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COMPARISON OF RELEVANT/IRRELEVANT AND MODIFIED GENERAL QUESTION TECHNIQUE STRUCTURES IN A SPLIT COUNTERINTELLIGENCE-SUITABILITY PHASE POLYGRAPH EXAMINATION

By

Richard S. Weaver and Marcia Garwood, Ph.D.*

During the last twenty years, a number of debates have taken place over the validity (accuracy), reliability (consistency), and utility (practicality) of existing polygraph testing techniques within the polygraph community. Most research studies have investigated specific incident testing as opposed to commercial (preemployment) or government counterintelligence polygraph screening examinations. The present study compares two commonly used polygraph testing techniques in goverment polygraph screening examinations to determine if the techniques differ in type of examiner decision and information developed.

Data were collected at a federal agency that screens applicants and other individuals processing for initial or continued access to classified information and/or spaces through the utilization of polygraph testing techniques. The agency uses a version of the Relevant/Irrelevant Technique initially developed by Leonarde Keeler(1936). The polygraph examinations involve the asking of ten relevant questions on both suitability and counterintelligence issues. Relevant test questions are asked in a random order, approximately 15-20 seconds apart during the administration of each polygraph chart. Intermittently, irrelevant questions are interspersed between relevant test questions. The purpose of the irrelevant test question is to establish or reestablish a physiological norm from which any subsequent or previous physiological response changes to relevant test questions can be assessed. Usually, each polygraph chart begins with one or two irrelevant test questions followed by several relevant test questions. From this point, irrelevant test questions are usually asked after every two or three relevant test questions. Relevant test questions are repeated, at random, throughout each polygraph chart. Physiological responses to relevant test questions are then evaluated to determine whether the respiration, skin resistance, or cardiovascular responses reflect a change from an established physiological norm. Physiological responses are evaluated in terms of perceived strength of change, duration, or consistency from chart to chart. Repeating relevant test questions prevents, or at least minimizes, results.(Weir 1974, Weir 1976, Weir and Atwood 1981) At the completion of polygraph examination, there is one of three possible conclusions:

(1) NSR (No specific physiological reactions are noted to any of the relevant test questions.

(2) SPR (Specific physiological reactions are noted to one or more of the relevant test questions); or,

*The authors are certified examiners in the federal government. Mr. Weaver is Chairman of the Standards and Ethics Committee of the APA and Dr. Garwood is on the APA Research Committee. For reprints write to Richard S. Weaver, 10615 Whiterock Court, Laurel, Maryland 20707.

(3) INC (Inconclusive - no definitive determination can be made from the polygraph charts).

Examiners also employ the use of secondary polygraph testing techniques (most often the "Peak of Tension" Technique), also developed by Keeler(1936), in order to resolve specific physiological responses to one or more relevant test questions or inconsistent physiological responses which may have occurred during the administration of the primary (Relevant/Irrelevant) technique.

It also should be noted that the primary polygraph technique frequently includes the asking of a "Reverse Norm," whereby the polygraph examiner intentionally errs in the phrasing of an irrelevant test question, or an unreviewed control question, a "surprise" question asked at the conclusion of an examination(Weir 1974). These procedures occur only when the examinee has not exhibited specific and consistent physiological responses to the relevant test questions being asked. The purpose of the "Reverse Norm" or unreviewed control question is to determine and demonstrate the physiological response capabilities of the examinee.

As the use of the polygraph in government has increased, a number of other federal government agencies have been involved in developing polygraph screening programs. Currently two other agencies utilize polygraph testing techniques incorporating the concept of a reviewed control question. In 1947, John E. Reid introduced the concept of the control question (or the "Comparative Response Question") into existing polygraph techniques. The Reviewed Control Question can be defined as a question asked during the course of a polygraph examination concerning an act of wrong-doing to which the subject in all probability will be lying, or at the least will entertain doubt as to the accuracy of his answer. In 1963, Cleve Backster explained the Reviewed Control Question Technique in terms of a psychological set, that is, the technique involuntarily focuses the examinee's psychological attention towards the particular test question which holds the greatest immediate threat to his well-being. The Reviewed Control Question Technique is based upon the theory that the examinee, if truthful to the relevant test questions being asked, will be most concerned and will focus psychological attention on the control question(s), rather than on the relevant test question(s). Under the same circumstances, an examinee who is being deceptive to one or more relevant test questions will be most concerned and will focus psychological attention on these relevant test questions within a polygraph chart being administered. Conversely, it is presumably an indication of deception whan an examinee exhibits stronger physiological responses to one or more relevant test question(s) compared to control test question(s) within the polygraph chart(Marcy et al., 1975). Numerical scoring procedures for comparing relevant test question responses with control test question responses have been developed in order to promote objectivity in polygraph chart analysis(Koll 1979). Although research has supported the validity and reliability of the Reviewed Control Question Technique in specific incident polygraph examinations, limited research has been conducted in order to assess validity, reliability, or utility of the Reid format of the control question technique within a polygraph screening examination, in which more than one topic area is being explored and evaluated (Department of Defense 1983).

Proponents of the Relevant/Irrelevant Technique maintain that the introduction of reviewed control questions into the polygraph technique only confuses the interpretation of relevant test question responses and, frequently, confuses the truthful subject and results in inconclusive polygraph records. They also maintain that the technique promotes an unnatural situation by requiring an examination to stress to the subject the importance of being truthful during a polygraph examination while at the same time devising questions that a subject will answer dishonestly or will entertain doubts as to the truthfulness of his answer.(Weir and Atwood 1981) An additional criticism of the Reviewed Control Question Technique is that control questions may be interpreted by the subject to encompass incidents of a serious, relevant concern which are not directly addressed by relevant test questions. Stronger responses to control questions in these cases, while interpreted as an indication of truthfulness to the relevant test questions, may actually be reflecting the subject's attention being focused on a more serious matter of concern, related to one or more of the control questions. Theoretically, this overriding concern to control questions may "mask" secondary concerns to one or more relevant test questions to which the subject is attempting deception.

One additional important difference between techniques used at different federal agencies is that some agencies combine questions of a counterintelligence concern with questions of a suitability nature during each polygraph examination chart administered. Other agencies separate relevant test questions of a counterintelligence concern from relevant test questions of a suitability concern. These tests consist of two phases. Usually, the first phase will employ relevant test questions of a counterintelligence concern. The second phase includes questions of a suitability concern.

This study compares the utility of the Relevant/Irrelevant Technique and the Reviewed Control Question Technique during the administration of screening examinations. The utility of these two alternative technique approaches is compared within the context of the split counterintelligence/suitability test format. A version of the Modified General Question Test (MGQT) currently taught at the United States Army Military Police School (USAMPS) which is based on the Reid Control Question Test has been incorporated as the Reviewed Control Question Technique format.(Reid 1976) Although it would seem to be appropriate to compare the validity of the Relevant/Irrelevant Technique with the reviewed Control Question Technique, it is not possible to independently verify the truthfulness of an examinee's answers to each question. Therefore, utility of the Relevant/Irrelevant Technique compared with the Modified General Question Test Technique (Reviewed Control Question Technique) will be assessed in terms of information developed, test minutes, chart clarity, and case resolution. The study is particularly significant because other polygraph screening programs throughout the federal government are presently in developmental stages.

METHODS

One hundred subjects of official polygraph examinations were randomly assigned to one of two groups. Group 1 was tested using a version of the Modified General Question Test (MGQT). An example of this type of test is

in Table 1. Group 2 was tested using the Relevant-Irrelevant (R-I) Technique. An exmaple of this test is listed in Table 2. Each polygraph examination consisted of several series of charts with the particular technique. One series consisted of counterintelligence relevant questions and one series consisted of suitability relevant questions. The counterintelligence series was administered before the suitability series in all cases. Inter-question interval (time between a subject's answer and the presentation of the next relevant question) was 15 seconds. The design of the study was as follows:

	Counterintelligence Relevant Questions	Suitability Relevant Questions
Group 1 - MGQT	n = 50	n = 50
Group 2 - R-I	n = 50	n = 50

The first author conducted all of the examinations included in this study. All of these examinations were initial phase tests. No reexaminations were included in the study. No "overall truth" or "sacrifice relevant" test questions were incorporated into either technique.

TABLE I
MODIFIED GENERAL QUESTION TEST
COUNTERINTELLIGENCE PHASE (Example)

Position	Type of Question
1	Irrelevant
2	Irrelevant
3	Relevant
4	Irrelevant
5	Relevant
6	Control
7	Irrelevant
8	Relevant
9	Relevant
10	Control
11	Relevant

MODIFIED GENERAL QUESTION TEST
SUITABILITY PHASE (Example)

Position	Type of Question
1	Irrelevant
2	Irrelevant
3	Relevant
4	Irrelevant
5	Relevant
6	Control
7	Irrelevant
8	Relevant
9	Relevant
10	Control
11	Relevant

TABLE 2
RELEVANT-IRRELEVANT
COUNTERINTELLIGENCE PHASE (Example)

Position (Flexible)	Type of Question
1	Irrelevant
2	Irrelevant
3	Relevant
4	Relevant
5	Irrelevant
6	Relevant
7	Irrelevant
8	Relevant
9	Relevant
10	Irrelevant

RELEVANT-IRRELEVANT
SUITABILITY (Example)

Position (Flexible)	Type of Question
1	Irrelevant
2	Irrelevant
3	Relevant
4	Irrelevant
5	Relevant
6	Relevant
7	Irrelevant
8	Relevant
9	Relevant
10	Irrelevant

All examinations were administered using a Lafayette Statesman Polygraph Instrument (Model #761-64S) which monitored relative change in thoracic and abdominal respiratory patterns, electrodermal activity, and cardiovascular activity.

Table 3 lists the data collected on each subject. The examiner made a decision of no significant reactions (NSR), significant physiological reactions (SPR), or inconclusive (INC) for the counterintelligence series and for the suitability series. Other dependent measures on each series included whether any information and whether potentially disqualifying information was developed during the pretest and after the first charts, test minutes (measured from the time the relevant questions were introduced to the end of the discussion about the questions), chart clarity, number of charts, and whether there was no interrogation, mild interrogation, or strong interrogation.

TABLE 3

SUBJECT DATA:

Subject Number	_____	
Age	_____	
Sex	_____	
Type Case (circle)	Applicant	Contractor
Group Assignment (circle)	MGQT	R-I

COUNTERINTELLIGENCE TEST:

Decision (circle)	SPR	NSR	INCONCLUSIVE
Information on Counterintelligence Issues Obtained During Pretest (circle)		YES	NO
Potentially Disqualify Counterintelligence Information Obtained During Pretest (circle)		YES	NO
Information on Counterintelligence Issues Obtained After Beginning Charts (circle)		YES	NO
Potentially Disqualifying Counterintelligence Information Obtained After Beginning Charts (circle)		YES	NO
Interrogation (circle)	None	Mild	Strong

Time Test
(Compute from Introduction of Counter-intelligence Questions to Conclusion of Discussion of Counterintelligence Issues) _____ Minutes

Chart Clarity
(circle number)

1	2	3	4	5	6	7
charts very unclear					charts very clear	

Test Techniques Used (Number of Charts)	RI	MGQT	POT
	____	____	____

SUITABILITY TEST:

Decision (circle)	SPR	NSR	INCONCLUSIVE
Information on Suitability Issues Obtained During Pretest (circle)	YES	NO	
Potentially Disqualifying Suitability Information Obtained During Pretest (circle)	YES	NO	
Information on Suitability Issues Obtained After Beginning Charts (circle)	YES	NO	
Potentially Disqualifying Suitability Information Obtained After Beginning Charts (circle)	YES	NO	
Interrogation (circle)	None	Mild	Strong
Test Time (Compute from Introduction of Suitability Questions to Conclusion of Suitability Issues)	_____ Minutes		

Chart Clarity
Circle number

1	2	3	4	5	6	7
charts very unclear						charts very clear

Test Techniques Used (Number of Charts)	R-I	MGQT	POT
	____	____	____

Remarks:

The following statistical analyses was performed on the data:

1. Chi-squares and contingency coefficients to measure strength of association were used for 2 x 3 tables to determine if Group 1 and Group 2 differed in the number of NSR, SPR, and Inconclusive decisions. This was done once for the test on counterintelligence issues and once for the test on suitability issues.

2. Chi-squares and contingency coefficients were used for 2 x 2 tables to determine if Group 1 and Group 2 differed in the number of times information was developed during the pretest and the number of times no information was developed during the pretest. This was done once for the counterintelligence test and once for the suitability test for both total information and for potentially disqualifying information.

3. Chi-squares and contingency coefficients were used for 2 x 2 tables to determine if Group 1 and Group 2 differed in the number of times information was developed after the first chart and the number of times no information was developed after the first chart. This was done once for the counterintelligence test and once for the suitability test for both total information and for potentially disqualifying information.

4. T-tests were used to determine if the two groups differed in test minutes, chart clarity, and number of charts for the counterintelligence test and the suitability test.

5. Chi-squares and contingency coefficients were used for 2 x 3 tables to determine if Group 1 and Group 2 differ in the number of times no interrogation, mild interrogation, and strong interrogation was used. This was done once for the counterintelligence test and once for the suitability test.

RESULTS

As discussed earlier, subjects were randomly assigned to either the MGQT group or the relevant-irrelevant group. However, since this was a field situation, occasionally it was necessary to use a combination of techniques in order to resolve a test. All subjects in the MGQT group first received several MGQT charts. If this did not resolve the test, the examiner frequently administered either an unreviewed control question or a relevant-irrelevant test to the MGQT group. The non-MGQT charts and the unreviewed control questions were eliminated for purposes of data analysis and all research decisions were made using only the MGQT data. Subjects in the relevant-irrelevant group first received several charts of the relevant-irrelevant technique. In order to resolve a test, the examiner occasionally then used peak-of-tension tests. Comparisons between this group and the MGQT group were made both using the relevant-irrelevant charts alone, and then by using the relevant-irrelevant charts in combination with the peak-of-tension charts.

Chi-square analyses were used to determine if the MGQT and relevant-irrelevant groups differed in types of decision (NSR, SPR, or INC), the number of times information was developed during pretest, the number of times potentially disqualifying information was developed during pretest,

the number of times information was developed after charts, the number of times potentially disqualifying information was developed after charts, and interrogation (none, mild, or strong). The two groups did not significantly differ on any of these variables for either the counterintelligence test or the suitability test. Results were the same whether the data for the relevant-irrelevant group consisted of the relevant-irrelevant charts along, or the relevant-irrelevant and peak-of-tension charts combined. Tables 4 and 5 list the different types of decision made for each group for the suitability and counterintelligence tests.

TABLE 4
SUITABILITY TEST

	Type Decision		
	NSR	SPR	INCONCLUSIVE
Group 1*			
MGQT	28	4	17
Group 2			
R-I	29	8	13
R-I/POT	33	5	12

Number of subjects classified as having no significant reactions (NSR), significant reactions (SPR), and inconclusive (INC) with the MGQT Technique, the relevant-irrelevant technique (R-I), and the relevant-irrelevant technique in combination with peak-of-tension tests (R-I/POT) for the suitability test. The R-I and the R-I/POT data reflect the same subjects and differ in whether the POT charts were or were not used in making the decision.

TABLE 5
COUNTERINTELLIGENCE TEST

	Type Decision		
	NSR	SPR	INCONCLUSIVE
Group 1			
MGQT	40	0	10
Group 2			
R-I	42	0	8
R-I/POT	42	0	8

Number of subjects classified as having no significant reactions (NSR), significant reactions (SPR), and inconclusive (INC) with the MGQT technique, the relevant-irrelevant technique (R-I), and the relevant-irrelevant technique in combination with peak-of-tension tests (R-I/POT) for the counterintelligence test. The R-I and the R-I/POT data reflect the same subjects and differ in whether the POT charts were or were not used in making the decision.

*One subject was eliminated from the MGQT group for the suitability phase because only 1 MGQT chart was conducted.

The MGQT and the relevant-irrelevant groups were compared on chart clarity (7-point scale), test time, and number of charts by using t-tests. The groups did not significantly differ on chart clarity for either the suitability or the counterintelligence test. There were no significant differences for test time on the suitability test; the MGQT test was significantly longer (mean = 21.78 minutes) than the relevant-irrelevant test (mean = 19.26 minutes) for the counterintelligence test ($t = 2.50$, $p < .05$). There were significantly more MGQT charts than relevant-irrelevant alone charts for the suitability test ($t = 2.46$, $p < .05$), but there were no significant differences in number of MGQT charts and number of relevant-irrelevant combined with peak-of-tension charts for the suitability test. For the counterintelligence test, there were significantly more MGQT charts than relevant-irrelevant alone charts ($t = 5.57$, $p < .05$) and than relevant-irrelevant combined with peak-of-tension charts ($7 = 4.59$, $p < .05$).

DISCUSSION

This study has evaluated the utility of the Relevant/Irrelevant Technique compared with the Reviewed Control Question Technique in the context of counterintelligence/suitability screening examinations. Results demonstrate that the Relevant/Irrelevant Technique and the Reviewed Control Question Technique (MGQT test format) produce similar numbers of NSR, SPR, and INC conclusions. The Relevant/Irrelevant Testing Technique format and the Reviewed Control Question Technique format (MGQT test) are similarly successful in developing information. Technique did not influence ease of interpretation of polygraph charts. The few significant differences that did occur suggest that a Relevant/Irrelevant Technique approach may be preferable in counterintelligence/suitability screening cases due to the amount of time required and the fewer number of polygraph charts necessary to reach a determination.

However, the results of this project should not be interpreted to discourage Reviewed Control Question Techniques from playing an important part in counterintelligence/suitability screening. The utility of the Reviewed Control Question Technique in screening cases may be more useful when a single issue emerges from the initially conducted Relevant/Irrelevant Technique approach. The research supporting validity and reliability of the Reviewed Control Question Technique in specific incident examinations would also support this position. Further research into alternative technique approaches is suggested by the results of this project.

It should be emphasized that this study has not investigated the relative validity of the two techniques. That is, the study did not investigate whether the examiner was more accurate at diagnosing truth or deception with one technique than the other. To conduct such a study it would be necessary to independently verify truth or deception on each issue.

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Errata

Please make the following corrections in your copy:

Page 97, paragraph 2, line 22+ should read:

... Repeating relevant test questions prevents, or at least minimizes, the possibility of random thoughts or artifacts affecting the overall test results. (Weir, 1974; Weir, 1976; Weir and Atwood, 1981). At the completion of polygraph examination, there is one of three possible conclusions:

Page 113, paragraph 1, line 7 should read:

... (90%). This difference is significant (X^2 = 13.5, $p < .001$).

Page 114, paragraph 2, line 9 should read:

... the experienced examiners was not significant (x^2 = 2.77, $p > .05$).

AN INVESTIGATION OF THE ACCURACY AND CONSISTENCY OF POLYGRAPH CHART INTERPRETATION BY INEXPERIENCED AND EXPERIENCED EXAMINERS

By

William J. Yankee, James M. Powell, III and Ross Newland*

Introduction

Over the years, many studies relating to the reliability and validity of polygraph methodology have been conducted and reported (Ansley, Horvath & Barland 1983). Only three of these studies, however, have investigated the matter of differences in diagnostic ability between experienced and inexperienced examiners.

Horvath and Reid (1971) selected 40 sets of charts, judged difficult to interpret, from a group of 75 sets of charts. All cases were field cases from the files of a large commercial firm and included a variety of felonies. The tests were all conducted by one examiner using a control question methodology. Twenty sets of charts were from verified truthful subjects and twenty sets were from verified deceptives. Seven experienced (over one year experience) examiners and three inexperienced (four to six months) examiners evaluated the charts. The examiners made their decisions based solely on the evaluation of the polygraph recordings. The experienced examiners made correct decisions in 91.4 percent of the cases whereas the inexperienced achieved 79.19 percent accuracy. The overall accuracy for both groups was 87.85 percent. The experienced examiners were quite consistent with scores ranging from a low of 85 percent to a high of 97.5 percent, with five of the seven achieving 90 percent and above. The inexperienced examiners achieved 70, 77.5 and 90 percent respectively. The experienced examiners made 6.4 percent false positive errors and 10.8 percent false negative errors, while three inexperienced examiners made 16.6 percent false positive errors and 25 percent false negative errors.

In a second study, Hunter and Ash (1973) used seven examiners to evaluate ten sets of verified truthful and ten sets of verified deceptive charts. It was not reported how the sets of charts were selected for the sample, however, they were field cases that came from the files of a large commercial firm and included a variety of felonies. The tests were all conducted by one examiner using a control question methodology.

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*William Yankee is a consultant to the A. Madley and Stanton Corporations in Charlotte, N.C. He is an APA Member. James Powell is the Executive Vice-President of the Stanton Corporation and is an APA Member. Ross Newland is Vice-President of the A. Madley Corporation and is an Associate Member of the APA. All three have been examiners for over ten years.

For reprints of this article write to Dr. William Yankee at 3817 Deckford Place, Charlotte, N.C. 28211.

Six of the examiners had been examiners for over a year, while the seventh had been an examiner for four and a half months and was still in internship training. Using a blind analysis approach, the overall accuracy for the seven examiners was 86 percent. In terms of correct decisions, the inexperienced examiner scored 85 percent as compared to the overall average of 86 percent. However, the consistency score for the inexperienced examiner was 75 percent as compared to an overall consistency (scoring the same charts on two separate occasions) score of 85 percent. No statistical treatment of the difference was reported. There were 20 false positive errors and 16 false negative errors.

In the third study Horvath (1977) compared, in addition to other selected variables, the accuracy scores of five high-experienced (more than three years) examiners with five low-experienced (less than three years) examiners. The cases were randomly selected from the case files of a large police agency and involved a variety of felonies.* Although not specifically reported in this study, the polygraph examination results for the sample had been conducted by several examiners (Horvath 1983) rather than just one examiner as was the case in the previous two studies cited. The high-experienced and low-experienced examiners had an overall accuracy score of 63.6 percent and 62.7 percent respectively. There was no statistically significant difference between the two groups. Although error rates were addressed, they were not statistically treated in respect to the high-experienced group in contrast with the low-experienced group.

Although the present study has some similarity with the previous studies, there are several differences. It is similar in that it addresses the issue of experienced vs inexperienced examiners. It is similar to the Horvath (1977) study in that it utilizes cases from the files of a large police agency, the examinations were conducted by more than one examiner, and involved a variety of felony types.

The first major difference relates to the length of training the inexperienced examiners had undertaken at the time of the study. The inexperienced examiners in the present study were in their seventh and eighth weeks of an eight-week training program as compared to four and six months of training in a six months program as cited in the Horvath & Reid (1971) and the Hunter & Ash (1973) studies.

A second major difference with the Horvath & Reid (1971) study was that in the present study no attempt was made to select charts on the basis of how easy or difficult the charts might be to interpret.

Other differences involve the method by which the blind analysis was conducted and the inclusion in the sample of several sets of charts diagnosed by the original examiner as inconclusive. The reasons for these differences will be explained under the method section.

This study, then, was undertaken to investigate the chart interpretation diagnostic ability of inexperienced examiners who were in their seventh and eighth weeks of an eight-week training program and to compare this diagnostic ability with experienced examiners.

*Only two other studies have utilized police file examinations, Horvath (1977) and Holmes (1958).

Method

Twenty-five verified sets of truthful charts, twenty-five sets of verified deceptive charts and ten sets of inconclusive charts were drawn from the central files of a police agency. Starting with January 1, 1982, the files were searched systematically, taking verified charts and inconclusive charts as they appeared in chronological order until the desired number of sets of charts were obtained. Charts that had clue information written on them, had reactions underlined, or in any way had information other than the normal polygraphic recordings and notations, were omitted, and the next set of verified charts, or inconclusive charts, as the case may be, replaced them.

When the data was being analyzed, it was observed that one set of inconclusive charts consistently resulted in high negative numerical values (-10 to -15). A check was made with the chief examiner of the police agency to determine if a mistake had been made in the original identification of the charts as inconclusive rather than deceptive. Indeed a mistake had been made. The individual who produced the charts had been tested twice. The first time the charts were diagnosed as inconclusive. The individual was tested again at a later date, was diagnosed deceptive, and subsequently confessed. It was the second set of charts, the deceptive ones, that were included in the sample. These charts were kept in the study, consequently the final sample included twenty-five verified truthful, twenty-six verified deceptive and nine inconclusive sets of charts.

The students involved in this investigation had studied, as a normal part of their curriculum, the concepts of validity and reliability, and a selected number of specific published studies as these concepts relate to polygraphy. As a result, it was assumed that they might anticipate that in any blind analysis study, there would be an even number of deceptive vs truthful sets of data. To control for whatever bias this might introduce in the study, the inconclusive sets of charts were included as part of the sample. Originally it was not intended to include these sets of charts in the analysis, but rather to use them as distractors. However, the results are being included.

All the charts used in this study were obtained using the Army Zone Comparison methodology. Each examination consisted of three tests, and each test contained three control-relevant zones. Thus for each examination there were three tests, with three zones each, for a total of nine zones to be evaluated (Weaver 1980).

Because of "confidentiality" and "maintain custody" policies of the police agency involved, photography was used to obtain the desired data. Each zone in each test was photographed using a 35 mm Minolta XG-1 camera and Kodachrome KR135-36 film. Each zone was coded with a case number and a zone letter and was photographed as part of the zone. The key to the code is known only to the police examiners that made the sample selection and the writers. This process results in sixty sets of slides (60 examinations) of nine each, for a total of 540 slides. The sets of slides (nine each set) were randomly placed in eight carousel trays. The slides were projected on a screen for evaluation. A scoring data sheet was

developed to include the case number and zone letter as well as spaces for the numerical values to be placed for each component for each zone. The scoring sheets were placed in a binder booklet. Each evaluator had their own booklet to work with throughout the study. See Exhibit A for sample page.

Four persons, three males and one female, were the inexperienced examiners. They were in their seventh and eighth weeks of training following 55 hours of chart interpretation instruction. Four examiners with one and one-half to seven years experienced, two of whom were private examiners and two police examiners, served as the experienced examiners.

The examiners were not given any information about the cases. They were told that the slides containing pictures of zones were from verified truthful and deceptive cases as well as inconclusives as diagnosed by the original examiners. The charts were photographed so that only the zones (control and relevant questions) and a five second period just prior to the stimulus presentation of the control questions (the first stimulus in the zone) were evident. Therefore the examiners could only evaluate the zones with no other information influencing their interpretation.

The examiners were instructed not to discuss their evaluations with each other or to compare their numerical scores. The examiners were closely monitored during the evaluation sessions. All the inexperienced examiners did their evaluations during a two-week period. Two of the experienced examiners did their evaluation over a period of one month while the other two did theirs during a one-day session.

The Army method of numerical evaluation was used by all examiners. A seven position scale of numbers from +3 to -3 were used to represent the perceived difference between relevant and control test questions responses after each comparison was made for each zone. A negative (-) number indicates that the reactions to the relevant question is judged to be greater than the reaction to the appropriate control question, whereas a plus number (+) is the reverse, the reaction to the control question is perceived to be greater than the reaction to the appropriate relevant question. A "0" indicates no perceived difference between the reactions, or lack of reactions, to the control and relevant questions being evaluated; a + or - sign indicates direction and a 1, 2 or 3 indicates magnitude of perceived differences, with 3 representing the greatest difference. An excellent presentation regarding Army chart interpretation methods in comparison with two other methodologies can be found in Weaver (1980).

Accuracy of Decision

Each examiner was given credit for a correct decision if the decision was in agreement with the verified decisions of the original examiners (N=51) or if it was in agreement with the original examiners diagnosis of inconclusive (N=9). Thus to be given credit for a correct decision regarding a verified truthful set of charts, the evaluator must have a score of, or in excess of, +6; and for a verified deceptive, a -6 or greater. Any score within the range +/- 5 from any verified set of charts was scored as a "no decision" result.

An examiner was also given credit for a correct decision if the score obtained on any one of the nine sets of charts diagnosed as inconclusive by the original examiners was within a +/-5 range. A +6 or better placed the decision into an "unverified truth" category, and a -6 placed the decision in an "unverified deceptive" category.

GROUPS	SECTION A Verified Truthful and Deceptive Decisions N=51								SECTION B Original Examiner Inconclusive Diagnosis N=9						SECTION C Verified and Inconclusive Combined N=60	
	Correct	%	FP	%	FN	%	ND	%	Correct	%	T	%	D	%	Correct	%
Inexperienced	167	82	1	.5	0		35	17	16	44	9	25	11	31	184	77
Experienced	191	94	2	1	0		11	5	19	53	13	36	4	11	210	88
Combined	359	88	3	.7	0		47	11.5	35	49	22	30	15	21	394	82

Table 1
Percent of Agreement of Student and Experienced Examiners With Original Examiner Diagnosis, Number of Errors and No Decisions

It can be observed in Table 1, Section A, that the inexperienced examiners were correct in 168 of their decisions for 82% as compared to 191 correct decisions, or 94%, for the experienced examiners. This difference is significant (x squared = 6.58 $p < .001$). There were no false negative decisions by either group, however, there was one false positive decision by the inexperienced examiners and two by the experienced team for an error rate of one half percent and one percent respectively. All three of these errors were made on the same set of charts. It is obvious that the difference in correct decisions between the two teams was not in error calls, but rather in the number of "no decisions" (35) made by the inexperienced team.

The results regarding the nine inconclusive sets of charts can be observed in Section B of Table 1. The agreement with the original diagnosis was 16 or 44% for the inexperienced group and 19 or 53% for the experienced group. The difference in agreement between the experienced and inexperienced groups is not significant (x squared = .52 $p > .05$). However, if 50% is considered chance, the agreement (49% with the original examiner) merely approaches chance. In those instances, when the groups did not agree with the original examiners inconclusive diagnosis, the students diagnosed in the deceptive direction (31%), while the experienced examiners diagnosed in the truthful direction (36%). This difference is significant (x squared = 6.52, $p < .001$).

In Section C of Table 1, correct decisions for the 51 verified and 9 sets of inconclusive charts have been combined for overall accuracy. The inexperienced team was accurate 185 times for 77%, and the experienced team was accurate 210 times for 86%. This difference is significant (x squared = 8.92 $p < .001$). The overall accuracy for both teams was 82%.

It has been contended that the truthfulness of innocent subjects cannot be detected at better than chance levels (Lykken 1981). In Table 2 one can observe the differences between inexperienced examiners and experienced examiners when the verified truthful and verified deceptives are separated.

	TRUTHFUL N=25						DECEPTIVE N=26					
GROUP	T	%	FP	%	ND	%	D	%	FN	%	ND	%
Inexperienced	69	69	1	1	30	30	97	93	0	0	7	7
Experienced	90	90	2	2	8	8	101	97	0	0	3	3

Table 2
Comparison of Correct Decisions Between Inexperienced Examiners and Experienced Examiners When Verified Truthful and Verified Deceptive Are Separated

The inexperienced examiners correctly diagnosed 69 (69%) of the verified truthful charts while the experienced examiners correctly diagnosed 90 (90%). This difference is significant (x square = 13.5 $p < .001$). The inexperienced examiners diagnosed one false positive and 30 "no decisions" while the experienced examiners diagnosed two false positives and 8 "no decisions". If 50% is considered the chance level, the inexperienced examiners correctly diagnosed the verified truthful charts at better than chance levels (x squared = 7.48 $p < .001$). In respect to the verified deceptive the inexperienced examiners correctly diagnosed 97 (93%) and the experienced examiners correctly diagnosed 101 (97%). This difference is not significant (x squared = 1.68 $p > .05$).

Consistency of Decisions

In determining consistency of decisions among the inexperienced examiners in the 51 verified cases, each was paired with each other, for a total of six pairs. A paired decision was counted if each member of the pair made a decision on a set of charts, that is, if they both had a numerical score of +/-6 or better. It was counted as "no decision" if both had numerical scores of +/-5 or less. It was counted a disagreement if one member had a +6 or better and the other member had a -6 or better. The same procedure was used to determine consistency for the experienced examiners in respect to the 51 verified cases.

In respect to the 9 sets of charts, diagnosed by the original examiner as inconclusive, a paired decision was counted if both members had a numerical score of +5 or less, or if both members had a +6 or better or a -6 or better. It was counted as "no decision" if one member had a +/-5 or less and the other had a score of +/-6 or better. It was scored as a disagreement if one had a +6 or better and the other had a -6 or better.

	SECTION A Verified Truthful and Deceptive N=51			SECTION B Original Examiner Inconclusives N=9			SECTION C Verified and Inconclusives Combined N=60		
	D(1)*	PA(2)*	%A(3)*	D	PA	%A	D	PA	%A
Inexperienced	2	222	99.1	1	31	96.8	3	253	98.8
Experienced	0	279	100	2	25	92.5	2	304	99.3
Total	2	501	99.6	3	56	94.9	5	557	99.1

*1) D=Disagree; *2) PA=Paired Agreement; *3) A=Agreement

Table 3
Comparison of Percent of Agreement of Paired Decisions Between Inexperienced Examiners and Experienced Examiners

Table 3, Section A, lists the number of times each pair of examiners diagnosed whether a subject was truthful or deceptive.

It also lists the number of times out of a possible 306 that both examiners in each pair made a definite decision. The inexperienced examiners disagreed in two instances out of 224 decisions and the experienced examiners did not disagree on any. The percent of agreement for the inexperienced examiners was 99.1%. Combining both teams, there were 503 decisions out of a possible 612. In the 503 instances where two examiners reach a definite decision of truth or deception, they agreed 501 times, or 99.6% of the time. The difference between the inexperienced examiners and the experienced examiners was not sigificant (x square = 2.77 $p > .05$).

Section B of Table 3 lists the number of disagreements and paired decisions on the 9 sets of inconclusive charts. In this instance, the inexperienced examiners agreed 31 times with one disagreement for a 96.8% agreement, while the experienced examiners agreed 25 times with 2 disagreements for a 92.5% agreement. This difference was not significant (x squared = .43 $p > .05$). Overall, the combined paired decisions was 56 out of 59 for an overall agreement of 99.1%.

In Section C of Table 3 the paired decisions for the verified truthful and deceptive and the inconclusive are combined for an overall agreement/disagreement assessment. The inexperienced examiners disagreed 1.2% of the time when decisions were made by both members of a pair, while the experienced examiners disagreed .7% of the time. Combining all examiners, it is noted that out of a possible 720 decisions, 557 were made with five disagreements for an overall agreement of 99.1%.

Discussion

This study clearly demonstrates that independent and blind evaluation of charts by other examiners produce highly accurate and reliable results

by both experienced as well as inexperienced examiners. However, there were a number of significant differences between experienced and inexperienced examiners, particularly in respect to accuracy of decisions.

In this study, there was a significant difference in correct calls on verified charts between the inexperienced and experienced; 82% to 94% respectively. Most of this difference occurred in the verified truthful charts with the inexperienced examiners reaching a correct level of 69% as compared to 90% for the experienced examiners. There was no significant difference between the two groups in respect to accurately identifying verified deceptive charts with 93% and 97% results.

These findings are in agreement with the Horvath and Reid (1971) and Hunter and Ash (1973) studies which both reported differences between experienced and inexperienced examiners, but in disagreement with the Horvath (1977) study which reported no difference.

One major difference in the findings with the previously cited studies is in the low rate of false positives and no false negatives in this study. The Horvath and Reid (1971) study reported 9.5% false positive and 15% false negative; and Hunter and Ash (1973) reported 7% false positive and 7% false negative. The Horvath (1977) study reported 50% false positive and 21.4% false negative on record sets involving crimes against a person and 47.9% false positive and 24.3% false negative in record sets involving property crimes. These latter figures may be somewhat misleading since inconclusive judgments were scored as errors. In this study the overall error rate on verified charts was .7%.

One can only speculate as to why there is such a distinct difference in error rates and accuracy rates between this study and the Horvath (1977) study. The commonalities of the studies are that more than one experienced police examiner conducted the examinations and all the cases were of a felony criminal type. The studies differed in methodology. The examiners in the Horvath (1977) study used a modified Reid/Arther control question method while the present study used the U.S. Army methodology. Horvath's (1977) study does not state the deceptive criteria used by the evaluators in the analysis nor does it indicate if numerical evaluation methods were applied. In this study, all evaluators applied the deceptive criteria as established by the U.S. Army method and also used the Army's numerical evaluation format. It is doubtful that different methodologies could totally account for the difference in the results.

There was no sigificant difference between the inexperienced examiners and experienced examiners in respect to consistency of decisions. The inexperienced examiners agreed 99.1% and the experienced examiners 100% of the time on verified truthful and deceptive charts. The inexperienced overall agreement, including the inconclusive charts (N=9), was 98.8%, while the experienced examiners agreed 99.3% of the time.

The second major difference between this study and other studies was the inclusion of sets of charts (N=9) diagnosed as inconclusive by the original examiners. The agreement with the original examiners was less than chance (44%) for the students and just slightly better than chance (55%) for the experienced examiners, a difference that is not significant.

However, the agreement rate among inexperienced and experienced examiners combined was 99.1% with inexperienced agreeing in the deceptive direction while the experienced examiners agreed in the truthful direction.

Again, one can only speculate as to why agreements with the original examiners on the inconclusive sets of charts was no better than chance. Charts diagnosed as inconclusive are frequently characterized by ambiguous physiological recordings. Perhaps the original examiners, confronted with ambiguous recordings, were influenced by the case facts and thus diagnosed the charts as inconclusive. The evaluators in this study had no such knowledge. The inexperienced examiners daignosed 44% as inconclusive but 55% in the truth-deception categories. The experienced examiners diagnosed 53% as inconclusive and 47% in truth-deception categories.

It should be recognized that diagnostic ability does not reflect on whether or not inexperienced examiners can conduct a proper examination so that the resulting polygraph recordings can be accurately and consistently diagnosed. However, it is clear from this study that inexperienced examiners can accurately and consistently diagnose polygraph charts.

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EXHIBIT A

Case # _____

Evaluator _____

Component	A 4/5	B 6/7	C 9/10	Tot
Pneumo				
G.S.R.				
Cardio				
Total				
			1st Chart Tot	

Component	D 4/5	E 6/7	F 9/10	Tot
Pneumo				
G.S.R.				
Cardio				
Total				
			2nd Chart Tot	

Component	G 4/5	H 6/7	I 9/10	Tot
Pneumo				
G.S.R.				
Cardio				
Total				
			3rd Chart Tot	

Case # _____

Component	A 4/5	B 6/7	C 9/10	Tot
Pneumo				
G.S.R.				
Cardio				
Total				
			1st Chart Tot	

Component	D 4/5	E 6/7	F 9/10	Tot
Pneumo				
G.S.R.				
Cardio				
Total				
			2nd Chart Tot	

Component	G 4/5	H 6/7	I 9/10	Tot
Pneumo				
G.S.R.				
Cardio				
Total				
			3rd Chart Tot	

All Charts _____

POLYGRAPH

Volume 14, Number 2

Errata

Please make the following corrections in your copy:

Page 97, paragraph 2, line 22+ should read:

... Repeating relevant test questions prevents, or at least minimizes, the possibility of random thoughts or artifacts affecting the overall test results. (Weir, 1974; Weir, 1976; Weir and Atwood, 1981). At the completion of polygraph examination, there is one of three possible conclusions:

Page 113, paragraph 1, line 7 should read:

... (90%). This difference is significant (X^2 = 13.5, $p < .001$).

Page 114, paragraph 2, line 9 should read:

... the experienced examiners was not significant (x^2 = 2.77, $p > .05$).

SENATE TESTIMONY OF GENERAL RICHARD G. STILWELL, USA (Ret.)

This formal statement was submitted by Richard G. Stilwell, General, USA (Retired), former Deputy Under Secretary of Defense (Policy) to the Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate, 25 April 1985.[Ed.]

Mr. Chairman, I appreciate the opportunity to appear before the Subcommittee today to present an overview of the Department of Defense Personnel Security Program and to discuss such specific personnel security policy matters as you may wish.

Traditionally, there has been a three-pronged approach to providing security to sensitive government programs: Information security, physical security, and personnel security.

Historically, the goal of personnel security has been to ascertain the trustworthiness of individuals prior to their being granted access to classified information or prior to their being assigned to sensitive national security duties--and their continuing trustworthiness afterwards. We do not take this responsibility lightly--for we are aware that both individual and national security interests are involved. People are central to the security issue. One can install the most comprehensive and sophisticated physical and information security controls imaginable, yet they will not prevent a cleared employee from compromising our secrets if he chooses to break the trust that his government has afforded him.

The ultimate thrust of personnel security, therefore, is to identify persons who may not be relied upon to protect legitimate national security secrets before they are given access and, of greater importance, to insure that those already given access are personally disposed to continue to meet their obligations to safeguard such information.

The keystone to personnel security in the Defense Department, as in most government agencies, has long been the personnel security field investigation, or background investigation, consisting of checks with national and local law enforcement agencies, employment and credit references, and interviews with friends, neighbors, co-workers, and others who are in a position to comment on the individual's reliability and trustworthiness. Rarely do these checks disclose evidence of covert contacts or attempted penetrations by foreign intelligence. Rather their value lies in uncovering personal conduct information that may reflect potential vulnerability to hostile approaches and, more often, develop information indicating that the subject's personal traits are such that he or she simply could not be relied upon to safeguard national security information.

We have provided the Subcommittee with copies of our personnel security policy documents detailing the DoD programs in the personnel security area. Additionally, the Director of the Defense Investigative Service in his presentation before the Subcommittee has covered the role of the Defense Investigative Service in implementing this program. I will not repeat those details here.

I do want, however, to highlight the key features of the Defense Program as well as mention several ongoing efforts both in DoD and with the Executive Branch which will undoubtedly have a significant impact upon the DoD Program.

The first crucial point to emphasize is its scope. The Department of Defense Personnel Security Program is by far the largest in the Federal Government. Indeed, there are more people cleared under the Defense Program than in the rest of the Federal Government. The General Accounting Office reports that over 90% of the sensitive positions in the Federal Government are in the Department of Defense. There are 2.5 million cleared DoD Military/Civilian employees, 1.4 million cleared industrial employees and approximatley 400,000 cleared members of the National Guard and Reserve Forces. These figures include individuals cleared for 105 special access programs involving information of the highest national security sensitivity.

Conducting timely and productive investigations at this volume, adjudicating the results of the cases completed, and, afterwards, mantaining security supervision of these vast numbers of cleared individuals are formidable tasks, both in terms of adjusting policy and resources to meet the Department's operational requirements, and to ensure basic fairness to those who are subject to this process.

Policy development is centralized at DoD level within DUSD(P). The Defense Investigative Service has sole responsibility to carry out background investigations of all defense employees and contractors. However, implementation of policy is decentralized at DoD component level. It is ultimately the responsibility of the Secretaries of the Military Departments, and the Heads of the Defense Agencies, however, to insure that persons accepted for or retained in the Armed Forces, persons selected for or assigned to sensitive civilian positions, and persons afforded access to classified information, including those employed under national security contracts, are reliable and trustworthy. The legal bases for the DoD Personnel Security Program are found in Executive Order 10450 which governs the civilian program, Executive Order 19865 which governs the industrial program, and Executive Order 12356 which governs access to national security information. While there is no Executive Order explicitly addressing military personnel security, our authority in this area derives from the National Security Act of 1947 which provides the Secretary of Defense with general authority to operate the Department in an effective, efficient manner.

Investigations and Security Supervision

The Department conducts a variety of background investigations, depending upon the level of access needed by the individual concerned. These are detailed in the statement provided by the Director of the Defense Investigative Service, however, so I need not repeat them. Suffice it to say, the process by which we arrive at the investigative scope for a particular type of investigation has been a dynamic one within defense. This is necessitated by the fact that we have extremely limited resources to conduct the vast numbers of investigations that are requested to carry out the defense mission. So it is not simply a matter of selecting

certain elements of an investigation for varying levels of clearance. Rather, the potential of each investigative element to produce information essential to a trustworthiness determination must be weighed against the investigative resources available. Since those resources are scarce, we search for techniques that will provide us with the most productive information with the least amount of investigative effort.

An example of this process is the relatively new interview-oriented background investigation, or IBI, mentioned by Mr. O'Brien. Under a test of this concept in 1981, we found that simply by direct and in-depth questioning of the subject, we were able to develop almost three times the amount of derogatory information previously being developed by investigations that did not include a subject interview. Although these interviews themselves are time-consuming and at the time they were put in place forced us to cut back temporarily on other elements of the investigation, we found them justified in terms of the relatively high rate of productivity.

We now have had four successful years of experience with the IBI and our customers seem pleased with it. Elements of the investigation which were temporarily suspended in 1981 have now been added back to this scope, and we find that the resultant combination is more productive of adverse information than the special background investigation required for access to sensitive compartmented information.

Although we depend heavily upon the personnel security investigative process as the initial basis for a clearance, we have long recognized that it would be unwise to rely exclusively on personnel security investigations as the sole means of assuring the continued security trustworthiness of individuals. Indeed, the effectiveness of the government investigative process, generally, and the availability and utility of sources of information, particularly, has eroded over the years. Simply stated, a personnel security investigation is not as productive of relevant adjudicative information as it was 20 years ago. This can be attributed to a number of factors, among them the Privacy Act of 1974, the Family Education and Right to Privacy Records Act of the same year, the increasing reluctance or inability of State and local jurisdictions to provide criminal history record information, the high mobility of our citizens which makes residence checks less useful, and a growing reluctance on the part of our citizens, in general, to provide the kind of personal information which may impact on clearances and careers.

Consequently, to supplement the investigative process, the DoD Program emphasizes continuing security evaluation of persons already cleared and functioning in sensitive positions. The responsibility for such assessment is shared by the organizational commander or manager, the individual's supervisor and, in a large measure, the individual himself. To this end, the Heads of DoD components maintain programs designed to evaluate on a continuing basis the status of personnel under their jurisdiction with respect to security eligibility. These programs require close coordination between DoD security authorities and personnel, medical, legal and supervisory officials to assure that all pertinent information available within an organization is considered in the personnel security evaluative process. These programs work. Indeed, the overwhelming

majority of suspensions or revocations of clearances is based on adverse information developed within the organizational management system rather than through the normal investigative process.

Similarly, under the Defense Industrial Security Program which is managed by DoD for 18 other Federal Agencies, contractors are required to report to the Department of Defense derogatory information which could adversely effect a contractor employee's clearance. This, too, constitutes an important feature of the industrial program.

In addition to investigating reports of derogatory information involving cleared personnel, DoD also conducts periodic reinvestigations of persons accessing sensitive compartmented information, holding top secret clearance, or assigned to certain especially sensitive positions. The periodic reinvestigation (PR) scope utilized by DoD is the most comprehensive in the Federal Government. However, because of resource limitations, we have found it necessary to limit the number of periodic reinvestigations by assigning quotas to the requesting agencies--with a current annual ceiling of 40,000. While we would like to cover all persons with top secret clearances at five-year intervals, the persons now requiring such periodic reinvestigation are estimated at 279,000 persons, with an estimated 296,000 additional joining the list between 1985-1988. The Defense Investigative Service would have to average 115,000 PRs annually, necessitating an augmentation of DIS by 767 investigative pesonnel. Were the periodic reinvestigation applied to persons cleared at the secret level, three million additional persons would require reinvestigation--and an additional DIS augmentation of 4841 investigative personnel plus the necessary auxiliary support.

In short, because of these resource limitations, we have had to focus our reinvestigations upon those with access to the most sensitive classified information. In this connection, our greatest personnel security concern involves those persons who have been cleared for, and who have had access for a period of time to, so-called "Special Access Programs". By definition under Executive Order 12356 a special access program may be created only if (1) normal management and safeguarding procedures do not limit access sufficiently; and (2) the number of persons with access is limited to the minimum necessary to meet the objective of providing extra protection for the information. In DoD, special access programs protect basically intelligence, research and development, and special military activities. We are particularly concerned with providing sufficient protection to these programs.

Use of the Polygraph to Supplement Investigations

In November 1981, soon after taking responsibility for this program, I commissioned a select panel, composed of senior defense officials, and charged them with reviewing the DoD Personnel Security Program from top to bottom and developing recommendations for improvement of the existing system. The panel was chaired by the Deputy Assistant Secretary of Defense for Administration, and consisted of the Navy General Counsel; the Director of the Army Staff; the Deputy Assistant Secretary of the Air Force for Logistics; The Deputy Director, NSA; and the Chief of Staff, DIA.

The panel conducted a comprehensive review and issued a lengthy report in April 1982, recommending a number of actions to enhance the Personnel Security Program (and I am pleased to report we have taken action on virtually all of them). Of particular interest with respect to special access programs, was the panel's recommendation that a limited, counterintelligence-scope polygraph be considered to assist in determining the initial and continued eligibility of a finite number of individuals to positions involving access to extremely sensitive classified information. Counterintelligence questions would be limited to questions such as: Have you ever engaged in espionage or sabotage against the United States?; Do you know anyone who is engaged in espionage or sabotage of the United States?

This recommendation was subsequently incorporated into a proposed revision of the Department's Polygraph Directive which was already in the works. After almost two years of consideration, which included two rounds of coordination internally and repeated discussions with the public and with Congressional staffs, last year the Congress approved a limited test of this approach during this fiscal year.

We believe--on the basis of our extensive experience with the polygraph--that this unique investigative tool can, when properly controlled, be employed in a manner that does not violate the rights and privacy of our employees, and yet provide the Department with a greater degree of security assurance with respect to our most sensitive programs, than we now have. We believe the mere possibility of being subjected to a polygraph examination will act as a powerful deterrent to those individuals who might consider an attempt to penetrate or compromise such programs. Recent history clearly indicates the extent of damage that can be caused by even one person who has access to sensitive information who is willing to share that information with our adversaries.

Acceptance of Prior Security Clearance Determinations

DoD policy also stresses avoidance of unnecessary or duplicative investigations. Within Defense, security clearances are mutually and reciprocally acceptable so long as there has been no break in Federal service greater than 12 months and no derogatory information is known that may have occurred subsequent to the last security determination. Considering the large number of cleared DoD personnel who move to new assignments each year this eliminates unnecessary duplication and a costly administrative burden. The policy also applies to the contrator arena wherein a cleared employee at one firm may transfer to another, with DIS transferring the security clearance without delay. Prior investigations conducted by DoD or another Federal agency are accepted so long as there is no break in employment greater than 12 months and the investigation is of substantially the same scope.

Adjudications

In the final analysis, even the most comprehensive investigation serves little purpose if the information it contains is not properly evaluated and adjudicated. We have placed considerable emphasis upon and are continually assessing the adjudicative process.

The standard which must be met for clearance or assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that entrusting the person with classified information or assigning the person to sensitive duties is clearly consistent with the interests of national security.

Thus, the principal objective of the DoD personnel security adjudicative function, consequently, is to assure that persons selected for sensitive positions meet this standard. The adjudication process involves assessing the probability of future behavior which could have an effect adverse to the national security. Since few, if any, situations provide conclusive evidence of future conduct, the adjudicative process attempts to judge whether the circumstances of a particular case, taking into consideration prior experience with similar cases, suggests some probability of behavior not consistent with the national security. It is clearly a subjective determination, considering the past but necessarily anticipating the future. Rarely is proof of trustworthiness and reliability or untrustworthiness and unreliability beyond all reasonable doubt.

While equity demands fair and consistent assessment of circumstances from one situation to the next, each case must be weighed on its own merits. All information of record, both favorable and unfavorable, must be considered and assessed in terms of accuracy, completeness, relevance, seriousness, and overall significance. In all adjudications the protection of the national security is the paramount determinant.

Our basic personnel security regulation (DoD 5200.2-5) details adjudicative guidelines which are unique in the federal government. The DoD adjudicative guidelines were developed by my former office in concert with security policy officials of all of the DoD components. They have proven to be invaluable to DoD adjudicators. Indeed, after the issuance of our guidelines, the Director of Central Intelligence developed a similar approach in 1980. We are currently in the process of reviewing and coordinating upgraded guidelines.

DoD components are responsible for adjudicating personnel security investigations of their personnel. Since 1976, the Army and Air Force have operated centralized adjudicative activities which are charged with the issuance, denial and revocation of security clearances. The Navy, however, continues on a decentralized basis and has, in effect, several thousand clearance granting authorities located on ships and at bases around the world.

Review of Industrial Security Program

In late 1983, following the arrest of James Durward Harper, Jr., for alleged espionage activity, I established a special DoD Industrial Security Review Committee, to review the effectiveness and administration of the Defense Industrial Security Program, in light of the Harper Case.

After months of intensive effort, the Industrial Security Review Committee, or "Harper Committee" as it has become known, produced its final report in November of this past year. I have provided your Subcommittee with a copy of the report. Therefore, I need not here detail its findings

and recommendations. I should say, however, that of the 25 recommendations, (a number of which related to personnel security), we agree with, and intend to implement, most of them. I can comment more specifically on these actions if you like, but first allow me to mention general features of the Defense Industrial Security Program itself. Under DoD Policy, industrial employees may be placed in-process for a personnel security clearance following a determination that access to classified information is necessary in the performance of tasks or services essential to the fulfillment of a classified contract or program. The initial determination is the responsibility of industry management. The policy explicitly requires that industry limit the number of personnel processed for a security clearance to the minimum necessary to discharge contractural obligations.

Contractors must also certify on each clearance application form submitted to the Department that the employee applicant has a need for the level of clearance requested, and that performance on classified contracts is required.

The oversight responsibility for insuring compliance with these initial clearance eligibility requirements is shared jointly by industry and DoD. Industry is required, for example, to appoint a security supervisor to monitor security activities on a continuing basis and to conduct a formal internal self policing audit midway between scheduled DoD security inspections. In addition, the Defense Investigative Service, which administers the Industrial Security Program and performs inspections of contractor security operations, also oversees contractor compliance with personnel security clearance requirements.

However, industrial security personnel and DIS representatives realize the inherent difficulties associated with assuring strict compliance with DoD clearance requirements. The principal burden to ensure compliance rests with the DIS inspector cadre which conducts periodic inspections of cleared firms but has a limited capacity to monitor the vast numbers of clearance requests being submitted. As the Harper Committee noted in its report, contractors have a powerful incentive to initiate clearance action on as many employees as possible, notwithstanding the requirement to establish the need for access before submitting a clearance application. Under current procurement regulations, shortages of cleared personnel could place contractors at a competitive disadvantage relative to the award of future contracts. We are addressing this problem.

This problem is not restricted to the industrial arena. The number of cleared DoD civilian and military is also very large, and we believe many have no need for a clearance but are put in for one out of an excess of caution. This was a major concern of the Harper Committee as it is to us. Accordingly, we are considering, for the first time in the history of the DoD program, putting requests for initial investigations on a quota basis - while at the same time reducing the number of persons with security clearances to a level ten percent below the number reported by the components for Fiscal 1984. While we do not want to hamper vital defense programs, we believe that such a quota system is the only effective way to bring the burgeoning volume of investigations and clearances - especially in industry - under control.

I now want to turn to a significant effort at the national level.

Review of Federal Personnel Security Program

The President, in March 1983 promulgated National Security Decision Directive (NSDD) 84 which directed, among other things, that an interdepartmental group under the Department of Justice (DOJ) undertake a "Study of the Federal Personnel Security Program and Recommend Appropriate Revisions in Existing Executive Orders, Regulations, and Guidelines."

The NSDD-84 Study Group chaired by DOJ, and consisting of OPM, DoD, FBI, State and Treasury representatives, conducted an in-depth review of the matter and on 1 May 1984 forwarded recommendations to the Assistant to the President for National Security Affairs. These recommendations identified areas which should be addressed by federal policy.

We strongly support this effort, believing that personnel security policy should be consistent among executive departments and agencies and ought to be grounded in a comprehensive federal policy covering civilian, military and contractor programs.

It has long been the position of the Department of Defense, and that of several other executive branch agencies playing a key role in national security matters, that Executive Order 10450 no longer serves its intended purpose and that a new order should be issued. A primary purpose of the new order would be to differentiate the Personnel Security Program from the Personnel Suitability Program.

Another problem has arisen recently as the results of the Merit Systems Protection Board, established to hear cases involving actions taken against civilian employees on suitability grounds, injecting itself into security clearance cases. Ms Kathleen Buck, DoD Assistant General Counsel, covered this matter in detail yesterday--and I support her position.

Personnel Security Research

Finally, I want to mention that in 1983, for the first time, we funded a modest approach to personnel security research. At OSD request, the Naval Postgraduate School began limited research into specific areas such as the potential utility of psychological assessment, evaluation of personnel interview techniques, improvement of the adjudicative process, and steps to improve the productivity of the background investigation. Additionally, we hope to launch, in the near future, expanded research on the use of the polygraph for personnel security screening.

These then are the highlights of the Department's Program and of ongoing efforts to improve it. This Subcommittee is to be commended for focusing some long overdue attention on this really vital but often overlooked aspect of protecting the nation's security. I will be pleased to answer any further questions that you may have.

Again, let me express my appreciation for the opportunity to appear before your Subcommittee.

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FEDERAL POLYGRAPH POLICIES DESCRIBED IN SENATE TESTIMONY

The following excerpts are from the formal submissions for the record by executive agencies of the federal government whose witnesses appeared before the Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate. The hearings were held in April 1985 and were on the "Federal Government's Security Clearance Programs." Polygraph was occasionally mentioned during these lengthy hearings, but was never a major topic of discussion. The emphasis was on the number of persons cleared (4.2 million); the amount of classified material; the methods, agencies, and quality of background investigations; the administration of personnel security programs in industry; the laws and executive orders; and discussions of specific cases. Two of the submissions are being printed elsewhere in this journal in their entirity. General Stilwell gave an exceptionally interesting presentation which will be of use to every reader who is involved in security. Boyce, convicted of espionage, has also made some interesting observations. Cases that were discussed at some length and addressed in the formal submissions included Boyce-Lee, Harper-Schuler, Bell-Zarcharski, and Veliotis. (Ed.)

The Air Force Personnel Security Program, Excerpt on the Polygraph

April 16, 1985

Position as to the use of a polygraph: The investigative process makes use of a number of instruments, or tools. These tools include checks of medical, educational, national agencies, law enforcement agencies, credit, criminal, and subversive files, interviews with associates, both business and personal, and most recently, interviews with the subject. No single tool is used in isolation or to the exclusion of the others. Rather, each tool complements the others with a synergistic effect on the whole investigative process. The adjudicative process increases in effectiveness and credibility in proportion to an increase in the relevant information that is known about a subject. While the polygraph neither replaces nor supersedes other data sources, its usage, on a controlled, select basis, adds to the number of tools available in the investigative process. Appropriately employed, with realistic constraints such as those recently published within DoD for the "test" program, it can provide a useful supplement which serves to sharpen the investigative profile of an individual.

The Department of the Army Personnel Security Program

February 26, 1985

Position as to the use of a polygraph. The Army supports the use of the polygraph for personnel security screening as an augmentation to the normal personnel security investigation. We do not feel that it should be used as a sole basis for granting or denying access to classified material.

We also feel that the scope of the examination should be limited to counterintelligence/loyalty type questions. Whereas so-called "life style" questions may result in acquisition of adverse suitability information, this type information may also be derived from traditional investigation techniques. Limitation of the examination to counterintelligence and loyalty thus circumvents the possible perception of invasion of privacy.

Statement of Phillip A. Parker, Federal Bureau of Investigation

April 16, 1985

The Administrative Services Division (ASD) is responsible for the hiring of all FBI personnel and, because of the large number of applicants versus the limited number of vacancies, this is accomplished on a highly selective basis. The application process for each applicant appointed is lengthy, detailed, and centers around testing, a personal interview, and an exhaustive background investigation that must meet requirements to grant a security clearance up to and including the Government's Top Secret level. Results of all these items are carefully scrutinized by case analysts and two to three levels of Special Agent supervisory personnel before an appointment is issued. In situations of admitted or developed contacts or relations with individuals in foreign countries, records of the Central Intelligence Agency are checked, the case results are evaluated by the FBI's Security Programs Office, and if deemed necessary, the applicant may be required to be interviewed by a foreign counterintelligence-trained Agent and possibly even undergo a polygraph examination. A polygraph examination may also be required in other types of situations in order to resolve questionable items discovered in the background investigation.

The FBI's application form, which all applicants must complete, is extremely detailed and covers all phases of a person's life. The applicant must undergo a personal interview in which all of the items on the application are reviewed and questioned. Following this, indices (internal records check) are checked on applicant and all listed individuals on the form. Background investigation is initiated on those selected for further processing. All information known at this point is verified and individuals are personally interviewed at all listed employments, schools attended, and at the last five years of residences, all with an eye toward disclosing the applicant's character, associates, reputation, loyalty, skills, and any other factor(s) reflecting on his/her suitability for the position sought from a security and skills standpoint. Ane new or

questionable information developed during the investigation is fully explored and resolved, if possible, during the investigative process, and as stated above, may require additional interviews of the applicant or a polygraph examination.

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TESTIMONY OF CHRISTOPHER J. BOYCE, CONVICTED SPY

This formal statement was submitted by Christopher J. Boyce, a convicted spy who is serving forty years for espionage (plus 28 years for bank robbery committed during the 18 months of his escape). The statement submitted for the record is very close to what he said orally in his testimony before the Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate, April 16, 1985. The emphasis of these hearings was on personnel security, background investigations, and related matters. Polygraph was occasionally mentioned in the hearings, but Boyce emphasized in his oral presentation and this formal statement their value in security. One humorous exchange during his testimony took place. Senator Gore asked Boyce if he thought that his friends would have told the truth if the investigators had talked to them during his background investigation. Replied Boyce, "Sir, if they had just seen my friends they would have turned me down!" Boyce confirmed during his testimony what he put in his statement, that although the KGB gave him assurances about taking a polygraph test they did not make any positive suggestion about how he could beat the test. [Ed.]*

"Mr. Chairman, several weeks ago I spoke to the Minority Counsels of this Subcommittee about my recollections and personal feelings concerning espionage and the government's personnel security programs. All of my adult life I have seen government as a steamroller headed in my direction, a thing to be opposed at all costs. The Minority Counsels surprised me. During those conversations I felt for the first time that persons from authority were speaking to me as one human being to another. As long as I can remember I have tried to tear down that which I could not accept instead of trying to build something better. It is my hope here today that I am performing a constructive act by relating my memories. I have come here in good faith to assist this Subcommittee if I can, but perhaps I need to say these things even more than you need to hear them.

"In early 1975 at the age of twenty-one, I took my first stumbling steps towards the KGB. I was a totally naive amateur. I lacked even the most rudimentary skills this Subcommittee would associate with espionage. But even today I am still astounded at how easy the thing was to begin

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* A copy of a videotape of Boyce's Senate testimony is available to play at state association seminars. It is a little over an hour in length.

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and, given the security system, how near impossible it was to prevent. Regardless of expensive and elaborate security systems, I suggest that espionage arrests are made mainly when beginners make artless, blundering mistakes. And such a policy that gets results primarily by picking up the pieces after a security breach instead of active individual-directed prevention is an extremely frail method on which to base security. I think that the counterintelligence elements of government and the personnel security programs of the defense industries are missing the boat, and if you will bear with me I will try to speak my way through to the root of the weakness as I see it.

"On April 28, 1977, at the age of twenty-four, I was convicted on eight counts of violating the espionage statutes and given a sentence of forty years. My boyhood friend and codefendant, Andrew Daulton Lee, was convicted in a separate trial on twelve counts of espionage and sentenced to life imprisonment.

"In mid-1979 I was finally sent to Lompoc Prison where I was put in the incorrigible unit with the hardcore convicts. One day I was reading a book on my bunk and one of the gangs entered the cell next to me en masse and stabbed my neighbor to death. I remember watching his blood puddle out on the walkway. And not long after that, they did the same thing in exactly the same way to the man in the cell behind me. I heard it all, the screams, the death gurgle. I was the son and nephew of former FBI agents. I did not expect to live long at Lompoc and I decided that being shot off the prison fence was a better death than the knives. But I wasn't shot; I got away one night in January 1980. For eighteen months I remained a fugitive, despite a manhunt as far away as Costa Rica, South Africa and Australia, I spent my days in Idaho and Washington State. It is a frightening life believing that every law officer in the country would be proud to put a bullet in you. I was desperate; I thought returning to prison meant my death. To live on the run, I began holding up federally insured banks. I learned about that from all the idle talk in prison. It was terribly wrong, but I never intended to harm anyone, and I didn't. All during this time, I did not hide my true identity and past from dozens of new friends in the Northwest - they were fully aware of what had gone on between the Russians and myself and they knew I was a fugitive.

"Finally, I was turned in by a friend wanting to collect the reward, and I was arrested on August 20, 1981 in Port Angeles, Washington. I pled guilty to everything and now have sixty-eight years instead of forty. The government now keeps me locked in an isolation cell in Marion, Illinois, where I have a lot of time to think about all this in peace.

"I have been told that the facts underlying the original charges against myself and Daulton are generally known by the members of the Subcommittee. I don't think I need to recount a long narrative of what we did. Suffice it to say that from March 1975 through December 1976, I removed or photographed a sizeable number of classified documents from the highly secret "black vault" of TRW, a CIA contractor in Redondo Beach, California and sent them on with Daulton to the KGB in Mexico City. I was able to obtain those documents through my position as a specially cleared TRW employee, working in the black vault, located in building M4. On more

than a dozen occasions I removed documents from TRW and photographed them. On approximately six occasions, probably more, I personally photographed documents while within the vault itself. Daulton, in turn, delivered and sold the documents to KGB agents working out of the embassy in Mexico City. The documents pertained in part to the existence and operation of then highly secret intelligence satellites.

"As an employee of TRW, I not only received Confidential, Secret and Top Secret clearances, and access to Special Projects, but I also was supposedly restricted by the prescribed physical security measures for classified documents. Obviously, neither the government's clearance procedures nor the company's security procedures worked very well. In fact, the company's security procedures were a great help to me in compromising a CIA project to the Russians. There are some obvious reasons why.

"Let me begin with the question of clearances. In 1975, when I sent Daulton off with the first classified documents to the Soviets, neither of us was a professional spy, to say the least. We knew as much about espioange as we did about hieroglyphics. On my part, I was not even a professional or longstanding member of the intelligence community. After dropping out of college, I went to work at TRW in July 1974. My only prior interest in the intelligence community had been one of suspicion and distrust. At twenty-one, in an era of Vietnam, assassinations, Chile, and Richard Nixon's resignation, I had a strong distaste for government. I considered the CIA as, if anything, the enemy. When I came to TRW I had no idea that my work would, in any way, involve the CIA.

"I got the job through what one might call the "ole boy network." My father, a former FBI agent who then worked in security at another large defense contractor, was a friend of Mr. Regis Carr, also a former FBI agent, and then manager of TRW security for Top Secret contracts. It was Mr. Carr who hired me.

"I started at TRW as a general clerk making approximately $140 per week. I was immediately given what is known as a "Confidential" clearance. Almost immediately my supervisors submitted my name for receipt of a Secret, than a Top Secret clearance, then access to two Special Projects, and, finally, access to NSA codes. By December all those clearances had been approved and I was assigned to the "black vault," which I subsequently learned to be one of the most secret and classified areas of work at TRW. It was only then that I learned that I would be working on a Special Project involving the CIA.

"I was assigned, with my immediate supervisor, to monitor and process secret communications traffic between the CIA, TRW, and other CIA contacts around the world. My work included daily contact with the intelligence satellite program.

"In looking back, I remember being surprised that I was given such relatively free access so very quickly to these supposedly highly guarded materials. I used to sit for hours and stare into the satellite guts. It was all science fiction to me. I doubt that I would have gotten a job in the project so quickly except for my father's friendship with Mr. Carr. Unfortunately, if you just accept someone because his father is a friend, it negates the entire security system.

"I believe that on the day that I was hired, and prior to applying for or receiving any security clearances, the decision to place me in the vault had already been made. On that day, Mr. Carr introduced me to the Director of Security for a Special Project in building M4 as "the man you will be working for". Later I learned that this was the Rhyolite Project. Mr. Carr told me that I would be temporarily doing relatively routine and boring documentation work for the first few months until my clearances came through for my permanent assignment.

"I've been told that in other espionage cases, there were some obvious "red flags" of potential security violators which went unnoticed in background investigations and by co-workers: heavy financial indebtedness, sudden affluence, alcoholism, disgruntlement.

"What was my red flag? Using those indicators, probably none. I was the oldest son in a well-respected, stable, upper middle class, Catholic family. My father had a fine reputation in professional positions of trust. I had performed moderately well in school. While my background investigations were underway, I heard that friends of my parents had been contacted as references. Speaking as adults, they told the investigators that I was the courteous, bright, responsible son of a good family, exactly as they were expected to say. This was the extent of the investigation, as best as I can tell.

"What the investigators never sought was the Chris Boyce who moved in circles beyond the realm of parents, teachers, and other adult authority figures. To my knowledge, they never interviewed a single friend, a single peer, during the entire background investigations.

"Had they done so, the investigators would have interviewed a room full of disillusioned longhairs, counter-culture falconers, druggie surfers, several wounded paranoid vets, pot-smoking, anti-establishment types, beaded malcontents generally, many of whom were in trouble. In 1974 I believe that the majority of young people of my generation could not be considered politically reliable by CIA standards. I am sure you remember. Had the investigators asked any of those friends what I thought of the U.S. Government, and in particular the CIA, I would have never gotten the job. Had they asked, they would have learned that I had first begun smoking pot at sixteen and that I had experimented with a variety of other drugs along with everyone else I knew in my age group. Had they asked, they would have learned that one of my closest friends and later partner in espionage was Daulton Lee, whose record on drug charges and probation violations was, by age twenty-two, quite extraordinary. Had Mr. Carr even bothered to query his own sons, my high school classmates, they could have easily told him far more than the government's entire background investigation did.

"From what I can tell, the government's background investigation uncovered no substantial evidence that the CIA and Chris Boyce lived in separate Americas. They found no past arrest record, no reason to distrust me. I suggest that, in any area of supposedly such grave national security considerations, that alone is not enough. The government's background investigation also uncovered no reason to trust me. I was twenty-one years old. I had attended three different colleges and had no idea

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what I would do with myself. I had no substantial work history except school jobs. I laid concrete, I was a waiter, I had a paper route, I was a pizza cook, a janitor, a liquor store delivery boy, I harvested barley one summer - certainly nothing akin to the responsibility of handling highly classified spy satellite communications. TRW was my first full-time permanent job. In short, I had never been tested. In my view, that should have generated some caution, especially given the tenor of the times in the early seventies - the widespread questioning of authority and open political dissent within my own generation. Yet, from what I can tell, TRW and the CIA never hesitated in placing me, untested and untried, in their most sensitive area of employment.

"I might add that the only thing I was asked to do to get these clearances was to fill out a few forms. Although, at the time, my little sister was polygraphed before she went to work at a 7-Eleven, I was never polygraphed. I had trouble speaking with the Minority Counsels about polygraphs. Should the government be in the business of making windows into men's minds? Perhaps when a person has a security clearance, it is proper that he give up a part of himself for everybody else. I don't presume to know.

"To continue - I was never given a subject interview. A year later, after I had already started sending TRW/CIA documents to the KGB, I was given access to yet another Special Project after merely signing a few more forms. No additional background investigation was done to my knowledge.

"On the question of physical security at TRW's black vault, I can answer it simply and quickly: there was none. In my view, and I believe in the eyes of my fellow workers there, security was a joke, certainly nothing to be taken seriously.

"Take, for example, our project security manager, whom we regularly referred to as our "token hippie." On lunch breaks, when not drinking with us or others at the local bars, he would often be skateboarding around the neighborhood. Sometimes he returned the worse for wear, with bruises and torn pants. On one occasion, he told me he wanted the security atmosphere in M4 to be as unintrustive as that on a college campus.

"I can recall one incident where he did take an especially active role in security. The M4 coffee fund for employees was found consistently short. The old night janitor was suspected of theft. One evening the project security manager phoned me in the vault and told me that I was to come upstairs after work to help him "catch a thief." We then drilled a hole in an office wall so that he could watch the coffee fund without being seen. For the rest of the evening the project security manager sat in the dark peering through the hole, eventually catching the janitor pinching a few quarters. When the "surveillance" began, I went back down to the vault and made myself a drink, wondering at the lunacy of it all. The system could catch a janitor stealing coffee money, but it was incapable of hindering me in any way from passing the entire project to Daulton and on to the KGB.

"I suppose most people view security regulations as something that

should be held in awe by employees. That was clearly not the case at TRW. A number of employees made phony security badges as pranks. My immediate supervisor once made a security badge with a monkey's face on it and, to everyone's amusement, used it to come in and out of the building.

"The security identification badges themselves were not strictly accounted for. There were boxes of old badges that employees had previously used that were not destroyed for months at a time. These could have been used for improper entry. Prior to coming to the black vault, I worked in badges for awhile. There was no accountability over the materials used in manufacturing identification. I could have made a badge and I.D. for anyone, giving them access to a number of classified areas. On one occasion, in late 1974, before being sent to the Rhyolite Project, a Special Project Manager arrived at Badge and I.D. accompanied by an outside consultant. I refused to make badges and identification for the consultant because he was not accompanied by the proper clearance paperwork. The Special Project Manager swore revenge and she later got it by having me temporarily transferred out of security.

"Aside from badges, there was almost no supervision over access to the building and the vault. Although my comings and goings at building M4 were logged by the security guards, there was nothing to stop me from entering at any time during the day or night. On occasion I returned to the vault late at night without being questioned or even raising suspicion. There was simply no questioning on after-hours access as long as one mentioned any plausible excuse in passing, such as, 'I forgot my tennis racket.' And once inside there was no monitoring of my after-hour activities in the vault. None of the security guards who would log my entrance or inspect the premises had authorized access to the black vault. During some of these after-hour visits, I photographed and removed documents. For awhile I used to come to work at 4 a.m. to process the teletype traffic from Langley and then shut back down and lock up at 5:30 a.m. in order to hunt jackrabbits with my Harris Hawk at sunrise. I would then return to work around 7:30 a.m. and reopen the vault. No one ever questioned this. I could come and go whenever I wanted. I remember laughing about this with a girl I knew who was a bank teller. She used to tell me that Security Pacific would never allow their employees to open and enter their vaults at will, unsupervised, at any time.

"Controls on access beyond the black vault area were hardly much better. As part of my courier duties I made deliveries to the CIA facility. Although I had no clearance or authorization to do so, on occasion I wandered into their code room. Once I recall talking to a female employee inside the vault there. On a clipboard hanging on the wall beside her was a list of all the code words for every station on their circuit. Because I was naturally curious about everything that went on there, I began to note all the "handles." She caught me reading it, paused to flip the board over, and just smiled. I do recall that one employee did ask me to leave because I was unauthorized.

"Within the TRW vault, management had effectively 'compartmentalized' security away. By making the vault such a highly secret area those of us inside had been given, in effect, total autonomy. We worked under our own set of rules, or more accurately, lack of rules. We brought in an

uncleared company locksmith and altered the numbers on the vault tumblers by half clicks to prevent unauthorized access by our supervisors. We did not want them trespassing on our private preserve. We regularly partied and boozed it up during working hours within the vault. Bacardi 151 was usually stored behind the crypto machines. Under security regulations we were required to destroy the code cards for the machines daily in a destruction blender. We chose instead to throw the code cards towards, but not necessarily in, canvas bags in the corner. We used the code destruction blender for making banana daiquiris and mai-tais. Although only about eight people had authorized clearances to the vault, often many non-cleared members of our 'club', so to speak, would be in the vault for libations. On occasion the Project Security Manager would join us for a drink on the house.

"Part of our informal duties included frequent runs to the liquor store with 'orders' from various employees throughout the building. We used the satchel for classified material as a cover to bring in their peppermint schnapps, rum, Harvey Wallbanger mix, what have you, along with our stout malt, back into M4. In doing so I sometimes used the satchel to take classified documents out. To return the documents, I used packages, potted plants, and camera cases. Packages and briefcases were never searched by the guards.

"On one occasion I needed to return a rather large ream of documents that I had taken out earlier in the satchel on a Rhyolite beer run. I went to a floral shop and bought two large clay pots about two feet tall. I put the ream of documents in one after wrapping them in plastic, covered it with dirt and then stuck bushy plants in both pots. I brought one of the plants into the building myself and asked the security guard to carry the plant holding the documents back into the building. He obliged.

"A more severe security breach regularly entered our vault over the encrypted teletype link from Langley. Routinely we would receive from the CIA communications operators misdirected TWXs on other contractors' projects. We were not cleared for these projects and there was no accountability for the misdirected TWXs we received other than a lackadaisical request to 'destroy' typed from the Langley communications operators.

"To briefly return to badges and identification - the camera and film used to photograph employees for their picture identification were stored in one of the black vault safes on a shelf directly beneath the NSA crypto codes. It always struck me as both odd, but still typical at TRW, that objects such as these would be stored together.

"I remember only two government inspections in the vault during the entire time I was there. It amazed me that even though we were using all this highly secret equipment that belonged to the government, the government wasn't even around to oversee it. As for TRW's own security, Mr. Carr, the Security Director, could not take two steps towards the vault without our knowing about it - the security guards always warned us in plenty of time concerning his movements. As a result, as far as I could tell, Mr. Carr was completely unaware of the security breaches in the vault. He gave his orders from inside a bureaucratic cloud.

"I distinctly remember one of the two government inspections. The code cards for the crypto machines came in checkbook-style binders sealed in clear plastic envelopes. The envelopes were to be unsealed and the binders removed only at the beginning of the month they were to be used. We were given books of these codes sometimes five months in advance of their date use, despite obvious security risks. I was amazed that NSA would let half a year's worth of their codes sit anywhere out of their possession.

"At the time of the inspection, I had been unsealing some of these 'future' codes, removing them, and photographing them. I would reseal the plastic with the heat from an iron or with glue and then replace them in the vault. They were all packaged in an official established manner. The inspector came across one code binder that I had replaced upside down and face down, and then resealed. Once tampered with, the plastic envelopes never looked quite the same, despite my botched efforts at resealing them. He noticed it, looked puzzled, but instead complained about some other relatively insignificant missing item - one that no one could remember. He had looked closely at the displaced code card binder, but chose to pass over the broken seal.

"Document control itself was poorly supervised. It was one of my tasks to take TWXs and other messages to our reproduction center. From there, I would distribute copies to various authorized recipients in TRW. On numerous occasions I would see different employees later reviewing these classified documents even though they were not cleared for access to them. At times employees would ask me for additional copies of these classified documents given them since they couldn't find or had lost their assigned copies.

"My experiences at TRW have caused me to come to certain conclusions about personnel security. I know that a number of changes have been made in the way the government conducts background investigations that supposedly alert the investigators to potential security risks. I have been told that there is now greater emphasis on peers in background investigations. This was a basic reform if it has stuck. Friends of my parents could simply not give a true insight into what made Christopher Boyce tick. As I said before, if this had been done, I believe that I would never have gotton the job in the first place.

"Secondly, I should have been interviewed in great detail regarding my lifestyle and attitudes. I was never questioned about these points which seem to me to be important indicators for future security breaches. Had I been interviewed in this manner, I also believe that I would have never been assigned to that sensitive position.

"Thirdly, I know that if I had been polygraphed solely on attitudes toward the government and the CIA or even marijuana use, I probably never would have been considered for the job, but then neither would most of the friends that I grew up with.

"There are also a number of changes in security procedures that would have deterred my brazen acts and also greatly increased my chances of getting caught. Although these suggestions might not stop the professional spy, they would clearly have affected amateurs like myself.

"First, supervision over Special Projects such as the one I was involved with must be strengthened, especially supervision over the security sections of the Special Projects. There was little, if any, outside influence over our day-to-day activities. We were project security and we viewed security as a joke because we could easily circumvent it by our insultation from the usual management controls. What little security we saw was ineffective and incompetent. If we had been strictly supervised, perhaps I would have thought twice before acting as I did. Instead I decided that the intelligence community was a great bumbling, bluffing deception.

"Second, a policy of inspecting every parcel, briefcase and package going into and out of buildings such as M4 should be implemented. Although this in and of itself would not have prevented me from concealing material on my person, it would have increased my awareness of security as well as my chances of getting caught.

"Third, metal detectors should be installed in buildings such as M4 where there are highly secret projects. Such devices might have prevented me from bringing the camera that Daulton gave me repeatedly in and out of the project area.

"Fourth, if there had been encoding devices on the classified documents that could be monitored at building exits, I would have never attempted to take the actual documents out. I am aware of similar devices on library books and items of merchandise that sound alarms if one attempts to remove them.

"Fifth, a policy on limited polygraph examinations at the time of termination of employment on the question of unauthorized disclosure should be implemented. This policy should be explained to the applicant for employment at the time of hiring. He should be reminded of this policy throughout employment. If I had known this, I would never have considered an act of espionage. Contrary to assurances to me by the KGB officer in Mexico City that they had ways to beat the polygraph, I knew I could not pass a polygraph and greatly feared it. That same fear heightened my resolve never to accept direct employment with the CIA although on two separate occasions it was offered. This policy, distasteful as it is, should be considered one of the best deterrents to those toying with the thought of espionage.

"Sixth, for the same reasons, I think that limited use of the polygraph at the time of an employee's update investigation would heighten the fear of being caught sooner in a case such as mine, but fear alone cannot achieve security.

"Seventh, the number and scope of onsite investigations by the government should be increased. Both of the two inspections I recall at TRW appeared to be pro-forma, just requiring us to show the inspector that we had certain items on their checklists. Never once were we questioned on knowledge of or compliance with security procedures. Never once, as I recall, were questions asked concerning our very cluttered workplace. Never once were we questioned on destruction of old ciphers or other classified materials.

"Eighth, I recommend some system of anonymous complaints concerning security breaches that would be directed to the government and not the company. If I had seen posters on some sort of hotline system operating within the company, it would have given me pause to consider what I was doing. It would not only have deterred espionage, but everything else.

"All of this brings me to another point I would like to raise. I am convinced from my own experiences that what I say now is by far the most useful contribution I can make to this Subcommittee's study of personnel security. While I think these security regulations you review are important to maintain the integrity of the government, I believe they are next to worthless if each of the four million Americans with security clearances do not have a grasp of how espionage would affect them personally.

"No matter what security procedures are devised, if a man built it, another man can circumvent it and usually in the most simple way. At best, physical security can only make things tougher. The increase of espionage that you are experiencing will not be a passing phase unless popular myths about espionage are debunked for the fraud they are.

"I think, even in these responsible times, that if not carefully monitored, the intelligence community of any Western nation can be, potentially, a threat to an open society. But there is nothing 'potential' about the KGB. That state apparatus not only threatens every open society, but it crushes open societies. That is the distinction I could not see at a rebellious twenty-one. It is a distinction which Americans must see.

"The security organizations of both sides spy and engage in clandestine tactics. And in Mr. Gorbachev's new age of Camelot at the Kremlin, it will perhaps be easier for naive Americans to rationalize away the distinction between the restrained secrecy that defends them and the stealthy menace that seeks to deceive them. By your own estimates there are at least 500 KGB agents in the United States. And, Senators, I respectfully suggest that the overwhelming majority of the four million Americans with security clearances are extremely naive in their conceptions of espionage. That is the root of your problem.

"When I was at TRW, I and several hundred other relatively fresh employees were given a group talk on the perils of espionage. A clean-cut, all-American type addressed us from the podium. Here I sat with the KGB monkey already on my back, surrounded by all these young people who were being fed totally inaccurate and inappropriate descriptions of espionage. They were given the impression that espionage was some exotic, glamorous escapade. Handsome Slav spies would seduce young American secretaries on their vacations in Brussels and bend them into secret agents for the KGB. That type of approach to preventing espionage was and is disastrous. That was just what all those bored, young secretaries around me were dying to hear.

"It was surreal. A government spokesman, automatically accepted by everyone as competent, stood there entertaining all those naive, impressionable youngsters around me with tales of secret adventure, intrigue, huge payoffs, exotic weaponry, seduction, poisons, hair-raising risks,

deadly gadgetry. It was a whole potpourri of James Bond lunacy, when in fact almost everything he said was totally foreign to what was actually happening to me.

"Where was the despair? Where were the sweaty palms and shakey hands? This man said nothing about having to wake up in the morning with gut-gripping fear before steeling yourself once again for the ordeal of going back into that vault. How could these very ordinary young people not think that here was a panacea that could lift them out of the monotony of their everyday lives, even if it was only in their fantasies?

"None of them knew, as I did, that there was no excitement, there was no thrill. There was only depression and a hopeless enslavement to an inhuman, uncaring foreign bureaucracy. I hadn't made myself count for something. I had made my freedom count for nothing.

"As we sit here a half dozen, perhaps a dozen, perhaps more Americans are operatives of the KGB. Perhaps some of them have been in place for years. I tell you that none of them are happy men or women.

"And I would suspect that there are hundreds of other Americans out of the four million with security clearances who have given serious thought to espionage. Those are the people that you must seek out and reach with the truth. It is infinitely better for you to make the extra effort to ensure that your personnel understand beyond a shadow of a doubt how espionage wounds a man than for more and more of them to find out for themselves. No American who has gone to the KGB has not come to regret it.

"For whatever reasons a person begins his involvement, a week after the folly begins, the original intent and purpose becomes lost in the ignominy of the ongoing nightmare. Be it to give your life meaning or to make a political statement. Be it to seek adventure or to pay your delinquent alimony. Be it for whatever reason, see a lawyer or a psychiatrist or a priest or even a reporter, but don't see a KGB agent. That is a solution to nothing.

"I only wish, Senators, that before more Americans take that irreversible step, they could know what I now know, that they are bringing down upon themselves heartache more heavy than a mountain."

* * * * * *

LAFAYETTE INSTRUMENT CALIBRATION

By

James T. Kovac*

I. Pneumograph Systems.

A. Before checking, the chest assembly must be pre-stretched about one inch in either the calibrator unit or secured around an object like a clipboard.

B. Close all pneumograph vents.

C. Unlock the lock/record bar.

D. Conduct pen swing check (top and bottom pen travel) on mechanical pneumograph using the centering control.

E. Conduct pen swing check on electronic pneumograph by applying five sensitivity units and using the centering control.

F. Pen swing of both pneumograph units should be about three inches wide.

G. Set both pneumograph pens about one-half inch from the bottom pen stop.

H. Conduct free flow check by moving the pneumograph tubes about one-quarter inch several times in rapid succession.

I. Conduct a sensitivity check by expanding the pneumograph tubes one-quarter inch causing the upward pen deflection of one and one-quarter to one and three-quarters of an inch (five to seven chart divisions).

J. Conduct a leak check for a two-minute period without the pen falling more than one and one-quarter inches.

II. GSR.

A. Before checking, place the finger plates in calibrator unit or fasten the two plates together.

B. Set mode selection switch to manual.

C. Apply 2.5 sensitivity units and check pen swing using the centering control.

D. Pen sweep of the GSR unit should be about six inches wide.

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*The author is an APA member and an instructor at the U.S. Army Military Police School, Polygraph Division, Fort McClellan, Alabama 36205. For reprints, write to Mr. Kovac at the school.

E. Center the pen.

F. Conduct a sensitivity check by depressing the 1K test switch and this will cause an upward pen deflection of one-quarter inch or one chart division. When the test switch is released, the pen will return to the center base line.

G. Neutralize all controls in the GSR.

H. If the 1K test switch in the lid calibrator unit was not used, then a self check will need to be conducted as follows:

1. Place finger plates on your fingers and apply about 2.5 sensitivity units. Center the pen and take a deep breath and release it. This will cause an upward pen deflection. (NOTE: The amount of deflection will vary with individuals.)

III. Cardio Systems.

A. Before checking, the cuff must be secured in the calibrator unit or wrapped around an object like a large jar.

B. Close all cardio vents.

C. Inflate the cuff to a stable pressure. (Inflate the cuff in the calibrator unit or around the jar above the desired pressure for the appropriate cardio unit and massage the cuff until the pressure remains stable. If the pressure drops below the desired level, re-inflate above the desired level and massage again. Repeat until a stable pressure is obtained.)

D. Check the mechanical cardio unit by releasing the lock/record bar.

1. Conduct all mechanical cardio checks at a stable 90mm Hg.

2. Conduct a pen swing limit check using the centering control.

3. Pen sweep should be about three inches wide.

4. Set pen about one inch from the bottom pen travel limit.

5. Conduct a free flow check by pressing the cuff several times in rapid succession.

6. Conduct a sensitivity check by pressing the cuff causing a 2mm Hg change on the sphygmomanometer which will cause an upward deflection of the pen of three-quarters of an inch.

E. Check the electronic cardio unit.

1. Check the mode switch and ensure that it is in cardio 1 mode.

2. Place the response activity control in the norm position (12 o'clock).

3. Place the notch control fully counterclockwise (minimum).

4. Inflate/deflate the system to a stable 60mm Hg. (Inflate the cuff in the calibrator unit or around the jar above the desired pressure for the appropriate cardio unit and massage the cuff until the pressure remains stable. If the pressure drops below the desired level, re-inflate above the desired level and massage again. Repeat until a stable pressure is obtained.)

5. Apply five sensitivity units to the electronic cardio unit.

6. Conduct a pen swing check using the centering control.

7. The pen sweep should be about three inches wide.

8. Set the pen about one inch from the bottom pen travel limit.

9. Conduct a free flow check by pressing the cuff several times in rapid succession.

10. Conduct a sensitivity check by pressing the cuff, causing a 2mm Hg change on the sphygmomanometer which will cause an upward pen deflection of three-quarters of an inch.

11. Neutralize the sensitivity in the electronic cardio.

F. Conduct a leak check for ten minutes and the pen should not drop more than one-quarter inch.

IV. Cardio Activity Monitor (CAM).

A. The sensitivity of a CAM is fixed at the time of manufacture and remains constant throughout its lifetime, so only a functional check is required.

B. Set mode selection switch to auxillary.

C. Place the CAM on your finger.

D. Conduct a self check at the required sensitivity units needed to get a one-quarter to three-quarter inch wide tracing.

E. Take a deep breath and release the breath to note a change in the tracing.

F. Neutralize the unit.

V. Kymograph.

A. Conduct a check to determine if the chart paper moves at a constant speed of six inches per minute across the writing table.

B. Place a mark at the bottom of the chart paper at the beginning and end of one minute; check that it is six inches.

STOELTING INSTRUMENT CALIBRATION

By

James T. Kovac*

I. Pneumograph Systems.

A. Before checking--the chest assembly must be pre-stretched about one inch either in the calibrator unit or secured around an object like a clipboard.

B. Close all pneumograph vents.

C. Conduct top and bottom pen travel limit check on mechanical pneumograph unit by using the centering control.

D. Conduct top and bottom pen travel limit check on electronic pneumograph unit by applying twenty sensitivity units.

1. Check pen travel limits by using the centering control.

E. Pen sweep of both pneumograph units should be about two and one-half inches wide.

F. Set pens of both units about one-half inch from bottom pen travel limits.

G. Conduct free flow check by expanding the chest assembly tubes about one-quarter inch, several times, in rapid succession.

H. Conduct sensitivity check by expanding both chest assembly tubes one-quarter inch causing an upward pen deflection of ten chart divisions (one inch).

I. Conduct leak check for a two-minute period without the pen falling more than ten chart divisions (one inch).

II. GSR.

A. Before checking, place finger plates in calibrator unit or fasten the two plates together.

B. Set mode switch to manual.

C. Conduct top and bottom pen travel limit on GSR by applying 20 sensitivity units and using the centering control.

D. Pen sweep of the GSR unit should be about five inches wide.

The author is an APA member and an instructor at the U.S. Army Military Police School, Polygraph Division, Fort McClellan, Alabama 36205. For reprints write to Mr. Kovac at the school.

E. Increase sensitivity units to 100 and center pen.

F. Conduct sensitivity check by depressing the 1K pip switch and this will cause an upward pen deflection of twelve and one-half chart divisions (one and one-quarter inches). When the pip switch is released, the pen will return to base line.

G. Neutralize all controls in the GSR.

H. Conduct self-check by placing the finger plates on your fingers.

1. Apply about 20 sensitivity units and center the pen.

2. Take a deep breath and release breath.

3. This will cause an upward pen deflection. (NOTE: The amount of deflection will vary with individuals.)

I. Neutralize the GSR unit to zero sensitivity units and remove finger plates.

III. Cardio Systems.

A. Before checking, the cuff must be secured in the calibrator unit or wrapped around an object like a large jar.

B. Close all cardio vents.

C. Inflate cuff to a stable 90mm Hg. (Inflate the cuff in the calibrator or around the jar slightly above the desired pressure and massage the cuff until the pressure remains stable. If the pressure drops below the desired level, re-inflate above the desired level and massage again. Repeat until a stable pressure is obtained.)

D. Check mechanical cardio unit by releasing lock/record bar.

E. Conduct top and bottom pen travel limit check on mechanical cardio unit by using centering control.

F. Conduct top and bottom pen travel limit check on electronic cardio unit by applying 20 sensitivity units and using centering control.

G. Pen sweep of both cardio units should be about two and one-half inches wide.

H. Set pens of both units about one-inch from bottom pen travel limits.

I. Conduct free flow check by pressing the cuff several times in rapid succession.

J. Conduct sensitivity check by pressing cuff causing a 2mm Hg change on the sphygmomanometer which will cause an upward pen deflection of ten chart divisions (one inch).

K. Conduct a leak check for ten minutes and pen should not drop more than two and one-half chart divisions (one-quarter inch).

IV. Cardio Activity Monitor (CAM).

(NOTE: Sensitivity of a CAM is fixed at the time of manufacture and remains constant throughout its lifetime, so only a functional check is appropriate and not a calibration check.)

A. Before checking, plug in CAM and set mode selector switch to CAM.

B. Conduct self-check at 20 sensitivity units assuring a proper tracing of three-quarters of an inch.

C. Set sensitivity units at 50 and center the pen.

1. Push the 1K pip switch and pen should deflect upward one-half inch.

V. Kymograph.

A. Conduct a check to determine if the chart paper moves at a constant speed of six inches per minutes across the writing table.

B. Place a mark at the bottom of the chart paper at the beginning and end of one minute and check that it is six inches.

* * * * * *

FINETUNING MIRANDA POLICIES

By

Charles E. Riley III*

> "... officers should be advised that once they have decided that an arrest is going to take place, they should not continue with the questioning without first complying with Miranda."

In 1966, the Supreme Court ruled in Miranda v. Arizona[1] that before a confession obtained through custodial interrogation could be used at trial, the government first had to prove that the defendant had been advised of, and waived, certain specified rights.[2] Although the holding in Miranda was limited to situations where both custody and interrogation existed simultaneously, it was uncertain in 1966 how the courts would define custody for purposes of applying the rule. Because of this uncertainty, many law enforcement agencies adopted broad warning and waiver policies that require compliance with Miranda prior to any interview of a suspect in a criminal case, regardless of whether the suspect is under arrest or otherwise deprived of his freedom of action at the time of the interview.

Broad warning and waiver policies, like the one described above, were justified in the late 1960's and early 1970's because of the uncertainty surrounding the proper parameters of the Miranda rule. However, in light of a series of Supreme Court decisions spanning the last 8 years, it is now clear that such policies are much broader than the law requires.

Post-Miranda Cases Defining Custody

In Beckwith v. United States,[3] agents of the Internal Revenue Service interrogated the defendant, a taxpayer who was the "focus" of a tax fraud investigation. Prior to the questioning, he was advised that he had a right to remain silent, that any statement made could be used against him, and that he was free to consult with counsel before the interview. He was not told that he had a right to an appointed attorney. He declined to exercise those rights, furnished incriminating statements and records, and was subsequently convicted. On appeal to the Supreme Court, he alleged that the IRS agents failed to comply with Miranda in conducting the interview.

The Court found that the agents were not bound by Miranda and that to apply the Miranda rule in those circumstances would separate the rule from its own explicitly stated rationale. Miranda application depends on custodial police interrogation, questioning in a coercive, police-dominated

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*The author was a Special Agent, FBI Academy, Legal Counsel Division, Federal Bureau of Investigation, Quantico, Va. More recently, S/A Riley has been assigned to the Chicago Office of the FBI. The article first appeared in the January 1985 issue of the FBI Law Enforcement Bulletin and is reproduced here with the permission of the Bulletin. [Ed.]

atmosphere. The idea that interrogation in a noncustodial setting, where the investigation has focused on a suspect gives rise to the Miranda requirement, was rejected. Moreover, the Court quoted with approval the view of a Federal appellate court that it is the compulsive aspect of custodial interrogation, and not the strength of the government's suspicions, which governs the application of Miranda. Thus, it is not the status of the interviewee--whether subject, suspect, or focus--but rather the coercive circumstances of the questioning that controls.[4]

In a 1977 per curiam opinion, the Court further emphasized that something more than suspicion or focus is necessary before Miranda applies. In Oregon v. Mathiason,[5] the defendant was asked to come to the State patrol office for an interview with an officer investigating a burglary. The suspect was told he was not under arrest but was believed to have participated in the burglary. He was not given Miranda warnings. He confessed and was convicted. On appeal, the Oregon Supreme Court reversed the conviction, finding that the defendant was interviewed in a "coercive environment" (i.e., custody) and Miranda applied. The court concluded that since the officer failed to give the warnings and obtain a waiver, the confession should have been inadmissible. The U.S. Supreme Court disagreed. The Supreme Court pointed out that the defendant was not formally arrested, nor was his freedom of action restrained in any significant way, and that without such factors, Miranda simply does not apply. Part of that decision is especially pertinent:

"Any interview of one suspected of a crime by a police officer will have coercive aspects to it simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But police officers are not required to administer Miranda warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect. Miranda warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.' It was that sort of coercive environment to which Miranda by its terms was made applicable, and to which it is limited."[6]

More recently, the Supreme Court again addressed the issue of custody for purposes of Miranda. In California v. Beheler,[7] the defendant, Jerry Beheler, and several acquaintances attempted to steal a quantity of hashish from one Peggy Dean, who was selling the drug in the parking lot of a liquor store. Dean was killed by Beheler's companion and stepbrother, Danny Wilbanks, when she refused to relinquish the drugs. Shortly thereafter, Beheler called the police, who arrived almost immediately, and told the police that Wilbanks had killed the victim. Later that evening, Beheler voluntarily agreed to accompany the police to the station house and was specifically told that he was not under arrest.

Beheler was interviewed at the station house and told the police what had occurred that day. The interview, which was not preceded by a warning and waiver of Miranda rights, lasted approximately 30 minutes. At the conclusion of the interview, Beheler was permitted to return home with the understanding that his statement would be reviewed by the district attorney. Five days later, Beheler was arrested for aiding and abetting

first-degree murder. He was advised of his Miranda rights, which he waived, and gave a taped confession. Both confessions were used against him at trial, and he was convicted.

The California Court of Appeals reversed Beheler's convction, holding that the first interview with police at the station house constituted custodial interrogation, which activated the need for Miranda warnings. In finding custody, the court noted that the interview took place in the station house, Beheler had already been identified as a suspect in the case, and the interview was designed to produce incriminating responses.

In reversing the California Court of Appeals decision, the Supreme Court, in a per curiam opinion, followed its previous holding in Oregon v. Mathiason[8] and ruled that in determining whether custody is present for purposes of Miranda, the inquiry is simply whether there is a "formal arrest or restraint on freedom of movement" of the degree associated with a formal arrest. Holding there was no such restraint in this case, the Court noted that Miranda warnings are not required simply because questioning takes place in the station house or because the questioned person is one whom the police suspect. Finally, the Court stated that the amount of information the police have concerning a person who is to be questioned, and the length of time between the commission of a crime and a police interview, are not relevant to the issue of whether custody exists for purposes of Miranda.

Although the above decisions establish that Miranda was not intended to apply to all interrogation situations, they create somewhat of a dilemma for law enforcement agencies. On the one hand, broad warning and waiver policies are easily understood and applied by law enforcement officers. These positive features are enhanced by the fact that confessions are never suppressed because Miranda warnings are given too early--just too late. On the other hand, law enforcement officers understand that certain crimes may go unsolved and criminals unpunished if suspects are advised of their rights in situations where persons are not legally entitled to the protections afforded by the Miranda rule.

Law enforcement administrators, in conjunction with agency legal advisors and prosecutors, must balance the above factors before deciding on an appropriate departmental warning and waiver policy. Some agencies have weighed these factors and decided to retain broad warning and waiver policies, while others have decided to modify their policies to bring them more in line with Miranda and its progeny. The remainder of this article discusses legal issues concerning interrogations that law enforcement agencies should consdier when promulgating or modifying warning and waiver policies. It also suggests approaches that can be used to help minimize legal problems that may subsequently arise in connection with these policies.

Formulating a Miranda Policy for Interrogations

Establishing a warning and waiver policy that conforms with the post-Miranda cases discussed above appears on its face to be a simple task. A policy that provides for compliance with Miranda only when a suspect is to be interrogated after he has been formally arrested or otherwise

significantly restricted in his freedom of movement meets the standard enunciated by the Supreme Court in Beckwith, Mathiason, and Beheler. It does not, however, provide practical guidance to police officers who must apply the policy to varying fact situations. A Miranda policy should never been written in such detail that it becomes overly cumbersome and therefore difficult to remember and apply. But, it should address with some specificity how the policy applies in the most commonly recurring fact situations faced by officers.

Arrests

The logical starting point for a warning and waiver policy is the statement that officers must comply with Miranda before they interview a suspect who is under arrest or otherwise incarcerated. However, even this clearly worded policy leaves unanswered several questions frequently raised by police officers. For example, does this policy apply where the purpose of a custodial interview is to elicit statements concerning crimes other than those for which the interviewee was arrested? Must State and local officers comply with Miranda when the person to be interviewed has been arrested by Federal authorities and vice-versa? Does it apply in emergency situations where the police need quick answers to questions in order to prevent possible harm to themselves, fellow officers, or members of the public? Finally, does this policy apply to all arrests, or only those where the suspect has been arrested for a felony? All of these frequently asked questions have been addressed by the Supreme Court, and the answers should be incorporated into departmental Miranda policies.

In Mathis v. United States,[9] the defendant was convicted by a jury in a U.S. district court on two counts of knowingly filing false claims against the Government in violation of Federal law. Part of the evidence on which the conviction rested consisted of documents and oral statements obtained from the defendant by a Government agent while the defendant was in prison serving a State sentence. Before eliciting these statements, the Government agent did not warn the defendant of his rights. Appealing his conviction to the Supreme Court, Mathis argued that his statements were used against him in violation of Miranda. The Government countered by arguing that Miranda did not apply because the defendant had not been put in jail by the officers questioning him, but was there for an entirely separate offense. Finding these distinctions "too minor and shadowy to justify a departure from the well-considered conclusions of Miranda," the Court reversed Mathis' conviction. As can be seen from this decision, in applying Miranda, the Supreme Court is not concerned with why a person has been arrested or by whom. It is the coercive aspect of custody itself, when coupled with police interrogation, that triggers the protections afforded by the rule.

With respect to emergency sitautions and the applicability of Miranda, on June 12, 1984, the Supreme Court recognized a "public safety" exception to Miranda. In New York v. Quarles[10] a New York officer entered a supermarket to locate an alleged rapist who was described by the complainant as having a gun. The officer located the suspect, Quarles, in the store. Upon seeing the officer, the suspect ran toward the rear of the store. The officer lost sight of him, and upon regaining sight of him, ordered the suspect to stop and put his hands over his head. The

officer frisked him and discovered he was wearing an empty shoulder holster. After handcuffing the suspect, the officer asked him where the gun was. Quarles nodded in the direction of some empty cartons and stated, "The gun is over there."

After the gun was located, Quarles was advised of his rights, waived those rights, and was questioned. Responding to this questioning, Quarles admitted ownership of the gun. In the prosecution for criminal possession of a weapon, the New York courts suppressed the gun and the statement concerning its location on grounds that the officer's failure to first advise the subject of his rights and obtain a waiver violated Miranda. Furthermore, Quarles' admission concerning ownership of the gun was suppressed as a fruit of the original Miranda violation.

Reversing the New York Court of Appeals, the Supreme Court agreed that Quarles was subjected to custodial interrogation without prior advice of his rights and waiver of those rights. The Court ruled, however, that the statement concerning the location of the gun and the gun itself were admissible under a "public safety" exception to the Miranda rule.

Explaining the exception, the Court held that a statement obtained as the result of custodial interrogation in the absence of the warnings and waiver is admissible so long as the statement is voluntary under the traditional due process/voluntariness test and the police questions that result in the admission are reasonably prompted by a concern for the public safety. In this case, there was no claim that Quarles' will was overborne by the actions of the officer, and thus, the Court did not address whether Quarles' statement concerning the location of the gun was voluntary under the due process/voluntariness test. The Court found that inasmuch as the gun was concealed somewhere in the supermarket, it posed a danger to the public safety. Consequently, the Court ruled that prior Miranda warnings and waiver had not been required and the New York Court of Appeals had erred in suppressing the gun, the statement concerning its location, and the later statement concerning ownership of the gun.

In creating this exception to Miranda, the Court ruled that the availability of the exception does not depend on the motivation of the individual officers involved, but is limited by the emergency circumstances that justify it. Therefore, police officers who rely on the exception must be able to later articulate specific facts and circumstances evidencing a need for the questioning in order to protect themselves, fellow officers, or the public. Furthermore, since this is a narrow exception to the Miranda rule, police officers should be instructed that once the emergency ends, any further custodial questioning should be preceded by the warnings and waiver.

The question of whether Miranda applies to nonfelony arrests has been the subject of controversy in the lower courts for several years. On July 2, 1984, the Supreme Court settled this controversy by ruling in Berkemer v. McCarty[11] that Miranda applies to interrogations of arrested persons regardless of whether the offense being investigated is a felony or a misdemeanor. Refusing to distinguish between misdemeanors and felonies for purposes of Miranda, the Court found that such a distinction would dilute the clarity of the rule because in many cases it is not certain at the

time of arrest whether the subject is to be charged with a misdemeanor and/or a felony offense.

In light of the Supreme Court's stated purpose behind the Miranda rule and the holdings in the above cases, a more definitive Miranda policy might begin by advising officers that before they question a subject who is in Federal or State custody, or the custody of a foreign government, they must comply with Miranda and that this policy applies regardless of whether the subject has been arrested for, or is being questioned about, a felony or a misdemeanor. Additionally, while Miranda warnings need not be given in custodial interrogation situations where an emergency exists and the police officer's questions are prompted by a concern for the safety of the officer, fellow officers, or the public, any further custodial interrogation should be preceded by the warnings and wavier as soon as the emergency ends.

Investigative Detentions

In 1968, the Supreme Court ruled in Terry v. Ohio[12] that law enforcement officers are constitutionally justified in detaining persons against their fill for short periods of time in order to investigate, and hopefully resolve, suspicious circumstances indicating that a crime has been, or is about to be, committed. Investigative detentions, or "Terry stops" as they have become known, are seizures within the meaning of the fourth amendment, and therefore, must be reasonable in order to be constitutional. But, since a temporary detention is less intrusive than a full custody arrest, the courts do not require police officers to establish that they had probable cause to justify the seizure as reasonable. Instead, a lower burden of proof, reasonable suspicion, is all that police officers need show to justify the detention as constitutional.

Investigative detention cases are closely scrutinized by the courts to ensure that this valuable investigative tool is not abused. One important factor in the reasonableness of a "Terry stop" is the length of the detention. The longer a person is detained, the more likely it becomes that a reviewing court will find that the seizure was actually an arrest requiring probable cause. Hence, officers who investigatively detain a suspect must resolve the suspicious circumstances that give rise to the detention as quickly as possible.

Police questioning of a detained person can be an effective method of resolving suspicious activities and circumstances so that the detaining officer can quickly make a decision to either release the suspect or subject him to a full custody arrest. The effectiveness of police questioning under these circumstances could very well be diminished if officers are required to first warn the suspect of his rights and obtain a waiver. Hence, the applicability of Miranda to investigative detentions is an important issue that should be addressed in departmental Miranda policies.

In Berkemer v. McCarty,[13] discussed briefly above, the Supreme Court squarely addressed this issue. On March 31, 1980, an Ohio State trooper observed McCarty's car weaving in and out of a lane on an interstate highway. After following the car for 2 miles, the trooper forced McCarty to stop and asked him to get out of the vehicle. McCarty complied,

however, he had difficulty standing, and the trooper concluded that McCarty would not be allowed to leave the scene as he would be charged with a traffic offense. McCarty was not told that he would be taken into custody. While at the scene of the stop, McCarty was asked to perform a "balancing test," which he was unable to do without falling. Additionally, McCarty was asked whether he had been using intoxicants, to which he replied that "he had consumed two beers and had smoked several joints of marijuana a short time before." McCarty's speech was slurred, and the trooper had difficult understanding him. At that point, McCarty was formally arrested, placed in the patrol car, and transported to the county jail.

At the jail, McCarty was given an intoxilyzer test which did not detect any alcohol in his blood. The trooper then resumed his questioning in order to obtain further information for his report. McCarty admitted that he had been drinking, and when asked if he was under the influence of alcohol, stated, "I guess, barely." McCarty also indicated in writing on the report that the marijuana he had smoked did not contain angel dust or PCP. At no point in the above scenario was McCarty advised of his rights.

McCarty was charged with operating a motor vehicle while under the influence of alcohol and/or drugs, which is a first-degree misdemeanor under Ohio law. He moved to have his incriminating statements excluded, arguing that introduction of his statements would violate Miranda since he had not been informed of his rights prior to the questioning. The trial court denied the motion, and McCarty pleaded "no contest" and was found guilty. McCarty appealed his conviction and the Ohio State courts ruled that his rights had not been violated since Miranda does not apply to misdemeanor arrests.

McCarty then filed a petition for a writ of habeas corpus in Federal court. The district court denied the writ and held that "Miranda warnings do not have to be given prior to in custody interrogation of a suspect arrested for a traffic violation." The Court of Appeals for the Sixth Circuit reversed, holding that Miranda applies to custodial interrogations regardless of whether the offense being investigated is a felony or a misdemeanor. Applying the principle to the facts of the case, the sixth circuit held that McCarty's post-arrest statements at the jail were clearly inadmissible since he had not been afforded the protections guaranteed by Miranda. Since inadmissible evidence had been used against him, the sixth circuit reversed his conviction. The sixth circuit, however, did not clarify whether all of his statements would be inadmissible at a second trial or only those statements obtained at the jail after he was formally arrested.

This case then went to the Supreme Court, and two questions were presented for review. As noted earlier, one question was whether Miranda applies to misdeameanor arrests. Concluding that it does, the Supreme Court ruled that McCarty's statements at the jail, after he had been formally arrested, were the result of custodial interrogation. Thus, the Court concluded that the admissions he made at the jail were improperly used against him since the police had not complied with Miranda. This finding resulted in the Supreme Court affirming the court of appeals decision to reverse McCarty's conviction; however, the Supreme Court did not

stop there. The Supreme Court went on to discuss whether the roadside questioning in this case--resulting in damaging admissions made before McCarty was formally arrested and transported to thejail--also constituted custodial interrogation requiring the protections of Miranda.

Citing Terry v. Ohio,[14] the Supreme Court noted that investigative detentions constitute fourth amendment seizures and therefore must be reasonable in order to be constitutional. The Court ruled, however, that they do not constitute "custody" for purposes of bringing the Miranda rule into operation since they are brief in duration and relatively nonthreatening in character when compared with a formal arrest. Likening the traffic stop in this case to a "Terry stop," the Court found no reason to treat the traffic stop differently for purposes of Miranda since McCarty was not told he was under arrest at the outset of the stop, the stop was made in public, and no other restraints comparable to those associated with a formal arrest were present until McCarty was formally arrested and transported to the jail. Although finding that custody for purposes of Miranda did not exist until McCarty was formally arrested, the Court made it clear that the custody determination must be made on a case-by-case basis taking into account all of the coercive factors, or lack thereof, present in a given case.

Based on this holding in Berkemer, it is recommended that departmental warning and waiver policies instruct officers that as a general rule, Miranda rights should not be given before an officer questions a suspect who is being investigatively detained. However, the policy should also instruct officers that if the detention is prolonged or other highly coercive factors are present (e.g., large number of officers present, restraining devices or weapons are involved, or the suspect must for some reason be moved from the location of the initial stop), then officers should administer the warnings and obtain a waiver before proceeding further with the questioning. An important aspect of this portion of the policy is to ensure that it allows for Miranda warnings and waivers in investigative detention situations where, although highly coercive factors are present, no formal arrest has been made. This will aid in rebutting subsequent arguments that by giving Miranda warnings, the officer impliedly admitted that the suspect was under arrest.

Other Factors Bearing on the Custody Issue

In the absence of a formal arrest or prolonged coercive investigative detention, defendants generally have a difficult time convincing courts that their confessions should be suppressed because of a failure to comply with Miranda. Some defendants, however, have successfully argued that they were in custody for purposes of the rule even in the absence of these factors.

In United States v. Lee,[15] the defendant was questioned by two Federal agents in a Government car parked in front of his home, concerning the death of his wife. Lee agreed to answer questions, and when he entered the vehicle, was told he was free to leave or terminate the interview at any time. Lee was not afforded Miranda rights, and after approximately 60-90 minutes of questioning, which included the agents advising him of the incriminating evidence they had collected in the case, he admitted

that he had choked his wife. The interview was ended, and Lee was not arrested until the next day when he voluntarily appeared at the police station for further questioning.

Relying on the above facts, the Ninth Circuit Court of Appeals ruled that "considering the totality of the circumstances a reasonable person could conclude that Lee reasonably might feel he was not free to decline the agent's request that he be interviewed." Consequently, the appeals court agreed with the trial court that Lee was in custody for purposes of Miranda during the questioning, and therefore, his confession was not admissible against him.

Several other courts have adopted the "totality of the circumstances" test for deciding the custody issue, but their results have often been contrary to the decision in Lee. For example, in United States v. Dockery,[16] a 24-year-old female employee of a federally insured bank was interviewed by two FBI Agents investigating a theft of funds from the bank. The interview was conducted in what the court described as a small, vacant office in the bank building. At the outset of the interview, the Agents advised Dockery that she did not have to answer any questions, that she was not under arrest or going to be arrested, and that she was free to leave at any time. During the interview, which lasted 16 minutes, the Agents told Dockery that they believed she was involved in the theft of bank funds and that they had her fingerprints. In fact, the only fingerprints the Agents had were those retrieved from the bank's personnel records. Dockery denied any involvement in the thefts, and the interview was ended. Dockery was asked to wait in the reception area outside the interview room in the event that bank officials wanted to question her.

A few minutes later, while waiting in the reception area, Dockery asked a bank official to find the two Agents because she wanted to talk to them again. The Agents returned and again repeated their warnings that Dockery did not have to talk to them and was free to leave whenever she desired. Dockery began to once again deny her involvements in the thefts, at which point one of the Agents told her that he was busy and was not interested in hearing her repeat what she had already said. He then asked, "Why don't you tell me what happened?" Dockery then gave a signed statement implicating herself in their thefts.

Noting that Dockery was never handcuffed, physically restrained, physically abused, or threatened during the interview, the en banc Eighth Circuit Court of Appeals ruled that Dockery was not in custody during the interviews, and therefore, her confession was properly used against her at trial. With respect to the Agent's representation concerning the fingerprints, the court cited Oregon v. Mathiason,[17] where the Supreme Court ruled that such statements have nothing to do with whether a suspect is in custody for purposes of Miranda.

The Fifth Circuit Court of Appeals uses a four-factor test in determining whether custody exists for purposes of Miranda. The court considers whether the interrogating officers had probable cause to arrest, the subjective intent of the officer, the subjective belief of the suspect, and the focus of the investigation.[18] Other factors considered by the courts in these cases include the language used by officers during

questioning, the physical surroundings where the questioning takes place, and the extent to which the suspect is confronted with evidence of his guilt.[19]

Regardless of which test is used, they all afford defendants the opportunity to argue that based on the factors present in their individual cases, they were justified in believing they were in custody at the time they were questioned, and therefore, should have been advised of their rights. The numerous factors that courts consider when making the custody decision, coupled with the varying weights given these factors by different judges, make it impossible for law enforcement agencies to write definitive Miranda policies covering all of these situations. However, a Miranda policy can address some of the more basic problems faced by officers in interview situations and offer advice regarding how these situations should be handled.

A good starting point is the situation where an officer questions a suspect with the specific intention of making an arrest at the end of the interview. While it does not necessarily follow that a suspect was in custody during an interview simply because he was arrested at its conclusion, the close proximity of the arrest to the questioning is likely to weigh heavily in a later decision on the custody issue. Therefore, it is recommended that departments instruct officers that when they find themselves in this situation they should, as a matter of policy, comply with Miranda at the outset of the interview.

A related situation is where an officer does not begin an interview with the intention of making an arrest, but during the questioning, decides that he is going to arrest the interviewee at the conclusion of the questioning. Again, because of the proximity of the arrest to the questioning, it is recommended that officers be advised that once they have decided that an arrest is going to take place, they should not continue with the questioning without first complying with Miranda.

A more troublesome scenario is where an officer has no intention of making an arrest at the conclusion of an interview, but the circumstances surrounding the questioning are sufficiently ambiguous that a reviewing court might determine that custody existed (e.g., where the location or duration of the interview might indicate a highly coercive environment or where the person interviewed is young and inexperienced). In these cases, it is suggested that officers be instructed that such ambiguity can usually be eliminated--thus negating the need for the warnings and wavier--by informing the suspect that he is not under arrest and/or is free to terminate the interview at any time. In cases where such assurances are given, officers should make this fact a matter of record in the investigative file.

Advising a suspect that he is not under arrest and/or is free to terminate the interview at any time should, as in the Mathiason, Beheler, and Dockery cases, resolve any doubt concerning the issue of custody for purposes of Miranda. There could, however, be occasional instances where an officer, after advising an interviewee he is not under arrest, still believes the custody issue sufficiently ambiguous that the rights should be given before any further questioning. While these situations should arise

infrequently, it is recommended that Miranda policies be written to allow officers to exercise discretion in such situations. This approach allows an officer, who is in the best position to evaluate the "totality of the circumstances," to afford the warnings and waiver, without having his decision later viewed as a tacit admission that the interviewee was in custody.

The Sixth Amendment Right to Counsel

Standard warning and waiver forms, developed in response to Miranda, are often used by law enforcement agencies in obtaining waivers of the right to counsel guaranteed by the fifth amendment. Inasmuch as the sixth amendment right to counsel applies in some cases where Miranda rights do not, law enforcement agencies that use the same warning and waiver policy for both purposes should ensure that their policies are broad enough to cover those cases where only the sixth amendment right is at issue.

An example of a case in which Miranda and the sixth amendment right to counsel do not overlap is where a suspect is arrested for burglary, taken before a magistrate or judge, and then released on bond. If a police officer attempts to interview this defendant while he is free on bond, Miranda does not apply because the defendant is not in custody. As discussed above, custody is an essential element of the Miranda rule. However, the defendant at this point has been formally charged with burglary, and the officer's goal is to deliberately elicit incriminating statements concerning this charge. Since he has been formally charged, however, the defendant's sixth amendment right to counsel has attached even though he is not in custody, and this right must be waived before an admissible statement can be obtained.

Two very important limitations on the sixth amendment right to counsel deserve mention at this point. First, the sixth amendment right to counsel only applies, and therefore only becomes an issue, where the defendant has been formally charged with a crime. A defendant has been formally charged with a crime when an indictment has been returned, an information filed, or the defendant has had a judicial hearing or appearance on the charge.[20] Second, the sixth amendment right to counsel only applies to those crimes for which the defendant has been formally charged.[21]

Based on the above, it is recommended that agencies include a statement in their warning and waiver policies advising officers that they should give the warnings and obtain a waiver before attempting to interview a defendant about a crime for which he has been formally charged (i.e., where the defendant has been indicted, had a court appearance, or an information has been filed), and that this policy applies regardless of whether the subject is in custody or not at the time of the interview.

A Word of Caution

The above recommendations concerning waivers of the sixth amendment right to counsel assume that a waiver of Miranda rights is sufficient to waive the sixth amendment right to counsel. In fact, courts have rarely questioned the general rule that a proper waiver of Miranda rights also operates as a waiver of the sixth amendment right to counsel. One Federal

circuit court of appeals, however, has ruled that a waiver of Miranda rights is not sufficient to waive the sixth amendment right to counsel, at least where the defendant has been indicted at the time of the interview. Holding that "waivers of Sixth Amendment rights must be measured by a 'higher standard' than are waivers of Fifth Amendment rights," the Court of Appeals for the Second Circuit ruled in United States v. Mohabir[22] that a waiver of the sixth amendment right to have counsel present during a postindictment interview must be preceded by a Federal judicial officer's explanation of the content and significance of this right.

Waiver of the sixth amendment right to counsel has been litigated frequently in recent years, and legal advisors must be alert for decisions like Mohabir so that department warning and wavier policies can be modified accordingly.

Conclusion

Some have hailed the Miranda decision as a positive step toward the protection of fifth amendment rights, while others have viewed it as a serious impediment to effective law enforcement. Regardless of these differing views, the decision stands as a milestone in the history of American constitutional criminal procedure. The unique nature of the decision, coupled with uncertainty as to its meaning and application, was undoubtedly the basis for the development of broad warning and waiver policies by law enforcement agencies beginning in the late 1960's. While recent Supreme Court decisions have reaffirmed the Miranda rule, they have also made it clear that it was only intended to apply in custodial interrogation situations. The clarification provided by these cases should make it easier for law enforcement agencies to comply with both the letter and spirit of Miranda, without unnecessarily hampering legitimate investigative efforts.

Footnotes

[1] 384 U.S. 436 (1966).

[2] The warnings required before custodial interrogation are: (1) The accused has the right to remain silent; (2) anything he says may be used against him; (3) he has a right to consult with a lawyer before or during questioning; and (4) if he cannot afford an attorney, one will be provided without cost.

[3] 425 U.S. 341 (1976).

[4] Id. at 346, referring to United States v. Caiello, 420 F.2d 471, 473 (2d Cir. 1969).

[5] 429 U.S. 492 (1977)(per curiam).

[6] Id. at 495.

[7] 103 S.Ct. 3517 (1983)(per curiam).

[8] 429 U.S. 492 (1977)(per curiam).

[9] 391 U.S. 1 (1968).

[10] 81 L.Ed.2d 550 (1984).

[11] 82 L.Ed.2d 317 (1984).

[12] 392 U.S. 1 (1968).

[13] 82 L.Ed.2d 317 (1984).

[14] 392 U.S. 1 (1968).

[15] 699 F.2d 466 (9th Cir. 1982)(per curiam).

[16] 736 F.2d 1232 (8th Cir. 1984).

[17] 429 U.S. 492 (1977)(per curiam).

[18] United States v. Montos, 421 F.2d 215 (5th Cir.), cert. denied, 397 U.S. 1022 (1970).

[19] See, United States v. Dennis, 645 F.2d 517 (5th Cir.), cert. denied, 454 U.S. 1034 (1981); United States v. Phillips, 688 F.2d 52 (8th Cir. 1982); United States v. Chamberlain, 644 F.2d 1262 (9th Cir. 1980); United States v. Booth, 669 F.2d 1231 (9th Cir. 1981).

[20] See, C.E. Riley, III, "Confessions and the Sixth Amendment Right to Counsel,: (Part I) FBI Law Enforcement Bulletin, August 1983, pp. 24-31; (Conclusion) FBI Law Enforcement Bulletin, September 1983, pp. 24-30.

[21] Id.

[22] 624 F.2d 1140 (2d Cir. 1980). See also, United States v. Payton, 615 F.2d 922 (1st Cir. 1980); United States v. Durham, 475 F.2d 208 (7th Cir. 1973).

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HOUSE OF REPRESENTATIVES - REPORTS ON BROOKS/SCHROEDER BILL

The Federal Polygraph Limitation and Anti-Censorship Act of 1984, H.R. 4681 by Representative Jack Brooks (D-Texas) expired with the 98th Congress. However, before it expired it had more favorable processing than any other anti-polygraph bill in history. HR 4681 was a bill limited in scope to the use of the polygraph by the federal government. It also included provisions to limit the use of prepublication review (to stop unauthorized disclosure of classified information). What is reported in this issue would be no more than historical value if it were not for the fact that Congressman Brooks has reintroduced his bill in the 99th Congress. It is now H.R. 39. For the text of that bill, see the January-February issue (Vol. 18, No. 1) of the APA Newsletter, pp. 41-44.

Although this bill by Brooks did not pass through the House (and there was no companion bill in the Senate), it is not to be taken lightly in the 99th Congress. The delaying tactics which stalled and killed it last time probably won't work a second time. It is worthy of note, however, that the 98th Congress did pass legislation in The Defense Authorization Act, authorizing the Department of Defense to expand the use of the polygraph in a pilot program of up to 3,500 examinations. This enactment was contrary to what Brooks proposed, and Patricia Schroeder (D-Colorado) amended. Indeed, Mrs. Schroeder reported out a completely different bill from that written by Brooks, but the intent was the same, to restrict the use of polygraph examinations on "government employees to cases involving alleged criminal conduct." Her bill also banned the use and enforcement of prepublication review requirements by federal agencies. CIA and NSA were exempted. Quoted below, at length, are extracts from the Report of the Post Office and Civil Service Committee. We have not reprinted those parts of the report which relate solely to prepublication review.*

FEDERAL POLYGRAPH LIMITATION AND ANTI-CENSORSHIP ACT OF 1984

August 6, 1982. - Ordered to be printed.

Mrs. Schroeder, from the Committee on Post Office and Civil Service, submitted the following REPORT [To accompany H.R. 4681] [Including cost estimate of the Congressional Budget Office]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 4681) relating to the administration of polygraph examinations and prepublication review requirements by Federal agencies, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

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*Deleted were chapters 1, 9 and 10 on "NSDD 84," and all of the material under "Prepublication Review."

That this Act may be cited as the "Federal Polygraph Limitation and Anti-Censorship Act of 1984".

Sec. 2.(a) Chapter 73 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER VI-POLYGRAPH EXAMINATION AND PREPUBLICATION REVIEW RESTRICTIONS

"§7361. Definitions

"For purposes of this subchapter-

"(1) the term 'agency' means-

"(A) an Executive agency;

"(B) the United States Postal Service;

"(C) the Postal Rate Commission;

"(D) the Administrative Office of the United States Courts;

"(E) the Library of Congress;

"(F) the Government Printing Office;

"(G) the Office of Technology Assessment;

"(H) the Congressional Budget Office;

"(I) the Office of the Architect of the Capitol; and

"(J) the Botanic Garden;

"(2) the term 'employee' means-

"(A) an individual employed by an agency;

"(B) a Congressional employee (other than an individual under subparagraph (A); and

"(C) an expert or consultant who is under contract under section 3109 of this title with an agency, including, in the case of an organization performing services under such section, an individual involved in the performance of such services;

"(3) the term 'classified information' means information-

"(A) specifically authorized under criteria established by stature or Executive order to be kept secret in the interest of the national defense or foreign policy; and

"(B) in fact properly classified pursuant to such statute or Executive other;

"(4) the term 'polygraph examination' means an interview with an individual which involves the use of a device designed to permit the examiner to make an inference or a determination, by evaluation of measured physiological responses, concerning whether the individual has truthfully or deceptively responded to inquiries made in such interview;

"(5) the term 'action', as used with respect to an employee or applicant for employment, means-

"(A) a personnel action under clauses (i) through (x) of section 2302(a)(2)(A) of this title;

"(B) a decision concerning clearance for access to classified information; and

"(C) a performance evaluation (other than under chapter 43 of this title); in the case of such employee or applicant; and

"(6) the term 'prepublication review' means submission of information to an agency for the purpose of permitting such agency to examine, alter, excise, or otherwise edit or censor such information before it is publicly disclosed, but does not include any such submission with respect to information which is to be disclosed by an employee in such employee's official capacity.

"§7362. Restrictions relating to polygraph examinations

"(a) An agency may not-

"(1) require, threaten to require, or, except as provided in subsection (b), request any employee or applicant for employment to submit to a polygraph examination;

"(2) take, or threaten to take, any action against an employee or applicant for employment-

"(A) on the basis of the individual's refusal to submit to a polygraph examination; or

"(B) on the basis of any inference or determination (referred to in section 7361(4) of this title) made from that individual's performance in the course of a polygraph examination; or

"(3) fail to take, or threaten to fail to take, any action on behalf of an employee or applicant for employment-

"(A) on the basis of that individual's refusal to submit to a polygraph examination; or

"(B) on the basis of an inference or determination described in paragraph (2)(B).

"(b)(1) An agency may request an employee, in writing, to submit voluntarily to a polygraph examination-

"(A) if the examination is administered as part of a specific investigation into alleged criminal conduct-

"(i) after the completion, by other means, of as thorough an investigation as circumstances reasonably permit; and

"(ii) solely for the development of information essential to that investigation;

"(B) if the individual is reasonably believed to have knowledge of the matter under investigation; and

"(C) if the alleged criminal conduct constitutes an offense punishable by death or imprisonment for a term exceeding one year.

"(2) A polygraph examination under this subsection may be administered only by an individual employed by, and under the direction of-

"(A) the Central Intelligence Agency;
"(B) the National Security Agency;
"(C) The Federal Bureau of Investigation;
"(D) the United States Secret Service;
"(E) the Drug Enforcement Administration;
"(F) the Bureau of Alcohol, Tobacco, and Firearms;
"(G) the Postal Inspection Service, United States Postal Service;
"(H) the Intelligence and Security Command, United States Army;
"(I) the Criminal Investigation Command, United States Army;
"(J) the Naval Investigative Service, Department of the Navy;
"(K) the Office of Special Investigations, Department of the Air Force; or
"(L) the Marine Corps.

"§7363. Restrictions relating to prepublication review

"An agency may not-

"(1) request, require, or threaten to require, an employee or applicant for employment to enter into an agreement, any part of which requires prepublication review;

"(2) take, or threaten to take, any action against an employee or applicant for employment of the basis of that individual's refusal to enter into such an agreement;

"(3) take, or threaten to take, any action against an employee or applicant for employment on the basis of that individual's refusal to comply with any of the provisions of such an agreement which require prepublication review;

"(4) fail to take, or threaten to take, any action on behalf of an employee or applicant for employment on the basis of a refusal referred to in paragraph (2) or (3); or

"(5) establish or enforce, or threaten to establish or enforse, any other requirement in order to compel prepublication review.

"§7364. Remedies

"(a)(1) Subject to paragraph (2) and subsection (b), any person aggrieved by a violation of section 7362 or 7363 of this title may bring a civil action against the United States for equitable or monetary relief, or both, in the district court of the United States for the district in which that person resides, for the District of Columbia, or, in the case of an employee or former employee, for the district in which that person was employed at the time the cause of action arose.

"(2) A civil action under this subsection shall be forever barred unless commenced within two years after the cause of action arose. For purposes of this paragraph, a cause of action shall be deemed to have arisen on the date that the person aggrieved knew, or with reasonable diligence should have known, of the violation concerned.

"(3) The court shall award reasonable costs of litigation, and may award reasonable attorney fees, to a prevailing plaintiff in an action brought under this subsection.

"(b)(1) If a person aggrieved by a violation of section 7362 or 7363 of this title would also be entitled to initate proceedings for remedial action under agency administrative procedures, such person may raise the matter under subsection (a) under such administrative procedures, but not both.

"(2) A person shall be deemed to have exercised the option under this subsection to raise a matter, either under subsection (a) or under agency administrative procedures upon the timely commencement of an action by such person in accordance with the Federal Rules of Civil Procedure or the timely initiation of such administrative procedures by such person, as the case may be.

"(3) For purposes of this subsection, the term 'agency administrative procedures' means any formal process of review by an agency provided under statute, regulation, or Executive order, including judicial review of any determination made in the course of such process.

"§7365. Exemptions.

"Sections 7362 and 7363 of this title do not apply-

"(1) to the Central Intelligence Agency, in the case of any individual employed by, or detailed to, the Central Intelligence Agency, any

individual applying for a position in the Central Intelligence Agency, or any expert or consultant under contract with the Central Intelligence Agency; or

"(2) to the National Security Agency, in the case of any individual employed by, or detailed to, the National Security Agency, any individual applying for a position in the National Security Agency, or any expert or consultant under contract with the National Security Agency."

(b) The analysis for chapter 73 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER VI-POLYGRAPH EXAMINATION AND PREPUBLICATION REVIEW RESTRICTIONS

"7361. Definitions.
"7362. Restrictions relating to polygraph examinations.
"7363. Restrictions relating to prepublication review.
"7364. Remedies.
"7354. Exemptions".

Sec. 3. (a)(1) The provisions of any agreement referred to in section 7363(1) of title 5, United States Code (as added by this Act) are, to the extent that such provisions relate to prepublication review, hereby rescinded.

(2) The head of each agency concerned shall provide written notice to each individual who, immediately before this Act take effect, was a party to any such agreement, informing such individual of-

(A) the enactment of this section; and

(B) the provisions of the agreement rescinded as a result of the enactment of this section.

(b) Nothing in subsection (a) applies with respect to the Central Intelligence Agency or the National Security Agency, or to any agreement which requires prepublication review by either of those agencies.

(c) For purposes of this section, "prepublication review" and "agency" each has the meaning given that term in section 7361 of title 5, United States Code (as added by this Act).

Sec. 4. This Act shall take effect on October 1, 1984.

EXPLANATION OF AMENDMENT

The committee amendement struck all after the enacting clause and inserted a new text. While retaining the basic policy of the introduced bill, the amendment refined the language, codified the operative sections in title 5, United States Code, eliminated the statement of findings, and changed the effective date from April 15, 1984, to October 1, 1984. The section analysis contains a detailed description of the bill as amended.

Purpose

The purpose of this legislation is to ban the use and enforcement of prepublication review requirements by Federal agencies against their employees and to restrict the use of polygraph examinations by agencies against employees to cases involving alleged criminal conduct. These restrictions apply to all agencies except the Central Intelligence Agency and the National Security Agency.

Committee Action

On January 30, 1984, Representative Jack Brooks (D-Texas) introduced H.R. 4681, a bill relating to the administration of polygraph examinations and prepublication review requirements by Federal agencies. The bill was referred to the Committee on Post Office and Civil Service.

The Subcommittee on Civil Service held public hearings on the bill on February 9, 1983 (Serial No. 98-39). Testimony was received from Representative Jack Brooks; Representative Barbara Boxer (D-California); George Reedy, Nieman Professor of Journalism at Marquette University and former Press Secretary to President Lyndon B. Johnson; Hon. Richard K. Willard, Acting Assistant Attorney General, Civil Division, Department of Justice; General Richard G. Stilwell (U.S. Army (Ret.)), Deputy Under Secretary of Defense for Policy; Fred B. Wood, Project Director, Office of Technology Assessment; Morton H. Halperin, Director, Center for National Security Studies; Jack Landau, Executive Director, Reporters Committee for Freedom of the Press; Jack Hampton, American Society of Newspaper Editors; Townsend Hoopes, President, American Association of Publishers; and Robert Lewis, Society of Professional Journalists.

Testimony was also recieved from Page Putnam Miller, Director, National Coordinating Committee for the Promotion of History; Rabbi David Saperstein, Co-Director, Union of American Hebrew Congregations; James Pierce, President, National Federation of Federal Employees; Dennis T. Hays, President, American Foreign Service Association; Mark Roth, American Federation of Government Employees (AFL-CIO); David S. Burckman, President, Senior Executives Association; and Henry L. Canty, Past President, American Association of Police Polygraphists.

Earlier, the Subcommittee on Civil Service held 3 days of hearings (Serial No. 98-40) jointly with the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary on National Security Decision Directive 84, issued by President Reagan on March 11, 1983. On April 21, 1983, the subcommittee received testimony from Floyd Abrams, an attorney with Cahill, Gordon, Reindel; Irwin Karp, Authors League of America; Mark Lynch, American Civil Liberties Union; Kenneth T. Blaylock, President, American Federation of Government Employees (AFO-CIO); Dennis K. Hayes, President, American Foreign Service Association; and Norman Ansley, Chief, Polygraph Division, Office of Security, National Security Agency.

On April 28, 1983, the subcommittees received testimony from Richard K. Willard, Deputy Assistant Attorney General, Civil Division, Department of Justice; Arch S. Ramsey, Associate Director for Compliance and Investigations, Office of Personnel Management; Steven Garfinkel, Director, Information Security Oversight Office, General Services Administration; Charles Wilson, Director of Office of Public Affairs and Chairman of Publications Review Board, Central Intelligence Agency; and Maynard Anderson, Director, Security Plans and Programs, Department of Defense.

On February 7, 1984, the subcommittees held an executive session to hear classified testimony from representatives of the Department of Justice, Central Intelligence Agency, National Security Agency, and Department of Defense.

On March 14, 1984, the Subcommittee on Civil Service met to mark up H.R. 4681. A quorum was not present and the subcommittee could not act. Nevertheless, Civil Service Subcommittee Chairwoman Patricia Schroeder (D-Colorado) asked Chairman William D. Ford (D-Michigan) of the Committee on Post Office and Civil Service to schedule consideration of the legislation at the meeting of the committee on March 21, 1984. On March 20, 1984, National Security Advisor Robert C. McFarlane wrote Chairwoman Schroeder to inform her that "at the direction of the President, I issued a memo to all agencies affected by NSDD 84, directing that 'implementation of two provisions of that directive be held in abeyance'." The two provisions suspended were paragraph 1(b), which required broader use of prepublication clearance agreements, and paragraph 5, relating to the use of the polygraph in investigations of unauthorized disclosures of classified information. In response to this letter, Chairwoman Schroeder asked that consideration of H.R. 4681 by the Committee on Post Office and Civil Service be postponed.

To clarify the effect of this suspension, Chairman Ford of the Committee on Post Office and Civil Service and Chairman Brooks of the Committee on Government Operations wrote the Comptroller General of the United States on April 4, 1984, requesting that the General Accounting Office survey agencies on their use of polygraphs and prepublications review requirements. On June 11, 1984, GAO reported that the survey results showed widespread use of prepublication review requirements and plans in a number of agencies, including the Department of Defense, to expand the use of polygraphs for purposes other than criminal investigation.

On June 14, 1984, Chairwoman Schroeder introduced H.R. 5866 which contained the test of the technical redraft of H.R. 4681.

On June 19 and June 22, 1984, Chairwoman Schroeder called meetings of the Subcommittee on Civil Service to consider H.R. 4681, but a quorum failed to develop at each meeting. On June 27, 1984, the Committee on Post Office and Civil Service, by a rollcall vote of 16-7, ordered H.R. 4681 favorably reported with a single amendment in the nature of a substitute. The amendment was the text of H.R. 5866.

Summary of Bill

H.R. 4681, as reported, prohibits agencies from requiring employees to sign and from enforcing prepublication review agreements and prepublication review regulations. The bill also prohibits most uses of polygraph examinations against employees, except in investigations of criminal wrongdoing. Exempted from the limitations contained in the bill are the Central Intelligence Agency, the National Security Agency and the employees and detailees of each.

STATEMENT

Summary

This legislation was developed in reaction to two administrative initiatives aimed at safeguarding national security information. The first was National Security Decision Directive 84 (NSDD 84), issued by President

Reagan on March 11, 1983, to stem the unauthorized disclosure of classified information. The second was a proposal by the Department of Defense to expand its use of polygraph examinations, particularly for the screening of individuals given access to highly secret programs and information.

While these two catalysts led to the introduction and consideration of the legislation, research into the subject matter covered by NSDD 84 and the DoD proposal revealed that prepublication review requirements existed prior to and independent of NSDD 84 and that the use of polygraphs by Federal agencies has been growing.

Consequently, H.R. 4681 is both broader and narrower in scope than these two administration initiatives. It is broader in the sense that it rescinds prepublication review requirements which existed prior to the issuance of NSDD 84. The bill also prohibits polygraph use, for other than investigations into criminal conduct, uses to which the polygraph has infrequently been put in the Federal Government. The bill is narrower in that it deals only with two provisions of NSDD 84 and does not address the rest of the directive.

The committee finds lifelong prepublication review requirements to be deleterious to open, informed public debate about Government policy, subject to arbitrary and politically motivated enforcement, and likely to become a serious administrative burden. The committee is also concerned about the burden prepublication review agreements place on the first amendment of the Constitution. Because the need demonstrated for prepublication review agreements by the administration was weak, the committee does not believe such a burden is justified.

The committee is concerned about the reliability of polygraph examinations and believes that they constitute a serious breach of personal privacy. Where polygraph examinations are most likely to be accurate--in the investigation of specific incidents of criminal misconduct--the committee recommends that their use be authorized under strictly limited conditions. In other cases, the committee believes traditional investigatory means are more effective.

The committee concurs with the policy of the bill, as introduced, that the Central Intelligence Agency (CIA) and the National Security Agency (NSA) and the employees and detailees of each be exempted from the bill. The committee makes this recommendation because the long-standing polygraph and prepublication review programs of each of these agencies have been subject to oversight by other committees of Congress. . . .

2. The issuance of NSDD 84.

A number of administrations, including the Reagan administration, have attempted to convert wide public support for safeguarding national security information into public support for stemming leaks which are merely embarrassing and have nothing to do with national security. National Security Decision Directive 84 (NSDD 84), promulgated by President Reagan on March 11, 1983, contains overbroad elements intended to catch embarrassing leaks in a net purported to catch national security leaks.

The directive was issued shortly after a number of embarrassing newspaper stories about plans of the Reagan administration appeared. It was issued shortly after the Presidental Press Secretary revealed that President Reagan was "up to his keister" in leaks.

While the directive may have been promulgated in response to specific, bothersome disclosures, the substance of the directive had been germinating for some time.

3. The Willard Report

The directive emerged from an interdepartmental group on unauthorized disclosures of classified information. The group, chaired by Richard K. Willard, then a deputy assistant attorney general, issued its report on March 31, 1982. The group was formed in early 1982 at the direction of then National Security Advisor William P. Clark. The report argues that unauthorized disclosures of national security information have increased in severity over the past decade. Despite previous failures in controlling these disclosures, the report says the Government "must seek more effective means to prevent, deter, and punish unauthorized disclosures." The task force explicitly deferred on four types of unauthorized disclosures--espionage, authorized disclosures where the source is not identified, unclassified information leaks, and negligent disclosure of classified information.

The report catalogs the legal problems in prosecuting those who disclose information and argues that new legislation is needed. The report says that only a tiny percentage of unauthorized disclosures are referred to the Federal Bureau of Investigation (FBI) for investigation and possible Justice Department prosecution. Prior to 1977, the FBI would investigate unauthorized disclosure cases only to find out that a prosecution was impossible because the agency which referred the case was unwilling to declassify the information for purposes of prosecution. So, in 1977, the Justice Department developed 11 questions, all of which had to be answered before the Department would investigate. The eleven questions are:

1. The date and identity of the article or articles disclosing the classified information.
2. Specific statements in the article which are considered clasified and whether the data was properly classified.
3. Whether the classified data is accurate.
4. Whether the data came from a specific document and, if so, the original of the document and the name of the individual responsible for the security of the classified data disclosed.
5. The extent of official dissemination of the data.
6. Whether the data has been the subject of prior official releases.
7. Whether prior clearance for publication or release of the information was sought from proper authorities.
8. Whether the material, or portions thereof, or enough background data has been published officially or in the press to make educated speculation on the matter possible.
9. Whether the data can be declassified for the purpose of prosecution and, if so, the name of the person competent to testify concerning the classification.

10. Whether declassification had been decided upon prior to the publication or release of the data.

11. What effect the disclosure of the classified data could have on the national defense.

Based on the answers to these 11 questions, the Justice Department decides whether it is likely the source of the disclosure can be identified. However, where the disclosure constitutes a very grave compromise of classified information, where there is a real possibility the investigation will pay off, and where the agency referring the matter has not finally decided against declassifying the material for purposes of prosecution, the Justice Department may go ahead without satisfactory answers to all 11 questions.

Clearly, the Justice Department policy is aimed at reducing the number of futile unauthorized disclosure investigations which it must conduct. Further, its investigations are hampered by the fact that questioning journalists about the sources of their information raises serious political problems. Its investigations are also hampered by the large number of Federal employees who are likely to have access to the information disclosed.

As a result of all these factors, investigations of unauthorized disclosures for the purpose of initiating criminal prosecutions have been largely unsuccessful.

The report of the Willard task force welcomed the Supreme Court decision in Snepp v. United States, 444 U.S. 507 (1980), holding that a nondisclosure agreement, signed by the Central Intelligence Agency (CIA) employee as a condition of employment, could be used as a basis to enjoin publication and attach profits from a book not submitted for prepublication review, pursuant to the nondisclosure agreement, even where no classified information was involved. The report recommended wider use and stronger wording of nondisclosure agreements.

The report found insufficient protective security within the Government and suggested greater emphasis on training in security for senior officials, better control on circulation and copying of classified materials, and a stronger personnel security program. The task force also raised concerns that frequent contacts between media representatives and employees with access to classified information leads to both deliberative and negligent disclosures of restricted information. The task force rejected the notion of a Government-wide rule on contacts, but urged each agency to adopt its own regulations.

The task force complained that existing personnel regulations prohibited the involuntary use of polygraphs on Federal employees. The report suggested that the polygraph is a useful devide for forcing confessions.

While criminal prosecutions are difficult, administrative sanctions, including dismissal, are possible, the task force concluded. It suggested that administrative sanctions be sought more often and that the FBI be specifically authorized to investigate leaks, even if administrative sanctions may be the only penalty sought.

The Willard task force recommended seven items, most of which found their way into the directive issued a year later:

1. The Administration should support new legislation to strengthen existing criminal statutes that prohibit the unauthorized disclosure of classified information.
2. All persons with authorized access to classified information should be required to sign secrecy agreements in a form enforceable in civil actions brought by the United States. For persons with access to the most sensitive kinds of classified information, these agreements should also include provisions for prepublication review.
3. Agencies should adopt appropriate policies to govern contacts between media representatives and Government officials, so as to reduce the opportunity for negligent or deliberate disclosures of classified information.
4. Each agency that originates or stores classified information should adopt internal procedures to ensure that unauthorized disclosures of classified information are effectively investigated and appropriate sanctions imposed for violations.
5. The Department of Justice, in consultation with affected agencies, should continue to determine whether FBI investigation of an unauthorized disclosure is warranted. The FBI should be permitted to investigate unauthorized disclosures of classified information under circumstances where the likely result of a successful investigation will be imposition of administrative sanctions rather than criminal prosecution.
6. Existing agency regulations should be modified to permit the use of polygraph examinations for Government employees under carefully defined circumstances.
7. All agencies should be encouraged to place greater emphasis on protective security programs. Authorities for the Federal personnel security program should be revised and updated.

4. Provisions of NSDD 84

After a year of interdepartmental clearance, National Security Decision Directive 84 (NSDD 84) was issued by the President on March 11, 1983. An NSDD is similar to an Executive order, except there is no requirement for publication in the Federal Register. Ordinarily, NSDD's are used for setting fundamental military doctrine, such as nuclear targeting strategy. Many NSDD's are classified. Since NSDD 84, concerning the safeguarding of national security information, was released in full to the public, it is not clear why the NSDD format was used instead of the more normal Executive order format.

The directive included six provisions:

1. Agencies which originate or utilize classified information have to adopt new procedures which include, as a minimum--
   a. Each employee with access to classified information must sign a nondisclosure agreement;
   b. Each employee with access to Sensitive Compartmented Information (SCI) must sign a nondisclosure agreement with a requirement for prepublication review. SCI is information the disclosure of which would reveal the methods and sources of intelligence collection;

c. The nondisclosure agreements have to be in a form approved by the Justice Department as enforceable in court;

d. New policies will govern contacts between reporters and agency personnel, regardless of whether those agency personnel have access to classified information.

2. Agencies which originate or utilize classified information must adopt new investigatory and reporting procedures which include, as a minimum--

a. All disclosures must be evaluated as to their seriousness;

b. A preliminary investigation must be conducted;

c. Records of disclosures and investigations must be kept;

d. Agencies must cooperate with each other in internal investigations of disclosures;

e. Persons determined by the agency to have knowingly made such disclosures or to have refused cooperation with investigations of such unauthorized disclosures will be denied further access to classified information and subjected to other administrative sanctions as appropriate.

3. All disclosures have to be reported to the Justice Department and the FBI is authorized to investigate "even though administrative sanctions may be sought instead of criminal prosecution."

4. The directive does not disturb existing interagency agreements between the FBI and other investigatory agencies.

5. The Office of Personnel Management (OPM) and other agencies must revise regulations so that employees can be required to take polygraph examinations and the new regulations must require that adverse consequences will follow from an employee's refusal to cooperate with a polygraph exmaination.

6. The Attorney General, in consultation with the OPM Director, should study and recommend changes in the Federal personnel security program.

5. Reaction to Directive

A flurry of criticism followed the release of the directive. Federal employee representatives charged that the polygraph provisions were a curtailment of individual rights. Authors and publishers voiced concern that the prepublication review provision made it impossible for former top Government officials to publish memoirs or write critiques of future administration policies. Representatives of the press were concerned that the new policies would stifle the free flow of information concerning policies of the Government.

Spurred by these concerns, the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, chaired by Representative Don Edward (D-California) and the Subcommittee on Civil Service of the Committee on Post Office and Civil Service, chaired by Representative Patricia Schroeder (D-Colorado), held 2 days of joint hearings. The lead-off witness on the first day of hearings, April 21, 1983, was Floyd

Abrams, a noted New York first amendment attorney. Abrams testified that NSDD 84 was part of a comprehensive policy of the Reagan administration based on the notion that "information (is) in the nature of a potentially disabling contagious disease which must be feared, controlled, and ultimately quarantined." Throughout the hearings, members of Congress returned to the question of the need for the directive and of the linkage between polygraph and prepublication review requirements, on the one hand, and disclosures which undermine national security on the other.

Administration witnesses refused to discuss specific disclosures in open session. As a result, plans were made to have a closed briefing, a session which was held on February 7, 1984. At this session, administration officials provided details of classified information which had appeared in the press. The witnesses were, however, unable to say with any assurance that a prepublication review requirement would have prevented the disclosure of this information. Indeed, in most unauthorized disclosure cases, the agency witnesses said the identity of the individuals who disclosed the information could not be ascertained. The agency witnesses gave a handful of examples of information which should not be disclosed does not mean that, were there no compulsory prepublication review, this information might have been disclosed. Rather, a former agency employee may regard prepublication review as a backstop and may, therefore, place more classified information in their manuscripts, knowing the agency can later order its deletion.

6. The Government Operations Committee report

The Committee on Government Operations, chaired by Representative Jack Brooks, also became involved in questioning the wisdom of NSDD 84. H.R. 4681 embodies the conclusions and recommendations of the Twenty-fifth Report by the Committee on Government Operations entitled, "The Administration's Initiatives to expand Polygraph Use and Impose Lifelong Censorship on Thousands of Government Employees" (Report No. 98-578, Nov. 22, 1983). This report was the culmination of years of concern over polygraph usage and investigation into both NSDD 84 and a proposed revision of Department of Defense Directive No. 5210.48, concerning polygraph examinations and examiners.

On February 3, 1983, more than a month prior to the issuance of NSDD 84, Chairman Jack Brooks and Ranking Minority Member Frank Horton of the Committee on Government Operations asked the Office of Technology Assessment (OTA) to review the available scientific literature on polygraphs to determine their validity. OTA was not asked to examine the issues of utility, privacy, constitutionality, or ethical aspects which had been raised in previous congressional hearings.

In developing its report, the Committee on Government Operations considered not only the report of the Office of Technology Assessment but also the results of a questionnaire sent on June 14, 1983 to executive departments and agencies covered by NSDD 84. Also, on October 19, 1983, a public hearing was held.

Based on this information, the Committee on Government Operations wrote in its report:

> The committee concludes, based on these studies and the testimony presented at the hearing, that the validity of the polygraph is not scientifically supported for the purpose and manner of its use proposed by the administraiton. The risk of misidentifying trustful persons as deceptive is great in these new policies and they should not be implemented. In addition, the prepublication review requirement will not result in significant infringement of the free flow of information and debate which is necessary for an informed public and which has been historically protected from prior censorship. With the prepublication review requirement, the Government can censor the books, articles, editorials, and fictional writings of many former Government officials. Prepublication review should be rejected as a wholly inappropriate response to the negligible problem of former officials divulging classified information.

The Committee on Government Operations found that, over the prior 5 years, there had been 21 unauthorized disclosures of classified information by officials or former officials through publications or speeches. Only two of those had involved Sensitive Compartmented Information (SCI). To counter this type of unauthorized disclosure, NSDD 84 would require that lifelong prepublication review agreements be signed by the 127,750 Federal employees and contractors with access to SCI. These agreements require the creation of a large bureaucracy to censor the writings and speeches of former officials. The potention for abuse in government censorship of political speech is great. The prepublication review requirement poses a serious threat to freedom of speech and national public debate, the committee concluded.

7. Legislative bans on NSDD 84.

Congressional concern about two specific provisions of NSDD 84 resulted in prohibitory language being attached to two pieces of legislation. When the Department of Defense authorization bill was on the House floor on July 26, 1983, Representative Jack Brooks offered an amendment prohibiting the Secretary of Defense from using, enforcing, implementing or otherwise relying on any rule, regulation, or directive to permit the use of polygraph examinations in the case of civilian employees of DoD or members of the military to any extent greater than was permitted on August 5, 1982. This prohibition lasted until April 15, 1984. The National Security Agency, which is part of DoD, was expressly excluded from this prohibition. The Brooks language was adopted by the House. The Senate adopted a similar amendment, offered by Senators Chaffee and Leahy and strongly support by Senator Jackson, on July 15, 1983. The moratorium on polygraph usage by the Department of Defense was enacted as section 1218 of Public Law 98-94, signed into law by President Reagan on September 24, 1983.

Senator Charles McC. Mathias, Jr. (R-Maryland) offered an amendment to the Department of State authorization bill when it was on the Senate floor on October 20, 1983. This amendment prohibited any agency head from issuing or enforcing any rule or regulation which (1) would require any

officer or employee to submit, after the termination of his or her employment with the Government, writings for prepublication review, and (2) is different from rules or regulations relating to prepublication review in effect on March 1, 1983. Again this restriction lasted only until April 15, 1984. The Mathias amendment was adopted by the Senate by a vote of 56-34. The House accepted this language in conference and the Mathias amendment became section 1010 of Public Law 98-164, signed into law by President Reagan on November 22, 1983.

The April 15, 1984 cutoff date in each of these amendments was set to provide Congress with time to review and, if necessary, act on the polygraph and prepublication review provisions of NSDD 84.

8. The suspension of provisions of NSDD 84

The Subcommittee on Civil Service held hearings on H.R. 4681 on February 29, 1984. Chairman William D. Ford scheduled full committee consideration of the bill for March 21, 1983, due to the necessity of action prior to April 15, 1984. On March 20, however National Security Advisor Robert C. McFarlane wrote Chairwoman Schroeder to "clarify the status" of two provisions of National Security Decision Directive 84.

Ambassador McFarlane said that the President had issued NSDD 84 "because of serious concern about the damage to intelligence sources caused by unauthorized disclosures of classified information." The letter said that following the promulgation of the directive "various Members of Congress expressed concern about two provisions of the direction: paragraph 1(b), which authorized broader use of prepublication clearance agreements, and paragraph 5, relating to the use of polygraph in leak investigation." Ambassador McFarlane noted the amendments to the State and Defense Department authorization bills barring implementation of these provisions expired on April 15, 1984.

Ambassador McFarlane went on to say:

> Rather than resume the legislative debate on the merits of NSDD 84, we would prefer to work cooperatively with Congress to develop a mutually acceptable solution to this problem. Therefore, at the direction of the President, I issued a memo to all agencies affected by NSDD 84, directing that "implementation to two provisions of that directive be held in abeyance." I understand that you and other Members of Congress have expressed concern that, unless legislation is passed to extend the legislative prohibitions that expire on April 15, paragraphs 1(b) and 5 of NSDD 84 might be reinstated. I can assure you that is not now, and never has been, our intention.
>
> The President has authorized me to inform you that the administration will not reinstate these two provisions of NSDD 84 for the duration of this session of Congress. It is our hope that, over the coming months, you and other Members of Congress will work with the administration in the spirit of

> cooperation to devise a solution to the problem of unauthorized disclosures of classified information. Because H.R. 4681 does not present a solution to this problem, we are opposed to its enactment.
>
> There is a serious problem that will not go away, and we therefore cannot completely foreclose future action along the lines of NSDD 84 if a legislative solution to unauthorized disclosures is not found. I would reiterate, however, that no such action will be taken for the duration of this session. Moreover, in order to facilitate congressional involvement in any future action to address this problem, the administration will notify your subcommittee of any such intended action at least 90 calendar days prior to its effective date.

Upon receiving this letter Chairwoman Schroeder wrote Chairman Ford to ask for a delay in full committee consideration. In her letter, Chairwoman Schroeder said:

> While the letter from Mr. McFarlane does clarify the status of National Security Decision Directive 84, it does not address other important issues raised in H.R. 4681. The letter does not speak to proposed amendments to Department of Defense Directive 5210.48 which would expand the use of polygraphs within the Defense Departments. Nor does the letter address the position to be taken by the administration concerning enforcement of prepublication review agreements which have already been signed by civil servants.

DOD DIRECTIVE 5210.48

1. The Carlucci memorandum

On August 6, 1982, Deputy Secretary of Defense Frank C. Carlucci approved a memorandum for Secretaries of the military departments, the Chairman of the Joint Chiefs of Staff and the Directors of the defense agencies. In this memo, Deputy Secretary Carlucci lifted the existing memorandum on periodic reinvestigations of personnel with sensitive Compartmented Information clearances. Attached to the memorandum was an addendum entitled, "Periodic Reinvestigation Procedures for Individuals Cleared for Access to Sensitive Compartmented Information (SCI)."

These procedures stipulated that individuals with SCI clearances could be requested to take polygraph examinations on an aperiodic basis. The questions to be asked would be limited to seven specified counterintelligence questions:

1. Have you ever been approached to engage in espionage or sabotage against the U.S.?

2. Have you ever engaged in espionage or sabotage against the U.S.?

3. Do you know anyone who is engaged in espionage or sabotage against the U.S.?

4. Have you ever been approached to give or sell any classified materials to unauthorized persons?

5. Have you ever given or sold any classified material to unauthorized persons?

6. Do you know anyone who has given or sold classified material to unauthorized persons?

7. Do you have any unauthorized contact with representatives of a foreign government?

The attachment goes on to say that "failure to consent to a polygraph examination may result in denial of continued access to Sensitive Compartmented Information."

2. Negotiations on expanded DoD polygraph use

Issuance of the Carlucci memorandum resulted in serious controversy. As a result, it has been implemented only in the National Security Agency.

Nevertheless, officials of the Department of Defense have engaged in negotiations amongst themselves and with congressional committees about how to shape a reasonable and politically acceptable polygraph policy.

The late Senator Henry Jackson opposed the DoD's proposed expansion of polygraph use for four reasons:

> First, the polygraph is recognized as an inherently unreliable instrument; its results are not admissable in the Federal and most state courts. . . .
>
> Second, wider use of this unreliable instrument, especially its application to military personnel ordered to billets covered by polygraph prescreening requirements, or subjected to it by a politically generated leak investigation, could destroy any number of careers, as well as the general morale of these and other government employees. . . .
>
> Third, even executive branch proponents or greater use of the polygraph recognize these limitations. However, they appear to value its intimidation effect. The report which is the basis for NSDD 84 concludes that "the polygraph can be an effective tool in eliciting confessions." This seems little more than a paraphrase of the comments attributable to President Nixon, who reportedly said: "Listen, I don't know anything about polygraphs, and I don't know how accurate they are, but I do know that they'll scare the hell out of people."
>
> Fourth, especially under leak investigation procedures, there is a clear potential for abuse of the polygraph. For DoD employees caught up in a leak investigation would be treated

> the same as high-level officials, both in terms of the requirement to submit to a polygraph exam and the manner in which the exam is conducted.

Officials of DoD do not speak with one voice on this issue. A number of components within DoD have strenuously objected to increased polygraph use for personnel screening purposes. Indeed, Dr. John Beary, former Principal Deputy Assistant Secretary of Defense for Health Affairs, wrote at least two memoranda, on December 16, 1982, and January 11, 1983, to the Deputy Secretary complaining about the scientific deficiencies of polygraph. Dr. Beary told hearings of the Subcommittee on Legislation and National Security of the Committee on Government Operations, chaired by Representative Jack Brooks, that polygraphs were used for "the placebo response." He said:

> Because most citizens are scientifically naive, some confess to things when hooked up to the polygraph because they believe it really can detect lies. However you don't get something for nothing. The innocent people whose careers are damaged by the machine are the price paid for these placebo-induced confessions.

Dr. Beary summarized the views he expressed within the Pentagon by telling the Brooks subcommittee:

> This machine cannot tell who is lying and who isn't. ... If you don't confess, you are never going to get caught by this thing. I would suspect, judging by the number of people and the security lapses we have had at CIA and other places where they use the polygraph, that people are getting through. Things are happening even though they are being screened on this. So, if it doesn't work yet your people think it does, your managers think it does, then you have a spy sitting there comfortably who is home free. Once you pass that, people pretty much forget about you in this context.

A similar view was expressed by Lawrence J. Korb, Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics in a memorandum written on August 16, 1983. Korb wrote:

> I think it is now clear that there is no scientific evidence to support claims of high polygraph accuracy. At a minimum, I think that the advocates of this program should be required to demonstrate scientifically the accuracy of their machine. I belive that use of the polygraph should not be expanded until that evidence is provided.
>
> My second concern is with the impact expanded polygraph use will have on morale within the Department. As you know, the vast majority of the people who work for the Department are dedicated, honest, and loyal. To subject these people to a polygraph test which, I am sure, is embarrassing and degrading will harm morale throughout the Department. This is particularly true if, as I expect, the random review process excludes

> high ranking people and if, as evidence already suggests, there is a significant tendency for innocent people to be incorrectly classified as deceptive.
>
> My final concern is with the public and Congressional perception of this policy. ... Certainly we have seen that our justification for the increased use of the polygraph is not accepted by the Congress and the press. While we have argued that the change is to catch spies and stop leaks, the perception is that the chagne is to prevent political embarrassment.

The Defense Department decisionmakers have been unwilling to back off entirely from expanding the screening uses of the polygraph. Yet, they have been willing to provide, in their draft regulations, greater protection for the employees subject to its use. The significant proposed changes from the existing DoD regulations on polygraph use are:

Military personnel, as well as civilians and contractors who are already subject, assigned to NSA will be subject to initial and aperiodic counterintelligence scope polygraph exams.

Foreign nationals working for the DoD will be subject to initial and aperiodic polygraphs when background information cannot otherwise be verified.

Civilian, military, and contractor personnel who have access to certain special access programs will be subject to initial and aperiodic counterintelligence scope polygraph exams.

In exceptional cases, polygraphs will be required as part of background checks for interim access to SCI.

Polygraphs will also be used for screening for certain positions in the Defense Intelligence Agency (DIA).

Currently, no action can be taken against an individual solely on the basis of the results of a polygraph exam. Under the proposal, if derogatory information is developed during the exam and all further investigatory efforts do not resolve it, DoD can deny an employee access to extremely sensitive information based on the information derived from the polygraph.

Currently, no adverse action can be taken based on a person's refusal to take a polygraph. Under the proposal, a person can be denied access or, in the case of certain DIA, NSA, and similar positions, be non-selected based on the refusal to undergo the examination.

The right to have legal counsel available prior to, during and after the examination as well as the right to terminate the examination at any time is safeguarded.

Embarrassing, degrading, and unnecessarily intrusive questions must be avoided.

Only counterintelligence questions may be asked during the examination.

Any adverse consequences from a polygraph examination are appealable in accordance with personnel and security laws.

3. DOD authorization bill

The moratorium on the Defense Department changing its polygraph policy expired on April 15, 1984. The Department of Defense authorization bill for fiscal year 1985 (H.R. 5167) passed the House with no provision relating to polygraphs. However, the Senate added a new section (1014) providing that DoD could not implement any revision to Directive 5210.48, "except for the conduct of a test program involving not more than 3,500 persons." Further, section 1014 goes on to require the Secretary of Defense to submit a report on the use of polygraphs in DoD during fiscal year 1985. The limitations does not apply to CIA or NSA and expires on September 30, 1985. The Senate language is now in conference.

. . .

POLYGRAPHS

I. Introduction

The development of the polygraph machine 80 years ago was just the latest step in man's long quest for a method of determining the true from the false. Unlike most of the truth devices and serums of literature and mythology, however, the polygraph machine does not measure truth or falsehood. Rather, the machine measures certain physiological responses (usually, cardiovascular activity, respiration, and perspiration) to see whether the subject is aroused when he or she answers a question. The machine is based on the theory that humans manifest physiological arousal when they lie. The problems with the accuracy of the machine arise because:

The physiological responses associated with lying are not unique to lying. The same responses can come from fear, generalized guilt, drugs, and a variety of other causes.

Different people react different ways. Certain individuals tend to exhibit less physiological response to lying than other individuals.

The technique of the polygraph examiner can be crucial. Well trained examiners ask yes or no questions in a blank, emotionless tone. Yet, someone using the techniques of a lawyer cross-examining a witness can produce a physiological response to questions that the subject is answering honestly.

Reading the bumbs and squiggles made by the machine can be rather subjective.

No responsible student of the polygraph claims it to be perfectly reliable. Yet, criminal and personnel security investigators believe that

it is a useful device for inducing admissions, developing leads for further investigation, and resolving unconfirmed derogatory information about an individual. Essentially their argument to the committee was that they were well aware of both the strengths and the weaknesses of the polygraph machine. If the polygraph is used responsibly in conjunction with traditional investigations means, investigators claim they can do their jobs much better. They say they do not use the polygraph as a substitute for investigation, but rather as an adjunct thereto. The problem is that users of the polygraph do not keep its weaknesses in mind. People tend to attribute infallibility to polygraphs and tend to use them as shortcuts in investigations.

The committee resolved the question of polygraph usage in H.R. 4681 by limiting its use to the purpose fo which it is best suited and most reliable--investigating a specific incident of alleged criminal conduct. With respect to the accuracy of the polygraph, the key factor is that the matter under investigation be a specific, serious incident. The Office of Technology Assessment was clear that it was in these types of circumstances that the polygraph was most successful. The committee was not presented with convincing evidence that the polygraph is a valid instrument for dragnet-type investigations or for the type of fishing expedition that personnel security screening involves.

The committee narrowly defined the circumstances under which an agency could request that an employee sit for a polygraph examination. The examination has to be part of a specific investigation into alleged criminal conduct which constitutes an offense punishable by death or imprisonment for a term exceeding 1 year. The polygraph examination has to be after the completion of as thorough an investigation as possible and solely for the development of information essential to that investigation. The individual asked to sit for the polygraph examination must be reasonably believed to have knowledge of the matter under investigation. And, a polygraph examination can only be conducted by a Federal employee who is employed by 1 of the 12 agencies now administering polygraphs.

The committee believes that only this narrow authorized use of the polygraph is justified by the evidence produced by polygraph proponents.

2. Policy concerns

While recognizing the fact that the polygraph is useful to investigators, the committee notes the following problems with the polygraph:

(a) The evidence of scientific validity of the polygraph examination is minimal. The OTA study concluded that there was not sufficient scientific study to verify the accuracy of the polygraph examination. The OTA study did say that polygraphs were more accurate in the investigation of specific incidents than they were in screening operations. Because of the lack of scientifically documented accuracy, the committee believes it is appropriate to limit the authorized use of the polygraph to those circumstances in which the evidence of reliability is the strongest.

(b) The polygraph examination has the potential for causing profound invasion of the personal privacy of the individual who is subject to it.

The examiner has enormous power over the subject, since the subject usually believes the examiner knows when the subject is not telling the truth. Even if the examiner follows high standards in formulating the questions, the subject is in a vulnerable, exposed position. If an examiner asks questions concerning the personal life of the subject, as examiners do at the CIA and NSA, the subject's life is laid bare. People who have taken a polygraph examination report that it is a humiliating experience. The committee does not believe that Federal employees should be subjected to this sort of painful experience, absent a demonstration by the Government of some overwhelming need.

(c) The Reagan administration has attacked the wages, benefits, employment rights, and quality of work of Federal employees since it came to office. National Security Decision Directive 84 is viewed by many civil servants as another effort to demoralize Federal workers and hold them up to scorn in the public's eye. Whether this was the intention of the administraiton in issuing NSDD 84 or not, the committee is quite concerned about the seemingly ceaseless attacks on Federal employees and the consequent decline in their morale. The polygraph provisions of NSDD 84, in particular, are one more swipe at the career work force.

(d) NSDD 84 proposes the expanded use of polygraphs for investigations into the unauthorized disclosures of classified information. The evidence produced on unauthorized disclosures indicates that investigation is usually futile. If the suspects cannot be narrowed down to a half dozen or fewer, the utility of the polygraph to find the culprit is very small. Insofar as an unauthorized disclosure of classified information violates one of the criminal provisions relating to disclosures, the bill permits the use of the polygraph in those cases. For most of the unauthorized disclosure investgations which the committee examined, however, the polygraph would not be a useful tool.

(e) The revisions to DoD Directive 5210.48 would permit the wider use of the polygraph for personnel security screening uses. The technical memorandum of the Office of Technology Assessment made it plain that the polygraph is not accurate enough to use for this purpose. The committee does not believe that using the polygraph to induce admissions, rather then to determine deception, is appropriate.

(f) NSDD 84 is aimed at stopping unauthorized disclosures of classified information. The committee agrees that such disclosures should be stopped. Nevertheless, the line between an unauthorized disclosure of classified information and a disclosure of information protected under the whistleblower statute (5 U.S.C. 2302(b)(8) may not always be clear. The provision of NSDD 84 authorizing polygraph examinations in unauthorized disclosure cases may deter Federal workers from disclosing waste, fraud, abuse or illegality, an outcome which the committee finds unacceptable. Much of what is most embarrassing to an administration and most beneficial to taxpayers is disclosed by Government employees who blow the whistle on wrongdoing. The committee opposes any effort to suppress these employees.

(g) Most courts will not accept the results of polygraph examinations as evidence for the prosecution of a person. Yet, NSDD 84 proposes

to use the results of polygraph examinations as a basis for taking administrative actions, including firings, against Federal workers. This degrades the due process rights of Federal workers.

(h) NSDD 84 and the revisions to DoD Directive 5210.48 would permit the taking of an adverse action against an employee or applicant for employment who refuses to take a polygraph examination. The committee finds this notion wholly unacceptable. The literature on polygraphs states the polygraphs are only accurate when they are voluntarily taken. If adverse action is the penalty for refusing to submit to a polygraph examination, it is hard to see how that examination can be characterized as voluntary. And, if the examination is not voluntary, the chances that the examination will produce useful results are few.

(i) The committee is concerned that, over time, the polygraph might become a shortcut for full investigation. Field investigation, record checks, and interviews take a considerable amount of time and resources. Budget pressures and personnel cuts could result in the polygraph being a substitute for these investigations. This works to the detriment both of employees and of the Government. It hurts employees because they could be a subject to adverse action based on inaccurate results of the polygraph machine. The jeopardy to the Government comes from excessive reliance on the machine. An enemy agent could well fool the machine and get hired as a result. This hypothetical result becomes more real if it is assumed that enemy espionage services devote considerable resources to the study of countermeasures to beat polygraph examinations. Even if these countermeasures are not perfect, the inherent inaccuracies of the polygraph together with the better chance of beating the machine through the use of countermeasures makes enemy infiltration a real possibility if polygraphs are used as a substitute for field investigation.

(j) The committee is concerned about the effect of the use of the polygraph on the fifth amendment protection against self-incrimination. The polygraph machine induces people to make admissions that they would ordinarily not make. It is this sort of forced admission against which the drafters of the Bill of Rights sought to protect citizens. If it is violative of the Constitution for the Government to force individuals to testify against themselves, it should be equally inappropriate for the government to accomplish the same goal indirectly, through the use of the polygraph.

3. Civil Service Commission policy

In 1964, a Subcommittee of the House Committee on Government Operations held a hearing on the Federal Government's use of polygraphs. Following the hearing, the committee issued a report concluding that there was no scientific evidence supporting the use of polygraphs and there was insufficient research on its accuracy. ("Use of Polygraphs as 'Lie Detectors' by the Federal Government," H. Rept. 80-198, Mar. 22, 1965.) The committee recommended that training of examiners be improved, that refusal to take an exam not result in adverse consequences, and that the President establish an interagency group to develop regulations on polygraph use.

President Lyndon B. Johnson established such a committee which

concluded that there was insufficient scientific evidence concerning the validity and reliability of polygraphs and that polygraphs use was an unwarranted invasion of personal privacy. The interagency committee said "use of polygraphs in the executive branch should be generally prohibited and used only in special national security cases and in specified criminal cases." (See Letter to President Johnson from Civil Service Commission, July 29, 1966.)

The Civil Service Commission (now the Office of Personnel Management) issued Appendix D to Part 736 of the Federal Personnel Manual. Appendix D was entitled, "Use of the Polygraph in Personnel Investigations of Competitive Service Applicants and Appointees to Competitive Service Positions." This appendix codified the recommendation of the interagency committee by permitting the screening use of polygraphs only in "an executive agency which has a highly sensitive intelligence or counterintelligence mission directly affecting the national security (e.g., a mission approaching the sensitivity of the Central Intelligence Agency) . . ." Note that the Commission only asserted jurisdiction over competitive service employees. The employees of CIA and NSA are exempted from the competitive service.

Appendix D goes on to require agencies using polygraphs for screening and personnel investigations to issue regulations containing the following:

(1) Specific purposes for which the polygraph may be used, and details concerning the types of positions or organizational entities in which it will be used, and the officials authorized to approve these examinations.

(2) A directive that a person to be examined must be informed as far in advance as possible of the intent to use the polygraph and of --

(a) Other devices or aids to the interrogation which may be used simultaneously with the polygraph, such as voice recordings.

(b) His privilege against self-incrimination and his right to consult with legal counsel or to secure other professional assistance prior to the examination.

(c) The effect of the polygraph examination, or his refusal to take this examination, on his eligiblity for employment. He shall be informed that refusal to consent to a polygraph examination will not be made a part of his personnel file.

(d) The characteristics and nature of the polygraph machine and examination, including an explanation of the physical operation of the machine, the procedures to be followed during the examination, and the disposition of information developed.

(e) The general areas of all questions to be asked during an examination.

(3) A directive that no polygraph examination will be given unless

the person to be examined has voluntarily consented in writing to be examined after having been informed of the above, (a) through (e).

(4) A directive that questions to be asked during a polygraph examination must have specific relevance to the subject of the particular inquiry.

(5) Adequate standards for the selection and training of examiners, keeping in mind the Government's objective of insuring protection for the subject of an examination and the accuracy of polygraph results.

(6) A provision for adequate monitoring of polygraph operations by a high-level official to prevent abuses or unwarranted invasions of privacy.

(7) A provision for adequate safeguarding of files charts, and other relevant data developed through polygraph examinations to avoid unwarranted invasions of privacy.

These standards remained in place until January 1984 when the Office of Personnel Management issued Basic Installment #311 to the Federal Personnel Manual (FPM). Subchapter 2-6 of Chapter 736 of the FPM, as revised by Installment No. 311, contains a recodification, with some changes, of the material quoted above. The subchapter goes on to say:

> NSDD 84 further requires that agency regulations and policies include a requirement for employees having access to classified information to submit to polygraph examinations, when appropriate, in the course of investigations of unauthorized disclosures of classified information. The polygraph examination shall be limited to the circumstances of the unauthorized disclosure, and its results will not be relied upon to the exclusion of other information obtained during the investigation.

One important further limitation to the directive is added by this language. The directive authorizes the use of polygraphs on all employees within an agency which handles classified information. The FPM only allows its use on employees who have access to classified information. Approximately 2.7 million of the 5 million total Federal civilian and military personnel have access to some classified information.

4. GAO findings relating to polygraph usage

In response to requests by Chairman Brooks and Chairman Ford, the General Accounting Office reported the following relating to usage of polygraphs:

During 1983, DoD employed 123 polygraph examiners and gave 10,502 exams. This is an increase of 11 examiners over a year earlier. Other agencies employed 66 examiners. Except in DoD, virtually all polygraph examinations were given in connection with criminal or specific-incident investigation.

In 1983, DoD gave 3,105 polygraph examinations for preaccess screening. This compares with 1,176 in 1982 and 45 in 1981.

. . .

5. OTA study of validity

The Office of Technology Assessment published a technical memorandum entitled, "Scientific Validity of Polygraph Testing" in November 1983 (OTA-TM-H-15). The technical memorandum focused on the nature and application of polygraph tests, scientific controversy over polygraph testing, data from field and simulation studies, and factors that affect test validity. Briefly summarized, the OTA found:

Federal Government use of polygraph tests had more than tripled from 1973 to 1982, from 7,000 to 23,000 exams.

Excluding the polygraph programs of the Central Intelligence Agency (CIA) and the National Security Agency (NSA), more than 90 percent of polygraph testing in 1982 related to criminal investigations.

In agencies other than CIA and NSA, only 261 polygraph examinations for the purpose of discovering the source of unauthorized disclosure of sensitive or classified information took place during the 1980 to 1982 period.

The March 1983 draft proposed revisions to the Department of Defense (DoD) polygraph regulations would authorize polygraph usage for initial and continuing access to highly classified information, including both Sensitive Compartmented Information (SCI) and special access programs, established under section 4.2(a) of Executive Order No. 12356.

The DoD proposal would provide adverse consequences for refusal to take a polygraph examination under certain circumstances.

Similarly, NSDD 84 provides that refusal to submit to a polygraph examination can result in adverse consequences for the employee. Consequences could include denial of security clearance or administrative sanctions.

The Department of Justice announced, on October 19, 1983, that it was not the administration's policy to permit agency heads to give polygraph examinations on a periodic or aperiodic basis to randomly selected employees who had access to highly sensitive information and to deny such access to employees who refuse to submit to exams.

No overall measure of polygraph testing validity can be established based on the published scientific evidence. Validity is defined as the extent to which the use of a polygraph machine can accurately detect truthfulness or deception.

This is true because a polygraph test involves more than physiological responses of a subject recorded by a machine. The types of individuals tested, the training of the examiner, the purpose of the exam, the

kinds of questions asked cause the results to vary widely. Different testing procedures are used in criminal investigations and personnel security screening.

OTA's inability to calculate an overall measure of validity also stemmed from variations in results and quality of research design and methodology in research studies examined.

The available research evidence does not establish the scientific validity of polygraph examinations for personnel security screening. A 1980 survey by the Director of the Central Intelligence Security Committee concluded that use of the polygraph was a productive bakground investigation technique; however, this was a utility study, not a validity study.

There is concern that use of polygraphs for personnel security screening may be particularly vulnerable to countermeasures and to false positives, where innocent persons are falsely labeled as deceptive.

Only in the area of investigations into specific criminal incidents is there scientific evidence of validity. However, the widely varying research techniques restrict the ability to generalize from the results of prior research. A review of 24 studies which met OTA's minimum acceptable scientific criteria found that correct guilty detections from the use of the polygraph ranged from 35 percent to 100 percent.

Where the polygraph is used in criminal investigations, it is usually after an investigation has been conducted and a prime suspect identified. For "dragnet" screening involving testing of a large number of people, no evidence of testing validity exists.

The research on countermeasures--including physical movement or pressure, drugs, hypnosis, biofeedback, and practice on the machine--has been limited but does suggest that these measures may effect validity. In the national security context, even a small false negative (guilty individual tested as non deceptive) rate could have devastating consequences.

The mathematical chance of false positive (incorrect labeling of innocent individuals as deceptive) is highest when the polygraph is used for personnel security screening. This is because screening involves the testing of a large number of individuals, few of whom are guilty. A small error rate over a large number of individuals results in a significant number of innocent people being labeled deceptive.

For the polygraph to be accurate, the voluntary cooperation of the subject is important. Imposing penalties for refusal to take an exam may create a de facto involuntary condition which increases the likelihood of invalid or inconclusive test results.

Polygraph testing has a weak theoretical base. The conventional theory is that, where the subject fears detection, that fear produces measurable physiological reactions. Hence, the machine is measuring the fear of detection rather than deception per se. The subject's intelligence level, psychological health, stability, and trust in the machine may affect these physiological responses.

Currently planned Federal research on countermeasures is inadequate. Other planned Federal studies have methodology problems.

6. DoD study of utility

In early 1984, the Office of the Deputy Under Secretary of Defense for Policy issued a report entitled, "The Accuracy and Utility of Polygraph Testing." This report traces the history of polygraph usage in the Federal Government, discusses quality control, testing techniques, uses, and research on the use of polygraphs. The report makes a strong argument that polygraphs are extraordinarily useful to elicit information which could not be gained in any other wawy. The following are excerpts from the overview of the report:

> The use of the polygraph for the investigation of crimes is a well established practice. Known errors in field use are exceedingly rare. Where examinees are found to be deceptive during testing, the confession rate is consistently high, despite the fact that all of these criminal suspects have already been interrogated by an experienced investigator. Moreover, there is nothing about the polygraph technique that [is] likely to cause a false confession because of the requisite low key questioning.
>
> The polygraph is extremely useful in intelligence and counterintelligence operations. There is positive evidence of the deterrent effect of screening examinations. ... [T]here is definite evidence that some extremely sensitive U.S. intelligence operations would have been penetrated by hostile intelligence services if the polygraph had not been employed in screening for clearance and access. ... Screening has also kept our intelligence agencies from hiring some extremely undesirable people. Examiners, in FY 82, obtained admissions from applicants of undetected crimes involving murder, attempted murder, arson, rape, and numerous other felonies.
>
> The polygraph field is one of those rare situations where the practice has outpaced the research. Some of the polygraph research is very limited in scope, some is dated, and some is flawed in design. Despite these limitations the research produces results significantly above chance.
>
> It is important to realize that polygraph examinations are not conducted in isolation. Their use is always in the context of a larger program. They play a role in investigations but they are never a substitute for investigation.
>
> Used with prudence, and a full knowledge of its limitations, the polygraph will continue to play a role in our criminal justice system and counterintelligence operations.

Clearly, the DoD study looks at something quite different from what the OTA study examined. OTA asked whether the polygraph was accurate. DoD asked whether it was useful. The fact that OTA answered in the negative

and DoD answered in the affirmative does not, therefore, show a contradiction between the two.

The committee recognizes that criminal and personnel security investigators find the polygraph a useful device.

EXCEPTIONS

The committee exempted the Central Intelligence Agency, the National Security Agency, and the employees, detailees, applicants, and experts and consultants of these agencies from the protections of H.R. 4681. The committee is concerned about the use of prepublication review agreements and polygraphs for screening in these espionage agencies. Nevertheless, the committee exempted these two agencies for the following reasons:

The committee recognizes that other committees of Congress, particularly the Permanent Select Committee on Intelligence, have expertise in the mission and operation of these two agencies. The Intelligence Committee has maintained vigilant oversight over the security procedures employed by these agencies. In the staff report of the Subcommittee on Oversight of the Permanent Select Committee in Intelligence on "Security Clearance Procedures in the Intelligence Agencies" (issued in September 1979), the subcommittee said: "The subcommittee urges the DCI (Director of Central Intelligence) to conduct a study to validate the accuracy of the polygraph in the preemployment setting and to establish some level of confidence in the use of that technique. The subcommittee also feels that the intelligence community should consider whether and how it can exercise more discrimination in the use of the polygraph."

Employees entering CIA and NSA know they are entering a highly secret world where their private lives will be altered in serious ways. Individuals going into these agencies are aware of the special sacrifices they will have to make. Hence, not providing these employees with the protections provided to other employees, while troubling, is not decisive.

Since the security requirements apply to all employees of CIA and NSA, all employees within these agencies are treated equally. Under NSDD 84 and the revisions to the DoD polygraph rules, some employees in an agency or workplace would be subject to polygraph examinations and prepublication review requirements while others would not. As employees are reassigned from one position to another within the same agency, they could move in and out of positions in which they are subject to polygraph examinations and prepublication review. This is not a workable situation.

Both CIA and NSA have had prepublication review and polygraph programs ongoing for some time. CIA has kept Congress fully informed about the procedures governing and the operations of its prepublication review program. H.R. 4681 generally prohibits agencies from implementing new programs. If H.R. 4681 did not exempt CIA and NSA, the bill would enforce CIA and NSA to cancel existing programs.

The committee has been under pressure to grant exemptions to other agencies as well. The committee does not believe that further exemptions have been justified. Two types of arguments have been made. The first is

that each agency in the so-called intelligence community ought to be exempted. The second is that employees of agencies which share information with CIA and NSA ought to be subject to the same requirements as employees of CIA and NSA. Depending on how the term "intelligence community" is defined, this exemption could moot the effect of the legislation. Each argument begs the key question of what is it about the agency or the unit thereof which is so secret that it warrants the intrusions on the right of free speech caused by prepublication review and the invasion of personal privacy occasioned by involuntary polygraph examinations.

While the committee will listen to requests for exemptions based on this key question, it believes that agencies must meet a high burden of proof to justify further exemptions.

. . .

Hon. William D. Ford,
Chairman, Committee on Post Office and Civil Service, U.S. House of Representatives, Cannon House Office Building, Washington, D.C.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 4681, the Federal Polygraph Limitation and Anti-Censorship Act of 1984, as ordered reported by the House Committee on Post Office and Civil Service, June 27, 1984. CBO estimates that enactment of this legislation will not result in significant costs or savings to the federal government.

The bill forbids agencies to require polygraph examinations of their employees. However, agencies may request employees to voluntarily submit to a polygraph examination as part of an investigation into criminal misconduct. Also, agencies may not require employees or applicants to enter into prepublication review agreements. Employees of the Central Intelligence Agency and the National Security Agency are exempt from the provisions of this legislation.

According to the General Accounting Office, approximately 11,000 polygraph examinations were conducted by the federal government in 1983, with about 8,000 (70 percent) of these examinations related to criminal or specific incident investigations. The majority of these polygraph examinations were given by the Department of Defense (about 10,500), which employs approximately 94 percent of federal polygraph operators. Because the majority of the polygraph examinations given last year were voluntary and were related to criminal or specific incident investigations, which the bill would still permit, enactment is not anticipated to produce significant savings to the federal government either through employment of fewer polygraph operators or fewer purchases of polygraph equipment. Similarly, the provisions in this legislation regarding prepublication review are not expected to produce significant costs or savings.

This legislation will not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. Sincerely, James Blum, (For Rudolph G. Penner, Director).

OVERSIGHT

Under the rules of the Committee on Post Office and Civil Service, the Subcommittee on Civil Service is vested with legislative and oversight jurisdiction over the subject matter of this legislation. As a result of the hearings, the subcommittee concluded that there is ample need and justification for enacting this legislation.

The subcommittee received no report of oversight findings or recommendations from the Committee on Government Operations pursuant to clause 4(c)(2) of House Rule X.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of House Rule XI, the committee has concluded that the enactment of H.R. 4681 will have no inflationary impact on the national economy.

ADMINISTRATIVE VIEWS

Set forth below are the views of the President's National Security Advisor and the Department of Defense on H.R. 4681.

The White House
Washington, D.C., March 20, 1984

Hon. Patricia Schroeder,
Chairwoman, Subcommittee on Civil Service, Committee on the Post Office and Civil Service, House of Representatives, Washington, D.C.

Dear Madam Chairwoman: It has come to my attention that, in the course of your Subcommittee's consideration of H.R. 4681, questions have arisen as to the status of two provisions of National Security Decision Directive 84 (NSDD 84). I am writing to clarify the status of that directive.

The President issued NSDD 84 because of serious concern about the damage to intelligence sources caused by unauthorized disclosures of classified information. Both anonymous leaks to the press and unauthorized disclosures in the writings of former officials have caused losses of sensitive intelligence information. This has been a problem in past administrations as well, prompting the congressional intelligence committees to urge more vigorous action in investigating and prosecuting leak cases.

Following the adoption of NSDD-84 in March of last year, however, various Members of Congress expressed concern about two provisions of the directive: paragraph 1(b), which authorized broader use of republication clearance agreements, and paragraph 5, relating to the use of the polygraph in leak investigations. Amendments to the State and Defense Authorization bills were adopted last year barring the Administration from implementing either of these two proposals until April 5 of this year.

Rather than resume the legislative debate on the merits of NSDD 84,

we would prefer to work cooperatively with Congress to develop a mutually-acceptable solution to this problem. Therefore, at the direction of the President, I issued a memo to all agencies affected by NSDD 84, directing that "implementation of two provisions of that directive be held in abeyance." I understand that you and other Members of Congress have expressed concern that, unless legislation is passed to extend the legislative prohibitions that expire on April 15, paragraphs 1(b) and 5 of NSDD 84 might be reinstated. I can assure you that is not now, and never has been, our intention.

The President has authorized me to inform you that the Administration will not reinstate these two provisions of NSDd 84 for the duration of this session of Congress. It is our hope that, over the coming months, you and other Members of Congress will work with the Administration in the spirit of cooperation to devise a solution to the problem of unauthorized disclosures of classified information. Because H.R. 4681 does not present a solution to this problem, we are opposed to its enactment.

This is a serious problem that will not go away, and we therefore cannot completely foreclose future action along the lines of NSDD 84 if a legislative solution to unauthorized disclosures is not found. I would reiterate, however, that no such action will be taken for the duration of this session. Moreover, in order to facilitate congressional involvement in any future action to address this problem, the Administration will notify your Subcommittee of any such intended action at least 90 calendar days prior to its effective date.

I trust that this will resolve questions about the status of NSDD 84 and permit your Subcommittee to proceed to consider H.R. 4681 without the pressure of an April 15 deadline.
Sincerely, Robert C. McFarlane. Department of Defense, Under Secretary of Defense, Washington, D.C., March 1984.

Hon. Patricia Schroeder,
Chairwoman, Subcommittee on Civil Service, Committee on Post Office and Civil Service, House of Representatives, Cannon House Office Building, Washington, D.C.

Dear Madame Chairwoman: Reference is made to your letter of March 21, 1984, asking that we advise the subcommittee of our plans with respect to the proposed changes to the Department's polygraph directive once the congressionally-imposed moratorium expires on 15 April. You will recall, as I testified to the subcommittee, those changes would permit Defense components to establish a limited, counterintelligence-scope polygraph examination as a condition of access to extremely sensitive classified information, protected within so-called "special access programs."

As I have stated at several recent hearings, the Department does not intend to promulgate such changes without some sort of consensus in the Congress that these changes are both reasonable and prudent. Indeed, in an effort to arrive at such a consensus, my staff has had lengthy discussions with the subcommittee counsel, and with members of the full Committee staff, and we have explained in-depth the nature and impact of these proposals. While we do not perceive agreement on every point, we do not

believe our respective views on this subject are so divergent that a compromise cannot be achieved. We have also been engaged in similar discussions with several other congressional committees who have expressed interest in the proposed policy changes, and believe we are close to achieving similar understandings with them. In short, we do not perceive a situation here that is irreconcilable.

Assuming that a consensus among appropriate congressional committees could be obtained, it would be our intent to publish the consensus proposal in the Federal Register for comment, to allow those who have not had an opportunity to comment upon it, to do so.

The proposal has already been through two complete coordination cycles in DoD over the last two years, gaining acceptance on both occasions by each of the military departments and defense agencies. You may also be interested to know that the FBI Director has endorsed in principle the proposed policy changes in a letter to Senator Tower.

In summary, the Department does not intend to act precipitously if the moratorium expires. We recognize it would do us little good to move forward in the face of substantial Congressional opposition, with or without a moratorium. It is not, and has never been, our intent to institute a program which did not have the support of the Congress, as well as our own employees. In this case, we believe a conceptual approach is possible which protects the rights and privacy of our employees, as well as provides far greater assurance than we presently have that our most vital intelligence and R&D programs are not penetrated by hostile intelligence services.

We appreciate the consideration the subcommittee has thus far given our proposal, and look forward to working with you and your staff to arrive at an agreed-upon approach to this difficult area.
Sincerely, Richard G. Stilwell, General, USA (Ret.) Deputy.

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ASSOCIATE EDITOR TOM BEATTY RESIGNS FROM JOURNAL

It is with regret that I announce the resignation of Associate Editor Thomas G. Beatty. Tom Beatty was not only our only law editor but was also the author of a number of articles published by the APA. His resignation is prompted by his recent appointment as a partner in the distinguished law firm of McNamara, Houston, Dodge, McClure & Nay, and the demands of his time as a member of the City Council of Antioch, California.

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Nonverbal Communication

Robert W. Frick. "Communicating Emotion: The Role of Prosodic Features." Psychological Bulletin 97 (3)(1985): 412-429.

This article reviews the expression of emotion through the nonverbal (prosodic) features of speech. Emotions can be expressed prosodically, apparently through a variety of features, and this communication appears to be largely the same for different individuals and cultures, suggesting the prosodic expression of emotion is not conventional. Some correlations between dimensions of emotions and prosodic features are discussed, and the possibility that prosodic contours (patterns of pitch and loudness over time) are used to communicate specific emotions is explored. Methodological difficulties with the acoustical manipulation of relevant auditory and articulatory features are noted. [author abstract]

Requests for reprints should be sent to Robert Frick, Department of Psychology NI-25, University of Washington, Seattle, Washington 98195.

Answer Mode in Card Test

Christopher J. Horneman and J.G. O'Gorman. "Detectability in the Card Test as a Function of the Subject's Verbal Response." Psychophysiology 22 (3)May 1985): 330-333.

A study involving 121 college undergraduates in which detectability of their selection of a card was accomplished by electrodermal recordings. The study compared, in a within-subject design, the relative effect of having the subject answer "yes," "no," or not answering at all. There was no attempt to motivate the subjects to deceive. The answer of "no" elicited the largest magnitude of electrodermal responses and the highest detection rate.

For reprints write to J.G. O'Gorman, Department of Psychology, University of New England, Armidale, Australia 2351.

Electrolytes

Staffan Hygge and Kenneth Hugdahl. "Skin Conductance Recordings and the NaCl Concentration of the Electrolyte." Psychophysiology 22 (3)(May 1985): 365-367.

This study examined the effects of four levels of NaCl concentration (0.1-0.7%) on skin conductance responses (SCRs) and levels (SCLs) to deep breaths and loud noise. Twenty-four subjects of both sexes took part in two identical experimental sessions, 7 days apart. All subjects encountered all four electrolyte concentrations. The results showed no effects of electrolyte concentration on SCLs or on the SCRs to the deep breaths, but indicated larger SCRs to the loud noise with the highest NaCl concentration. [author abstract]

Address requests for reprints to Staffan Hygge, National Swedish Institute for Building Research, Box 785, S-801 29 Gavle, Sweden.