screening process may be more expensive. For many companies, a polygraph ban would not erode their workforce. It would be business as usual for most firms.

But this change in hiring policies could have serious consequences for a major and especially vulnerable segment of the work force—those who are trying to work themselves out of poverty, and those just entering the job market. These are the very people who can least tolerate another barrier to employment.

Those who would suffer the most from a polygraph ban would be those who have just moved to another city to search for opportunity, those who have had a rocky employment history—perhaps through no fault of their own—and those who are having a tough time breaking into the job market. It seems to me that it would be a terrible mistake for us to pass a bill that would make it even harder for them to get jobs.

We have a responsibility to look down the road at the consequences of a total ban on the polygraph. I believe that if we pass the Williams bill, we may be kicking many of our citizens off the employment ladder, just as they are trying to work their own way up.

For these reasons, I cannot support H.R. 1212, and urge consideration of the Darden-Young substitute.

Mr. LIVINGSTON. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to H.R.

1212 and in support of the Young-Darden substitute.

(Mr. LIVINGSTON asked and was given permission to revise and extend his remarks.)

Mr. LIVINGSTON. Mr. Chairman, in the interest of expediency, since time is very valuable to the Members, I will not use all of my time. I would simply say that I believe the Young-Darden substitute is a very reasonable compromise to the approach that has been taken here today. H.R. 1212 is a bill whose time has not come.

Mr. Chairman, I rise in opposition to H.R. 1212 and in support of the Young-Darden substitute.

I oppose and testified against legislation to ban the polygraph last year, and I continue to oppose it, because I believe that such legislation would deprive private employers of a very important tool in screening out thieves and criminals from various specialized places of employment. Polygraph tests are needed. They are effective, and they protect banks, child-care centers, and nuclear powerplants. Businesses of all kinds need the polygraph to help them hire trustworthy people and combat an estimated annual loss of \$40 billion from theft.

Obviously polygraphs work and clearly Congress knows they work. Time after time the House has voted to allow Government agencies to use the polygraph. Just this year we included by a vote of 345-44 a provision in the 1987 defense authorization bill which permits random polygraph tests of DOD employees and contractors with access to sensitive information. We also passed the State Department authorization bill 414-0 in June which allows polygraph testing of Embassy security personnel.

Department of Defense counterintelligence personnel have identified seven cases in the past 2 years in which polygraph examinations uncovered information about potentially serious national security breaches that would have never come to light without such a program. For instance, a polygraph exam of a defense contractor employee applying for special access clearance revealed that he has previously been involved in a scheme to smuggle U.S. high technology equipment to the Eastern bloc.

In case after case there is evidence to show that the polygraph is critical to efforts to protect our Nation's security interests from espionage. During the Defense Appropriations Subcommittee's investigation into the Walker spy ring Members asked witnesses what could be done to prevent such activities in the future. Admiral Butts, who was the Chief of Naval Intelligence at the time, told us that random polygraph testing would be the most effective deterrent. That is why Representative BILL YOUNG of Florida added a provision to the defense authorization bill that would allow random testing. If the possibility of polygraph testing is such an important deterrent factor to the Department of Defense, how can we then disallow its use—and thus its deterrent effect on thefts and dishonesty in the private sector.

So we've acknowledged that our national security needs require the protection provided by polygraph exams, yet why are we now saying that our private citizens are not entitled to the same protection? That's foolish. It

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9591

would be horribly inconsistent to approve the use of the polygraph for the Government, and then prohibit it for the private sector. Yet that's what we're about today.

Opponents of the polygraph argue that polygraph examiners are poorly trained and that the results are inaccurate. However, the polygraph has consistently proven accurate 85 to 95 percent of the time, and that's why we want our intelligence gathering agencies to use it.

In my 6 years as a criminal prosecutor in Louisiana, the polygraph proved to be a valuable investigative tool upon which we relied. There were times when charges were actually dropped because of a defendant's performance on a polygraph. The exam is valuable, it not only helps in catching crooks, but in clearing innocent people as well.

It is in everyone's interest that polygraph results be as accurate as possible. In Louisiana, laws have been passed which establish guidelines for the 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. In fact, according to the U.S. Chamber of Commerce, 34 States and the District of Columbia now regulate the practices of polygraph examiners. Although I do not see any purpose in involving the Federal Government in this area at all, it would be better to pass legislation modeled on current State law than to simply outlaw the use of the polygraph in the private sector. That is why I support the Young-Darden substitute amendment.

The substitute allows private-sector employers to use polygraphs provided they follow certain guidelines. It protects examiners by making it illegal for examinees to ask questions concerning religious, racial, political or social beliefs. Further, it specifies that polygraph results may not be used as the sole basis for an employment decision. There are also provisions allowing relief in Federal court for any improper use of the polygraph. This substitute allows the private sector to protect itself, and us, from dishonest employees, but at the same time it preserves the rights of all employees from possible polygraph abuses. It is a fair and reasonable alternative to H.R. 1212.

Mr. Chairman, I urge the Members to support the Young-Darden substitute and oppose H.R. 1212.

Mr. ROWLAND of Georgia. Mr. Chairman, I move to strike the requisite number of words.

(Mr. ROWLAND of Georgia asked and was given permission to revise and extend his remarks.)

Mr. ROWLAND of Georgia. Mr. Chairman, there has been considerable discussion about the degree of accuracy of polygraph examinations.

Even the most ardent believer in polygraphs will concede that they are not infallible. Unfortunately, the results of polygraph tests have sometimes been treated as absolute fact. It is this kind of abuse that the Young-Darden substitute seeks to eliminate.

At the same time, it is my understanding that over the past 10 to 15 years important strides have been made in the training of examiners, in the sophistication of the testing, and in the quality of the equipment. Poly-

graph testing is more reliable as an investigative tool today than it has been in the past.

As a physician, I am very aware of the usefulness of electrocardiograms in the diagnosis of a heart condition. But as every physician knows, an electrocardiogram does not tell everything. While it is an important tool, it is not the only one which is used to determine the cardiac status of a patient. Many other tests are also used.

The same is true of a polygraph test. It can be helpful if properly used in conjunction with other investigative procedures.

However, given the fact that polygraph testing is not totally accurate, it is important that something be done to prevent the abuses. Among other things, the Young-Darden substitute would prohibit any employer from making a decision about an employee based solely on the results of a polygraph test. Other investigative techniques would need to be used to determine whether any action should be taken.

I believe that employees deserve protection against the improper use of polygraph examinations. I do not believe that an absolute ban on polygraphs is the way to provide that protection. In my view, Mr. Chairman, the Young-Darden substitute is an approach that all sides on this issue should be able to support.

Mr. HUTTO. Mr. Chairman, I move to strike the requisite number of words.

(Mr. HUTTO asked and was given permission to revise and extend his remarks.)

Mr. HUTTO. Mr. Chairman, I rise in support of the Darden-Young substitute to the Employee Polygraph Protection Act. My State of Florida first passed laws regulating the polygraph industry in 1967. Over that time, the State has developed a system of stringent regulations that allow both business and labor access to the polygraph while minimizing instances of abuse.

Florida's former secretary of state, George Firestone, presented testimony to the last Congress detailing our State's experience with the polygraph. I would like to share some of his observations with you.

Last year, there were 519 fully licensed polygraph examiners in Florida, conducting an estimated 300,000 tests a year. State law requires that each of those 300,000 individuals be told that they have a right to file a complaint with the secretary of state, yet only one validated complaint against an examiner was filed all year. This evidence would lead me to conclude that polygraph abuse is neither widespread nor prevalent in our State. Furthermore, there is evidence to show that the polygraph can benefit both employers and employees.

It benefits our State in that those who are qualified to work can find jobs. And it certainly benefits our citizens when they are protected by the

information from polygraph tests from persons who would use their jobs to commit crimes.

In Florida, the polygraph fulfills demonstrated public need to employers, employees, and customers. One of the reasons it serves us so well is because we enforce a strict set of standards, restrictions, and practices regarding the polygraph.

I support the Young-Darden substitute because it respects my State's right to use the polygraph under the regulations that it determines to be appropriate. If Congress were to outlaw polygraph testing in the private sector, the Federal Government would be denying our citizens jobs, stripping our businesses of an important tool they need to operate, and intruding in our legitimate right to manage our own affairs.

I urge my colleagues to join with me in supporting the Young-Darden amendment.

Mr. RAY. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the Darden-Young substitute.

(Mr. RAY asked and was given permission to revise and extend his remarks.)

Mr. RAY. Mr. Chairman, I wish to compliment the gentleman from Georgia [Mr. DARDEN] and the gentleman from Florida [Mr. YOUNG] for their interest in business. These gentlemen are probusiness. They have dug into the situation that is affecting business. They have come down on the side of being probusiness, and I think they have done a very good job in crafting and bringing together this substitute.

Mr. Chairman, today we are considering legislation that those on both sides of the issue agree would make sweeping changes in the polygraph industry and dramatically affect dozens of other industries that rely on the polygraph.

While all of us would agree that polygraph abuse should be stopped, many of us nonetheless believe that H.R. 1212, which outlaws the polygraph in many private sector industries, has serious flaws. It sets up a double standard between the Government and private industry. We should pass legislation that takes a consistent approach to polygraph regulation.

Banning the polygraph in many private sector industries while allowing its use by Government agencies is inconsistent with Democratic principles. Government officials at all levels—from the CIA to local police forces—have said that the polygraph can be an essential tool in investigations, often providing the key to solving a case. The Congress has passed legislation to require expanded use of the polygraph by the Defense Department to protect our national security. If the polygraph is useful to them, it must be useful for private employers as well.

H 9592

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

Mr. DARDEN. Mr. Chairman, will the gentleman yield?

Mr. RAY. I yield to the gentleman from Georgia.

Mr. DARDEN. Mr. Chairman, does the gentleman realize that if this committee bill is adopted, we would not even be able to administer a polygraph test to people who go to work in day care centers before they go to work there?

We are told that 52 percent of America's mothers with children of the age of 6 are in the work force, and many of these children are taken to day care centers and nursery schools every day while their mothers work. Does the gentleman agree that we have a responsibility to protect these children from the possibility of abuse by unfit employees in these child day care centers?

Mr. RAY. Mr. Chairman, I do agree with the gentleman from Georgia. I also would make an inquiry of the gentleman, who is, I believe, a former district attorney in Cobb County, GA.

Mr. DARDEN. That is correct.

Mr. RAY. I understand the gentleman had many cases dealing with child abuse in day care centers, or at least the gentleman knew of many cases?

Mr. DARDEN. Yes. And in addition to that, if you look at the newspapers over the last several years, there have been rampant examples of abuse by employees of day care centers. All we need to do is call the Congressional Research Service. We found about 40 or 50 such examples just in the past year.

We believe this is one more reason why we must have the use of the polygraph to prohibit people such as this from looking after our children under the guise of caring for them.

Mr. RAY. I know the gentleman is aware of this problem, and so am I. The most precious commodity we have is our children. Certainly we need to do everything we can to protect these children in day care centers.

Mr. DARDEN. Mr. Chairman, I thank the gentleman.

Mr. RAY. Mr. Chairman, in an article in the Labor Law Journal, a noted polygraph authority said "If * * * the test is reliable enough to aid in promoting public safety by keeping dishonesty among public employees in check, it must logically follow that private employers be allowed to impose its use as well."

Over the past several decades, we have passed hundreds of bills requiring business and industry to protect the health and welfare of their customers. We require them to accept this responsibility, and we give citizens the right to take them to court if they violate it.

The business and industrial manager serves at the first line of defense in protecting the public from abuses of products, services, and employees. It is in the employer's and the public's interest for businesses to monitor their

inventories and to screen personnel so that they can detect, correct, and avoid problems before they cause damage or injury. A company's internal controls provide the quickest, the most economical, and the safest solution to many of these problems.

This brings me to my second point: not only is the double standard wrong, but so is the triple or quadruple standard that would be created if some businesses were allowed to use polygraph testing and not others.

I believe it is essential that we consider the needs of industries which use the polygraph to protect the health, safety, and resources of millions of Americans. It is essential that we make sure that the legislation we develop addresses their concerns in an appropriate manner. While we have a responsibility to our constituents to protect them from abusive polygraph exams, we also must make sure that we don't pass a bill that disregards the legitimate needs and concerns of employers. I believe it is possible to strike a balance between the two.

The Young-Darden substitute sets up guidelines for those States that have either weak or no polygraph legislation. It sets standards which ensure not only that examinees are protected but which require tests to be thorough and given by competent examiners.

This legislation recognizes the practical needs of American business and is responsive to the potential harm that can be done to examinees by improperly trained testers or others who abuse test results. It recognizes that the States are best able to consider all of these needs and to find the balance that works best for their citizens, using guidelines that we establish at the Federal level.

The polygraph has a role to play as one of the tools used by companies in internal investigations, but the polygraph must be administered fairly and accurately if it is to be effective. The Young-Darden substitute would regulate the polygraph industry to protect employees while serving American business by improving the reliability of polygraph exams.

Mr. JEFFORDS. Mr. Chairman, I move to strike the requisite number of words.

(Mr. JEFFORDS asked and was given permission to revise and extend his remarks.)

Mrs. VUCANOVICH. Mr. Chairman, will the gentleman yield?

Mr. JEFFORDS. I am happy to yield to the gentleman from Nevada.

(Mrs. VUCANOVICH asked and was given permission to revise and extend her remarks.)

Mrs. VUCANOVICH. Mr. Chairman, I rise in support of the Young-Darden substitute and urge its adoption. This is a good substitute. It is a good balanced bill.

Mr. Chairman, proponents of H.R. 1212 say that polygraphs don't work; that they aren't reliable. Well, Mr. Chairman, these same proponents of H.R. 1212 have already acknowl-

edged the legitimacy and efficacy of polygraph testing in some situations because of the exemptions written into this bill. As we know, H.R. 1212 proposes to ban polygraph testing by all private employers, except for: First, all Federal, State and local government employers; and second, private employers engaged in governmental intelligence or counterintelligence work. The bill specifically exempts employees of the CIA, the National Security Agency, the FBI, and DOD from the ban.

In addition, this body has already officially acknowledged how essential polygraph testing is for national security purposes. In the last Congress, and again more recently, during consideration of the Defense Authorization bill, we overwhelmingly endorsed the use of polygraph testing. Unquestionably, there are places and occasions where polygraph testing is vital.

So, are we to say that polygraph tests are good and essential; and that a polygraph test is a legitimate tool for use in the public sector, but it is not reliable for the private sector? Is this another double standard Congress presumes to impose? We cannot acknowledge the usefulness—the essential role of polygraph testing as a legitimate and effective tool for the Government to use, and yet deny its credibility and efficacy for the private sector. Obviously, the polygraph test has a proper place in both Government and private business.

Yes, abuses can and do occur; however, the abuses occur when there are no regulations—when there are no standards for training, and when there are no guidelines for conducting the tests. The answer is to eliminate the abuses of polygraph testing, not the uses of polygraph testing. Banning the use of the polygraph is throwing the baby out with the bath water.

The Young-Darden substitute properly addresses the need for regulating the use of polygraph testing and ensuring that examiners meet certain standards, while at the same time guaranteeing the rights of individuals being examined. This is where our focus should be—recognizing the essential role of polygraph tests, while at the same time recognizing the need to provide uniform, strict standards.

The Young-Darden substitute is a balanced bill—a reasonable measure that protects both the employee/prospective employee, and the employer. It is a moderate alternative which would allow the private sector the same protections afforded the Government. I urge my colleagues to vote for the Young-Darden substitute.

Mr. JEFFORDS. Mr. Chairman, I do not intend to take much time, but I do want to clarify a couple of things.

Earlier I spoke and took a position in strong opposition to amendments to this bill, and I am most strongly in opposition to this particular amendment.

Something is wrong if the system does not work, and nothing we can do to regulations is going to fix it. My position is that any validity there may be in this is far outweighed by the damages created to the individuals who are forced to go through the polygraph examinations, and the general feeling among those who have studied this

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9593

issue is that it is no better than a flip of a coin.

I did vote for the Gunderson substitute because I believe that the intimidation factor, which I believe is a primary consideration, can sometimes be successful. In fact, I would point out one incident to the Members where the police, who were very imaginative and did not have a polygraph handy, wired a fellow up to a Xerox machine and started questioning him, and at an appropriate time they pushed a button on the machine where they had previously put in a piece of paper that said, "It's a lie." So when they asked the gentleman as to whether or not he had committed the crime, they pushed the button, and out popped the paper, it said, "It's a lie," and he confessed.

I can see that this machine or these kinds of tactics of intimidation can lead to some utility, but the question is whether it is utility with respect to preemployment.

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, I thank the gentleman for yielding.

I agree with the gentleman and the problem that the gentleman expresses about the Xerox machine.

Under H.R. 1212 that could still happen. Under the Darden-Young substitute, because we put in place certain safeguards, that could not happen; but under H.R. 1212, the situation that the gentleman is really worried about can still happen.

Mr. JEFFORDS. I do not want to stop police officers from being able to do their duty in that kind of fashion.

I would say that I think that the bill or the amendment that we have here is going to create more problems than it solves, and I would like to refer to a colloquy that I had earlier with the gentleman from Texas, because I do not want to leave any impression upon the Members that I made a misstatement.

I indicated that the DOD study did not show any studies which indicated there was a validity with respect to preemployment screening, or if there was, it was done by a polygraph examiner.

The gentleman from Texas [Mr. DELAY] took serious exception to that, but the gentleman gave me a list of the studies to which the gentleman relied upon.

There was one study that was referred to in the DOD study which indicated that there was validity to pre-screening for employment. However, it was by a polygraph screening director of the Polygraph Screening Service in Salt Lake City, UT, Dr. Bariland, who is not referred to as being a polygraph expert on the gentleman's list.

There are other studies, the Bursch, Bloom and Edle study, and one was a study by Mr. Horvath, former chief examiner for the largest polygraph in-

stitution in the United States, and the others he referred to were studies by a Dr. Raskin.

Let me read what he said in testimony before the Senate committee.

There is no scientific evidence that polygraph testing, when used in the commercial sector for screening, has any scientific validity * * * One thing I would like to point out very clearly is that there is a substantial difference between its use in criminal investigation and in national security applications as compared to commercial screening applications.

Except that one study done by a polygraph operator, that has shown any validity to preemployment screening, and we are dealing with that here.

I could take a little issue with the gentleman from Florida that we cannot still have quickies on this, because the amendment only says that they must set aside 1 hour.

It does not say that they have to have an exam that lasts at least an hour, so I do not think it does all the gentleman hopes it will do.

We should not be validating something which has never been proven to be validated, except in one city by a polygraph operator.

Mr. DELAY. Mr. Chairman, I move to strike the requisite number of words.

(Mr. DELAY asked and was given permission to revise and extend his remarks.)

Mr. DELAY. Mr. Chairman, I wish to answer the gentleman from Vermont, the gentleman's statement that there is only one study on preemployment polygraph examination.

I would like to clear it up. There is one study in the Department of Defense survey of 42 studies. There are 42 studies in 1 survey.

I would also like to point out that they are not the only studies that have been done on preemployment polygraph examination, the effects of motivation.

There is another survey, a review of the scientific literature of the validity, reliability and utility of polygraph techniques and many others that I could refer to.

There are more studies than have been quoted by the proponents of this bill.

They say the AMA and the OTA have done studies. I can show you 42 in 1 survey and hundreds from all over the world, Canada, Israel, and other countries in this world in this particular review.

Every one of them says that there is some validity in some way, or I should not say every one of them, but the vast majority of them say that there is validity in the polygraph system, and most of them say that there is at least validity in at least 80, if not 95, percent of the examinations taken.

That is not the point. They have brought up a few studies. We have brought up many, many studies that are done to attest to the validity.

I think the real validity is if the polygraph is not any good, then why are so many people using it? Why has this House recognized that it would be valid in the case of drugs and financial institutions and in the Government? It is valid. There is no argument.

There is one opinion by this side, and our opinion is that it is valid.

The point is that it is valid, and this substitute restricts and gives you criteria by which it is not abused and gives certain minimums by which you can hold the examiner's feet to the fire.

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, I thank the gentleman for yielding.

On the subject of accuracy and effectiveness of the polygraph, 2 years ago this House and the Congress created a temporary test program in the Department of Defense for polygraph, and a school for polygraph examiners was established at Fort McClellan, AL.

Under this test program, polygraphers for the Department of Defense conducted 9,500 exams. The Department of Defense did a random survey of those people who took those polygraph tests, and found that 99 percent did not think that the polygraph was unfair in any way, or that it was objectionable or an unwarranted invasion of privacy.

Based on this study, this House and the conferees committee on the authorization bill now have agreed, to make the test program a permanent program because they are satisfied it works when you do it right.

We are trying to put in place the same professional requirements that the Department of Defense is using at their school at Fort McClellan, AL.

Mr. DELAY. The gentleman from Vermont did not refer to the other studies done on postincidents, crime detection, and others that were done that were highly effective, so what the gentleman is saying, and what most of them are basing the invalidity of a polygraph on is saying that there are no major studies done on prescreening, but there have been many studies done on criminal investigations, post-incident investigations that show time and time again that it is a valid process.

You cannot have it both ways, where it is not valid for prescreening, so it is not valid for anything.

It is valid, and we all know it is valid, and it ought to be used to protect the citizens of America.

Mr. NEAL. Mr. Chairman, I move to strike the requisite number of words.

I would like to share with the Members an article that I found in my desk today. It is interesting, and I had not seen this when I came over earlier in the day and got involved in the debate.

Let me quote a few relevant passages.

H 9594

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

Donald Davis is a 22-year-old worker, and so on, and was grilled extensively by police after reporting his wife's disappearance on January 12.

He flunked every time he was asked if he had killed her. I will skip down in the article.

"They asked me if I killed my wife with a gun or a knife or my hands, and they asked me if I threw her off a mountain or in a lake or a river or a rock quarry," he said.

The polygraph report showed a long list of questions, each asking if he killed the woman or knew where she was, or if she was alive.

Beside each question was Davis' response of no, along with the word "deception."

The story goes on to point out that his wife returned. She left town, had gone to somewhere in Florida. She said she wanted to find out if she could make it on her own. She was gone 6 weeks, and somehow called home and talked to a girlfriend; and the girlfriend told her about the problems her husband was having, and because she returned, he was not convicted of murder.

The article ends with a quote from Mr. Davis where he says, "I wasn't lying. It was that lie detector that was lying."

There are several major problems with this proposal to use widespread lie-detector tests, and the first one is a very basic constitutional question: The question of our system of justice.

Under our system we assume that our public, the people of this country, are innocent until proven guilty. The widespread use of lie-detector tests says to our public that you are guilty, and you must prove your innocence, and how are you going to do it.

You are going to do it with a gadget that our now distinguished Senator from North Carolina called 20th-century witchcraft. These gadgets do not work.

I looked at some of the studies the distinguished gentleman from Texas was quoting. Every one of those studies I could find some weasel word, some way of qualifying that study to make it clear that these lie detectors are simply not reliable.

I have not seen these comments, but it has been said over and over again today that the American Medical Association is against the use of these gadgets, that the American Psychological Association, the experts on testing, are against using these gadgets.

Let us pay some attention to these experts in the field. We are running the grave risk of putting American people at great risk in an attempt to find some quick fix for a very serious problem.

Let me close by asking the Members to ask yourselves this question: Would you like to subject your future, your future, the opportunity to work and in some instances to be free, to this little black box, this little gadget, plus some person, usually a person that is not

highly trained or qualified, would you want to subject your life, your future to this kind of gadget?

If you answer yes, I guess you can say yes; this is just wonderful.

Let us run ahead with these kinds of tests, but this is a very dangerous precedent.

It has been said over and over again today that we are being hypocritical when we say we ought to let the Federal Government, the intelligence agencies of our country use these gadgets but not let private business, and that is absolutely correct.

If we let our intelligence agencies use these gadgets and rely upon them for important national security questions, we subject our country to great danger.

I would urge the Members not to continue to let the intelligence agencies of this country use these gadgets in a way that might put our country in great jeopardy.

There are mental techniques that can be used; drugs that can be taken so people can defeat these tests, and we run a grave risk.

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. Neal] has expired.

(On request of Mr. SWINDALL, and by unanimous consent, Mr. NEAL was allowed to proceed for 1 additional minute.)

Mr. SWINDALL. Mr. Chairman, will the gentleman yield?

Mr. NEAL. I yield to the gentleman from Georgia.

Mr. SWINDALL. Mr. Chairman, I thank the gentleman for yielding to me.

First of all, what would the gentleman do about the situation which I addressed earlier where there is a convicted ex-con who desires to have a polygraph to clear his or her good name?

What would the gentleman do for that person?

Mr. NEAL. I would have to say to that person, you cannot do it with these gadgets, because they are inherently unreliable.

I have a hearing record of hearings held before the Committee on Government Operations when we heard witness after witness testify to the point, to the fact that these gadgets are not reliable; and for that reason, I would have to say to the gentleman, you cannot depend on these gadgets to finally determine innocence or guilt.

Mr. SWINDALL. Under that scenario, the person loses his job, so what could be worse?

□ 3045

Mr. NEAL. Many people are going to lose their jobs, just like this poor fellow here. This fellow could have ended up, "Lie Detector Tells Fib," the headline says. This fellow could have ended up dead because of a faulty lie detector.

Mr. BARTLETT. Mr. Chairman, I move to strike the requisite number of

words. I rise to speak in favor of the substitute.

Mr. Chairman, I will not take the entire 5 minutes, but I must say in response to my good friend, the gentleman from North Carolina, who is very eloquent, that I want to call to the attention of the gentleman and the attention of the House in the example that the gentleman used of a law enforcement lie detector or polygraph which later proved to be false is expressly permitted and authorized under the bill that is before us; so if you want to eliminate or to restrict any abuses that you may see happening in law enforcement, then you should vote against the bill.

On the other hand, the Darden-Young substitute that is before us would establish minimum standards for polygraph examiners; requirements that the questions be in writing and a whole host of other standards; so if the gentleman is interested, as I know he is, in curing the problem that he specifically cited, that is, a polygraph that was used in a law enforcement case and it turned out to be incorrect, then he should vote for the substitute which will establish minimum standards, improve those standards, and establish standards for polygraph examiners and examinations.

The House needs to understand there are two bills before us. The main bill would prohibit in all cases the use of a polygraph examination without regard to whether it meets standards or not, except for Government work. For Government work, no standards are given in the bill at all, or drugs.

On the other hand, there is the Darden-Young substitute that would say that if there had been abuses in polygraphs, if there are standards that ought to be adopted, we will adopt those standards for all cases.

Mr. NEAL. Mr. Chairman, will the gentleman yield?

Mr. BARTLETT. Yes, I yield to the gentleman from North Carolina.

Mr. NEAL. Well, Mr. Chairman, I would just like to make one point. I do not mean to be too facetious. I am quoting from a statement by a distinguished Member of this House.

I would say I would consider establishing standards for these so-called lie detector tests about like establishing standards for the dunking stool, the rack, and the firing squad. These are all techniques for eliciting a particular response, but I submit to my good friend and my distinguished colleague that these lie detector tests are no more accurate than the gadget that they used to dunk people to determine if they were liars.

Mr. BARTLETT. I understand.

Mr. NEAL. I would hope we would not proceed with those things in this modern-day era.

Mr. BARTLETT. I understand the gentleman's moderation, I did not make that statement and the gentleman did not; but the bill that the gen-

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9595

tleman from North Carolina plans to vote for and is speaking for establishes no standards whatsoever for Government uses, none, not one. If it is a law enforcement agency, if it is the Congress of the United States, we will have no standards, not one; but under the Darden-Young bill we would establish at least some standards for all uses of the polygraph.

Mr. NEAL. Mr. Chairman, will the gentleman yield one more time?

Mr. BARTLETT. I yield to the gentleman from North Carolina.

Mr. NEAL. Let me say, Mr. Chairman, I share that concern and I would hope that we would understand that these gadgets are inherently unreliable and not depend on them for the Government use. If we can stop their widespread use, which I believe to be unconstitutional and unreliable with the American public, maybe we can move to stop their use in the Government also.

Mr. BARTLETT. I understand what the gentleman is saying. That is not the subject that is before the House.

We have two bills before the House. We can choose one to prohibit all uses in private industry and no standards at all in the public sector, or two, we can acknowledge that we should establish some standards, minimum standards, and some licensing requirements for the use of the polygraph.

I urge the House to take the other course, the Darden-Young course, for the minimum standards.

Mr. OBERSTAR. Mr. Chairman, I move to strike the requisite number of words.

(Mr. OBERSTAR asked and was given permission to revise and extend his remarks.)

Mr. OBERSTAR. Mr. Chairman, if the claims of its supporters can be believed, the polygraph is truly an amazing device. It is supposed to measure our intangible thoughts; determine if we are telling the truth or telling a lie; it is supposed to help police and prosecutors determine the truth of a suspect's statements, and thereby determine probable guilt or innocence. It is supposed to aid employers to weed out those prospective employees who would be prone to lie, to cheat, and to steal. If all those claims are believed, the polygraph is truly an amazing device. It can find that most elusive of all human qualities: truth.

Unfortunately, the fact is that the polygraph does not measure truth and it does not measure falsehood. It can only measure physical reactions such as blood pressure, heart beat, perspiration, and then technicians take those reactions and measure them against research figures to determine if the subject is uncomfortable enough to be suspected of telling a lie.

What type of device is this to inflict upon human beings, who as the gentleman from North Carolina so eloquently said, under our Constitution and under our system or jurisprudence

are presumed to be innocent until proven guilty.

Polygraph testing has expanded in recent years in the private sector, as businesses have sought them out and used these devices for preemployment screening, for internal security investigations to determine who gets hired and who gets fired, who advances in his or her career and who is set aside. At the same time, the validity of polygraph testing has come into wide question all across this country. The Office of Technology Assessment has reported that available research evidence does not establish the scientific validity of polygraph testing for personnel security screening.

Twenty-two States and the District of Columbia have restrictions on the use of polygraphs for testing for private employment, but that is not enough. Companies can circumvent that provision by hiring people in States that do not restrain or restrict or prohibit polygraph testing and then transfer their personnel into those more restrictive States.

The numbers speak for themselves. The American Polygraph Association says that 98 percent of the 2 million polygraph tests given each year are given by private business, three-fourths of those for preemployment screening. I cannot think of a more intrusive and dangerous device to inflict upon the people of this country than polygraph testing on such a widespread indiscriminate basis.

I think this legislation is a reasonable approach, one that protects the integrity of the individual and it is a bill that we ought to pass.

Mr. FRENZEL. Mr. Chairman, I move to strike the requisite number of words.

(Mr. FRENZEL asked and was given permission to revise and extend his remarks.)

Mr. FRENZEL. Mr. Chairman, I am one who has had some experience with these particular kinds of machines in private business and in all the cases where I saw it applied, there was a positive result. I have not heard anyone claim a hundred percent accuracy for the process. I have not heard anyone claim a hundred percent accuracy for interviews or drug tests or even thermometers, as far as that goes.

I myself probably am a dangerous weapon. I interview a lot of employees. I am certainly not a skilled interviewer. I am considerably less dangerous than a polygraph.

But what this bill does is to bar the use of polygraphs. It means you cannot use them in connection with any other system, machinery or processes, that you might want to use to check on employees in which cases you need some very strong security.

The bill is a little bit inconsistent because it does allow exceptions, and as the gentleman from Florida has pointed out, you are going to have poly-

graph use whether this bill passes or not.

My personal preference would be that there would be no messing around in the private use of polygraphs by the Congress.

I understand 41 States have laws on the books relating to polygraph use or standards, and in my judgment it is a splendid area in which the States should legislate and a wonderful area for the heroes of Congress to stop messing; but if we are going to pass a bill, we certainly should have the good sense to accept the Young-Darden substitute, because at least there we have some consistent principles that will protect everyone, not just those who were fortunate enough to get exclusions from the bill.

I think any rule of good reason and sanity would lead us to support the Darden-Young substitute, if indeed we have to legislate in this field at all.

Mr. WILLIAMS. Mr. Chairman, I move to strike the requisite number of words. I raise in opposition to the amendment, but really for the purpose of thanking my colleagues who have been more than patient during what has been really a good debate and has focused by both the opponents of my bill and the supporters of my bill and the opponents and supporters of the substitute now before us have focused on the merits and the demerits of the lie detector.

We are now approaching just a few minutes short of 10 hours on this bill. It is interesting that we can pass a reconciliation bill within an hour. We can spend \$100 billion within just a few minutes with no debate, but it takes 10 hours to get passed an emotional issue like this.

The debate has been good. The attention has been good.

Mr. Chairman, orderliness of the House has of course been excellent and we appreciate everyone's involvement in this.

I would also remind the Members that we just finished voting on this a year ago on this very substitute and turned it down 173 to 241. I urge you to turn it down again tonight.

Mr. BILIRAKIS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I yield to the gentleman from Florida [Mr. YOUNG].

Mr. YOUNG of Florida. Mr. Chairman, I thank the gentleman for yielding. I will be very brief.

I listened to the debate of those who say that the polygraph does not work. If it does not work, I say to my dear friends and colleagues, if it does not work, why are you supporting a bill that allows it to be used in all the Federal Government, every State government, every county, every city, and every political subdivision in America, the FBI, contractors, security guards, those involved in the drug industry? If it does not work, why are you going to support a bill that allows it to be used

H 9586

CONGRESSIONAL RECORD — HOUSE

November 4, 1967

without any professionalism in millions and millions of cases?

I thank the gentleman for yielding.

Mr. BILLRAKIS. Mr. Chairman, I endorse the gentleman's remarks and ask that we support the bill.

Mr. PARFIS. Mr. Chairman, our national security agencies repeatedly come to us asking for authority to conduct polygraph examinations as part of their programs to guard our national security.

So far this year, this body has voted twice to support measures that provide for polygraph testing by the Federal Government. On May 11, the vote was 345 to 44 in favor of an amendment offered by the gentleman from Florida [Mr. YOUNG] to the Defense Department's authorization bill. The measure establishes a permanent polygraph program for national defense agencies.

Then just 1 month later, on June 16, there was a unanimous vote to back an amendment offered by the gentleman from Florida [Mr. MICA] to the State Department's authorization bill. That amendment included language to require counterintelligence polygraph examinations for members of the Diplomatic Security Services.

The increasing prevalence of espionage and deceit in our Government underscores the need for polygraph examinations. And those latest votes, which are only the latest in a series, show our consistent backing for the use of polygraph testing to protect our national security.

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.

We would be establishing a dangerous double standard if we were to approve this legislation to strip business and industry of access to the same investigative tool that the Government obviously finds to be so useful.

Private business and industry also have a serious responsibility to protect people and assets. The polygraph enables them to better carry out these responsibilities to protect the health and welfare of our citizens.

I urge my colleagues to oppose the ban on polygraph testing in the private sector and instead to support the more reasonable, and workable, measure introduced by the gentleman from Florida [Mr. YOUNG] and the gentleman from Georgia [Mr. DARDEN] to set nationwide standards for testing and examiner qualifications. 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.

Mr. DREIER of California. Mr. Chairman, I rise today in support of the Young-Darden substitute to the Polygraph Reform Act. The substitute better addresses the concerns of employees and employers over abuse in administering polygraph examinations. This

measure would guarantee specific rights to employees asked to take a polygraph and would impose stringent Federal standards on polygraph examiners. In addition, the substitute respects the rights of State and local governments to impose their own more stringent standards on the polygraph industry.

Though not infallible, polygraphs have demonstrated a certain accuracy in determining a subject's truthfulness. I do not believe an employer should be deprived of this useful tool as a means to hire trustworthy employees any more than he should be deprived of the imperfect techniques of a personal interview, reference or written application. All of these tools should be used together to select the most qualified candidate. I would like to point out that the Young-Darden substitute would assure that no employment decision would be made based solely upon the results of a polygraph examination or an employee's refusal to take a polygraph.

When the House passed in the 90th Congress a similar ban on the use of polygraph examinations in the private sector, a number of exemptions were added to the bill which had the effect of permitting polygraph tests in selected industries. While I supported these exemptions, Congress creates a double standard by exempting day care facilities, nursing homes, pharmaceutical firms, armored car and security guard agencies, and the nuclear power industry from the ban on polygraph examinations. By retaining the use of the polygraph for all private sector employers, the Young-Darden substitute would treat all industries equally.

Mr. MONTGOMERY. Mr. Chairman, as we debate the merits of the polygraph technique and its value in the workplace, I ask my colleagues to focus for a moment on a larger issue at stake here. Namely: the Constitution.

It is our responsibility to protect and ensure the proper balance of power between the States and the Federal Government.

There is no constitutional basis for a Federal ban on polygraph testing in the private sector. Article 10 clearly states:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Thirty-one States already have passed polygraph legislation. At least four of them chose to outlaw polygraph testing completely. The others have developed various regulatory approaches that allow polygraph testing under certain conditions.

It is clear that the States are accepting their responsibility to regulate this controversial instrument.

The approach presented to us today to ban the polygraph is an overreaction that undermines the hard and careful work that the States are doing to develop their own bodies of law. The principles of federalism call on us not to intervene in matters that are the responsibility of the States and in which there is no overriding need for a uniform national policy.

In fact, the heated debate among scientists and academicians about the validity of the polygraph is evidence that this issue has not been resolved to the point that any national policy could be formulated. This appears to be an appropriate area in which to allow the States to develop various approaches that suit

their citizens best. And they are demonstrating their ability to do that.

Further, it has traditionally been the purview of the States to regulate commerce within their boundaries. They have mechanisms to certify that those who deliver health care services to residents are qualified to do so. They oversee insurance and real estate brokers, utility companies, doctors, lawyers, and dentists, to name just a few.

The States are equipped to regulate the services offered by polygraph examiners as well, as most have demonstrated by passing their own legislation.

Assistant Attorney General John Bolton sent a letter to the Congress addressing this issue. He said:

Polygraph misuse may be more appropriately deterred by restricting the conditions under which polygraphs are administered rather than prohibiting their use altogether. The States are better equipped to make those determinations.

He suggested that the States can provide avenues for appeal if someone feels his or her rights have been violated. States also can regulate the kinds of questions that are asked, the equipment that is used, and the qualifications of examiners.

I agree with Mr. Bolton that the Federal Government should not prohibit the use of the polygraph in the private sector. There should not be a flat, nationwide ban on the polygraph, but its use should be regulated on a case-by-case, and State-by-State basis, as provided by the Constitution.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. YOUNG].

The question was taken; and the Chairman announced that the yeas appeared to have it.

RECORDED VOTE

Mr. YOUNG of Florida. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 169, noes 242, not voting 22, as follows:

[Roll No. 413]

AYES—169

Anderson	Dannemeyer	Hefley
Archer	Darden	Hefner
Armey	Daub	Herger
Badham	de la Garza	Hill
Baker	DeLay	Hochbrueckner
Ballenger	Derrick	Holloway
Barnard	DeWine	Hopkins
Bartlett	Dickinson	Huckaby
Bateman	DioGuardi	Hunter
Bennett	Dornan (CA)	Hutto
Bentley	Dowdy	Hyle
Bereuter	Dreier	Inhofe
Bevill	Edwards (OK)	Ireland
Billrakis	Emerson	Jenkins
Bliley	Erdreich	Jones (TN)
Boulter	Fawell	Kasich
Broomfield	Fields	Konnyu
Buechner	Filippo	Kyl
Bunning	Frenzel	Lagomarsino
Burton	Gallegly	Latta
Byron	Gekas	Leath (TX)
Callahan	Gooding	Lent
Campbell	Gradison	Lewis (CA)
Chandler	Grant	Lewis (FL)
Chapman	Gunderson	Lightfoot
Chappell	Hall (OH)	Livingston
Cheney	Hall (TX)	Lowery (CA)
Ceasle	Hammerschmidt	Lujan
Coble	Hansen	Lukens, Donald
Coleman (MO)	Hastert	Lungren
Cossette	Hatcher	Mack
Craig	Hayes (LA)	MacKays

November 4, 1987

CONGRESSIONAL RECORD — HOUSE

H 9597

Madigan
Marlenee
Martin (NY)
McCandless
McCollum
McEwen
McGrath
McMillan (NC)
Meyers
Mica
Michel
Miller (OH)
Montgomery
Moorhead
Morrison (WA)
Myers
Nelson
Nichols
Ortiz
Oxley
Packard
Parris
Pashayan
Pickle
Porter
Quillen

Ravenel
Ray
Rhodes
Roberts
Rogers
Roth
Routema
Rowland (GA)
Salki
Schaefer
Schmette
Schulze
Sensenbrenner
Shaw
Shumway
Shuster
Siskiy
Skeen
Slaughter (VA)
Smith (NE)
Smith (TX)
Smith, Denny
(OK)
Smith, Robert
(NH)
Smith, Robert
(OR)

NOES—242

Ackerman
Akaka
Alexander
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Barton
Bates
Beilenson
Berman
Billbray
Boehlert
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Brown (CA)
Bruce
Bryant
Bustamante
Cardin
Carper
Clarke
Clinger
Coelho
Coleman (TX)
Collins
Conte
Conyers
Cooper
Coughlin
Courter
Coyne
Crockett
Davis (IL)
Davis (MI)
DeFazio
Dellums
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Downey
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
English
Espy
Evans
Fasell
Fazio
Feighan
Fish
Flake
Florio

Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Gallo

McMillen (MD)
Mfume
Miller (CA)
Miller (WA)
Mineta
Moakley
Mollohan
Moody
Morella
Morrison (CT)
Mrazek
Murphy
Murtha
Nagle
Natcher
Neal
Nielsen
Nowak
Oakar
Oberstar
Obey
Olin
Owens (NY)
Panetta
Paterson
Pease
Pelosi
Penny
Pepper
Perkins
Petri
Pickett
Price (IL)
Price (NC)
Pursell
Rahall
Rangel
Regula
Richardson
Ridge
Rinaldo
Ritter
Robinson
Rodino
Roe
Rose
Rostenkowski
Rowland (CT)
Roybal
Russo
Sabo
Savage
Sawyer
Saxton
Scheuer
Schneider
Schroeder
Schumer
Shays
Sikoraki
Skaggs
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NJ)
Snowe
Solarz
Spratt

St Germain
Stagers
Stallings
Stark
Stokes
Studds
Sundquist
Sweeney
Swindall
Tausin
Taylor
Thomas (CA)
Thomas (GA)
Upton
Valentine
Vander Jagt
Vucanovich
Walker
Whittaker
Wolf
Wortley
Wylie
Young (FL)

Torrice
Towns
Traffant
Traxler
Vento
Visclosky
Volkmmer
Walgren
Watkins
Weber
Weldon

NOT VOTING—22

Biaggi
Brown (CO)
Carr
Clay
Crane
Daniel
Duncan
Gephardt

Gingrich
Howard
Jones (NC)
Kaptur
Kemp
Lipinski
Lott
Molinari

Owens (UT)
Roemer
Sharp
Udall
Waxman
Weiss

□ 2110

The Clerk announced the following pairs:

On this vote:
Mr. Roemer for, with Mr. Gephardt against.

Mr. Brown of Colorado for, with Ms. Kaptur against.

Mr. Lott for, with Mr. Weiss against.

Mrs. BOXER changed her vote from "aye" to "no".

Mr. CAMPBELL changed his vote from "no" to "aye."

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the Committee amendment in the nature of a substitute, as amended.

The Committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. FOLEY] having assumed the chair, Mr. GONZALEZ, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1212) to prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce, pursuant to House Resolution 295, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the Committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

RECORDED VOTE

Mr. GUNDERSON. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered. The vote was taken by electronic device, and there were—ayes 254, noes 158, not voting 21, as follows:

(Roll No. 414)

AYES—254

Garcia
Gaydos
Gejdenson
Gibbons
Gilman
Glickman
Gonzalez
Gordon
Gray (IL)
Gray (PA)
Green
Gregg
Guarini
Hamilton
Harris
Hawkins
Hayes (IL)
Hayes (LA)
Henry
Hertel
Hochbrueckner
Horton
Houghton
Hoyer
Hubbard
Boulter
Hughes
Jacobus
Jeffords
Johnson (CT)
Johnson (SD)
Jontz
Kanjorski
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lancaster
Lantos
Leach (IA)
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lewis (GA)
Lloyd
Lowry (WA)
Luken, Thomas
Manton
Markley
Martin (IL)
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McDade
McHugh
McMillen (MD)
Mfume
Miller (CA)
Miller (WA)
Mineta
Mokley
Mollohan
Moody
Morella
Morrison (CT)
Mrazek
Murphy
Murtha
Nagle
Natcher
Neal
Nielsen
Nowak
Oakar
Oberstar
Obey
Olin

Ortiz
Owens (NY)
Panetta
Pashayan
Pease
Pelosi
Penny
Pepper
Perkins
Petri
Pickle
Price (IL)
Price (NC)
Pursell
Quillen
Rahall
Rangel
Regula
Richardson
Ridge
Rinaldo
Ritter
Robinson
Rodino
Roe
Rose
Rostenkowski
Rowland (CT)
Roybal
Russo
Sabo
Savage
Sawyer
Saxton
Scheuer
Schneider
Schroeder
Shays
Sikoraki
Skaggs
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NJ)
Snowe
Solarz
Young (AK)

H 9598

CONGRESSIONAL RECORD — HOUSE

November 4, 1987

NOES—158

Archer	Hansen	Packard
Arney	Hastert	Parris
Badham	Hatcher	Patterson
Baker	Hefley	Pickett
Balenger	Hefner	Porter
Barnard	Herger	Ravenel
Bartlett	Hiller	Ray
Barton	Holloway	Rhodes
Bateman	Hopkins	Roberts
Bennett	Huckaby	Rogers
Bereuter	Hunter	Roth
Bilirakis	Hutto	Roukema
Bliley	Hyde	Rowland (GA)
Buechner	Inhofe	Salki
Bunning	Ireland	Schaefer
Burton	Jenkins	Schulze
Callahan	Jones (TN)	Sensenbrenner
Chandler	Kasich	Shaw
Chapman	Kolbe	Shumway
Chappell	Konnyu	Shuster
Cheney	Kyl	Sisisky
Coats	Lagomarsino	Skeen
Coble	Latta	Slaughter (VA)
Coleman (MO)	Leath (TX)	Smith (NE)
Combust	Lent	Smith (TX)
Craig	Lewis (CA)	Smith, Denny
Dannemeyer	Lewis (FL)	(OR)
Darden	Lightfoot	Smith, Robert
Daub	Livingston	(NE)
de la Garza	Lowery (CA)	Smith, Robert
DeLay	Lujan	(OR)
Derrick	Lukens, Donald	Solomon
DeWine	Lungren	Spence
Dickinson	Mack	Spratt
DioGuardi	MacKay	Stangeland
Dornan (CA)	Madigan	Stenholm
Dreier	Marlenee	Stump
Edwards (OK)	Martin (NY)	Sundquist
Emerson	McCandless	Sweeney
Fawell	McCollum	Swindall
Fields	McEwen	Tallon
Frenzel	McGrath	Taylor
Frost	McMillan (NC)	Thomas (CA)
Galleghy	Meyers	Thomas (GA)
Gekas	Mica	Valentine
Gingrich	Michel	Vucanovich
Goodling	Miller (OH)	Walker
Gradison	Montgomery	Weldon
Grandy	Moorhead	Whittaker
Grant	Morrison (WA)	Wolf
Gunderson	Myers	Wortley
Hall (OH)	Nelson	Wyllie
Hall (TX)	Nichols	Young (FL)
Hammerschmidt	Oxley	

NOT VOTING—21

Biaggi	Gephardt	Molinari
Brown (CO)	Howard	Owens (UT)
Carr	Jones (NC)	Roemer
Clay	Kaptur	Schumer
Crane	Kemp	Sharp
Daniel	Lipinski	Udall
Duncan	Lott	Waxman

□ 2125

The Clerk announced the following pairs:

On this vote:

Mr. Gephardt for, with Mr. Brown of Colorado against.

Mr. Kemp for, with Mr. Crane against.

Ms. Kaptur for, with Mr. Lott against.

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN THE ENGROSSMENT OF H.R. 1212, EMPLOYEE POLYGRAPH PROTECTION ACT

Mr. MARTINEZ. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, the Clerk be authorized to make corrections in section numbers, punctuation, and cross-references and to make such other techni-

cal and conforming changes as may be necessary to reflect the actions of the House in amending the bill, H.R. 1212, the Employee Polygraph Protection Act.

The SPEAKER pro tempore (Mr. DURBIN). Is there objection to the request of the gentleman from California?

There was no objection.

GENERAL LEAVE

Mr. MARTINEZ. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 1212, the Employee Polygraph Protection Act, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF HOUSE JOINT RESOLUTION 394, FURTHER CONTINUING APPROPRIATIONS, FISCAL YEAR 1988

Mr. PEPPER, from the Committee on Rules, submitted a privileged report (Rept. No. 100-419) on the resolution (H. Res. 302) providing for the consideration of the joint resolution (H.J. Res. 394) making further continuing appropriations for the fiscal year 1988, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 435, UNIFORM POLL CLOSING TIME FOR PRESIDENTIAL ELECTIONS

Mr. PEPPER, from the Committee on Rules submitted a privileged report (Rept. No. 100-240) on the resolution (H. Res. 303) providing for the consideration of the bill (H.R. 435) to amend title 3, United States Code, and the Uniform Time Act of 1966 to establish a single poll closing time in the continental United States for Presidential general elections, which was referred to the House Calendar and ordered to be printed.

RESIGNATION AS MEMBER OF COMMITTEE ON GOVERNMENT OPERATIONS

The SPEAKER pro tempore laid before the House the following resignation as a member of the Committee on Government Operations:

HOUSE OF REPRESENTATIVES,
Washington, DC, November 4, 1987.

HON. JIM WRIGHT,
Speaker of the House, H-204 Capitol, Washington, DC.

DEAR MR. SPEAKER: Effective today, I tender my resignation from the House Committee on Government Operations.

With kind regards, I am,
Sincerely,

ERNE KONYU,
Member of Congress.

The SPEAKER pro tempore. Without objection, the resignation is accepted.

There was no objection.

RESIGNATION AS MEMBER OF COMMITTEE ON MERCHANT MARINE AND FISHERIES

The SPEAKER pro tempore laid before the House the following resignation as a member of the Committee on Merchant Marine and Fisheries.

HOUSE OF REPRESENTATIVES,
Washington, DC, November 4, 1987.

HON. JIM WRIGHT,
Speaker of the House, The Capitol, H-204, Washington, DC.

DEAR MR. SPEAKER: I am writing to inform you that I hereby resign from the House Committee on Merchant Marine and Fisheries effective this date.

Sincerely,

JOSEPH J. DIOGUARDI,
Member of Congress.

The SPEAKER pro tempore. Without objection, the resignation is accepted.

There was no objection.

ELECTION AS MEMBERS TO CERTAIN STANDING COMMITTEES OF THE HOUSE

Mr. KOBLE. Mr. Speaker, by direction of the Republican Conference and on behalf of the Republican leader I offer a privileged resolution (H. Res. 304) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 304

Resolved, That the following named Members be, and they were hereby elected to the following standing committees of the House of Representatives:

Committee on Merchant Marine and Fisheries: Mr. Konnyu of California.

Committee on Government Operations: Mr. Shays of Connecticut.

Committee on Science, Space and Technology: Mr. Shays of Connecticut.

The resolution was agreed to.

A motion to reconsider was laid on the table.

VACATING OF APPOINTMENT OF ADDITIONAL CONFEREES ON H.R. 2713, DISTRICT OF COLUMBIA APPROPRIATIONS, 1988

The SPEAKER pro tempore. Without objection, the Chair's prior appointment today of Mr. WATKINS of Oklahoma as a conferee on the bill H.R. 2713 is vacated.

There was no objection.

The Clerk will notify the Senate of the change in conferees.