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Floyd Fay Takes Case on Polygraph To TV

Floyd Fay, who served more than two years in prison for a 1978 Perrysburg murder which he did not commit, appeared on NBC's "Today" show this morning to make his case against the use of polygraphs in criminal trials.'

Mr. Fay, who was interviewed along with David Lykken, a University of Minnesota professor and a polygraph expert, described some of the questions he was asked when he took a "lie detector" test. The test indicated that he was deceptive when asked if he shot Fred Ery, co-owner of a Perrysburg carryout store. The test results were admitted into evidence during a trial in Wood County.

Count prosecutors admitted Oct. 31 that they had prosecuted the wrong man, and have charged two others.

While in prison, Mr. Fay, 28, corresponded with Dr. Lykken as part of his efforts to gain a new trial. He told Phil Donehue [sic] that he helped several of his fellow inmates beat the test while in the London Correctional Institute.

Tests were used on some prisoners there during questioning about disciplinary violations, Mr. Fay, formerly of Ford Road, Perrysburg Township, said.

Dr. Lykken, a professor of physiology and psychology, said polygraph tests are responsible in some cases for decisions on whether to prosecute someone in certain cases or whether an employer hires someone.

Her said he believes the test is based on a questionable premise: That a truthful subject will show more physiological signs of being disturbed by a "control" question (where the examiners often expect a lie) than to the relevant questions such as "did you do it."

Dr. Lykken had Mr. Donehue [sic] attached to a machine for a few questions about the host's age. He gave what could be considered signs of deception when he answered a question truthfully.

<http://www.people.com/people/archive/article/0,,20079233,00.html>

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The Truth About Lie Detectors, Says David Lykken, Is That They Can't Detect a Lie

By Linda Witt

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Every year at least one million Americans undergo a lie detector test, and the number is steadily rising. Polygraph results are cited increasingly, and not just in the courts. Officials from government agencies as well as banks, department stores and fast-food chains are using lie detectors to screen job applicants or uncover theft by employees. The only catch, says David T. Lykken, 52, author of the recently published book *A Tremor in the Blood*, is that polygraph tests don't work. The innocent will fail them 50 percent of the time. Thousands of people, he says, are being refused employment, fired from their jobs and, in some cases, sent to prison—without having committed any crime. A psychiatry and psychology professor at the University of Minnesota who has studied lie detectors for over two decades, Lykken talked with PEOPLE's Linda Witt in his Minneapolis office about the evils of the polygraph.

Why are you against lie detector tests?

Because there is no such thing as a lie detector. A machine—or test—known as a polygraph picks up your emotional reactions to questions, measuring breathing, sweating responses and blood pressure. The examiner uses this information and other subjective evaluations for a diagnosis of what he thinks is truthful or deceptive.

Is this physical evidence conclusive?

The most any examiner can infer is whether or not one question is more disturbing than another—but not why. About 90 percent of the damaging reports made to employers are based not on physiological reactions but on the examiner's assumptions, or on incriminating confessions made during an interview. This subjectivity is part of the reason why the detectors are accepted as evidence in criminal cases in only about 20 states, and then only when both sides agree in advance.

How does the machine work?

Two soft rubber belts are strapped around you—one around the stomach, the other around the chest. Wires are fastened to the ends of two of your fingers. And a blood pressure cuff is wrapped around your arm.

Is there a specific physiological "symptom" of lying?

Absolutely not.

Can the experience of the test itself induce stress signals on the charts?

Yes. It's easy to make people frightened and angry. But the machine cannot tell if one person is angry, another frightened, or whether one or both are being deceptive. Statistics show tests are heavily biased against the innocent. If you've ever had the experience of denying a false accusation and still feeling guilty, you can understand. Wouldn't your palms sweat if you were suspected of murder? Ironically, the true criminal may be so accustomed to the psychodynamics of lying and denial that he can fool the examiner more easily.

How reliable are the tests?

Half of innocent people fail them. You'd do as well flipping a coin. In particular, people with strong consciences and religious beliefs can be easily made to feel guilt and anxiety.

Who is officially qualified to give lie detector tests?

In most states, anyone who passes the typical six-week polygraph course. Yet these inexperienced, untutored people are asked to make difficult judgments that may be literally matters of life or death. Polygraph expertise is touted as science, yet only about 10 of the thousands of practicing examiners are Ph.D.s in psychology, and few could meet the requirements for any of my basic courses.

Can a person refuse to take a polygraph?

Yes. Legally neither an employer nor the police can force you to take a lie detector test. The problem is that many people may then associate refusal to take the test with actual guilt.

Why do employers use polygraphs?

To solve thefts, mainly. They are also used in evaluating job applicants.

Would a "lie box" have helped the Washington Post deal with its reporter who won her Pulitzer for a made-up story and had been hired on a phony résumé?

Giving her a lie detector test might have led her to confess her misdeeds earlier, but if it didn't produce a confession, the test results would be ambiguous at best.

Have innocent employees been fired after failing polygraphs?

Yes, and in increasing numbers. In one case, a Detroit woman was awarded \$100,000 from the Kresge stores. But there are tragedies—I will testify soon for the widow and young son of a highly decorated ex-Marine who killed himself after innocently failing a test.

Has anyone been wrongly convicted after failing a polygraph?

It's too common. Peter Reilly, then an 18-year-old from Canaan, Conn., was convicted of murdering his mother largely because he failed a lie detector test. Peter was persuaded that the polygraph showed he had killed her, even though he had no memory of it. Peter had strong physiological reactions to questions like "Peter, did you hurt your mother?" and "Can you remember stomping on her legs?" His eventual confession was meaningless. His conviction was later overturned because vital evidence had been withheld from the defense.

Is design of the questions a problem?

The Floyd Fay case in Ohio can be used as an example of how dumb they can be. Fay failed a lie detector test and was convicted of murder. But he had volunteered to take the test because he knew he was innocent. Typically, he was asked relevant questions like "Did you do it?" along with control questions like "Is today Tuesday?" Because Fay responded more strongly to the "Did you do it?" questions than to "controls," he failed. He served two years in prison before the real killers were found.

Can you outwit the lie detector machine?

Yes. While in prison Fay read an article of mine that said you could make the polygraph needles jump during the control questions by biting your tongue or rubbing your foot against a nail hidden in your shoes. Fay claims he taught the techniques to 27 prisoners who were in trouble over rules. All had told Fay they were guilty, yet 23 beat the test. Anything that produces tension during a question—even tightening your fanny muscles—will make the needles dance.

Are there other polygraph abuses?

Yes. In many parts of the country rape complainants undergo polygraph tests before they can file charges. I find this particularly distressing. How could such a victim, even while telling the truth, not react violently to the relevant

questions?

Why do we believe in polygraphs?

I don't know exactly. The lie detector is almost exclusively an American artifact. Many Europeans have never heard of it. Americans are hooked on the mystique of science and technology—an aura exploited by advocates of the devices. There is nothing scientific about them. We began romanticizing the "lie box" in the '20s and '30s as we became aware of the horrors of the third degree and police brutality. The lie detector seemed clean in comparison to hitting someone with a rubber hose. And as a matter of fact, if that is the alternative, I prefer the polygraph.

Does it have any valid uses?

The Los Angeles police are able to get a 30 to 40 percent confession rate by using the polygraph. If lie detectors help close the books on some of the cases in cities with big crime problems like L.A., I'm all for them. I've seen cops grab a gullible guy fleeing the scene of a crime and wrap a cord from the squad car radio around his wrist and tell him it's a lie detector. I put myself in the cop's shoes. So he's got this guy by ruse—of course, the confession must be verified by other means, but at least he's got him.

Isn't this contradictory—they're good if they can scare the guilty, but evil when they scare the innocent?

I'm sensitive to civil liberties, but a person can make a fetish out of civil liberties and forget the police have a serious, difficult job to do—as long as they don't violate rights.

Should lie detectors be banned?

I'd like to think one could impeach the lie detector simply by unmasking its mystery. The lie detector has no more place in the courts or in business than a psychic or tarot cards.

<http://news.google.com/newspapers?id=ljBPAAAIBAJ&sjid=mAIEAAAIBAJ&pg=6149%2C5011976>

Rekeyed from a link from the above Google address to The Toledo Blade article about Floyd Fay's case

Oct 31, 1980

Conviction in Perrysburg Murder Called a Mistake: Man Freed After 2 Years

New Evidence Links Slaying to two others

by Jim Yavorcik, Blade Staff Writer

A former Perrysburg Township man, imprisoned for more than two years for a murder that authorities now say he did not commit, walked out of the London Correctional Institute Thursday night a free man.

Meanwhile, Wood County Prosecutor John Cheetwood said that newly discovered evidence in the murder case – involving the shooting death of a Perrysburg carry-out store owner in 1978 – has led to the arrest of one suspect and a warrant being issued for the arrest of another.

The freed man, Floyd Fay, 28, was convicted in August, 1978, by a Wood County jury of the murder of Fred Ery, 26. he was accused of shooting Mr. Ery inside Andy's Beverage Center, 134 East Third St., Perrysburg, a store the victim owned with his father. Mr. Ery died later in St. Luke's Hospital.

The conviction was based on evidence that Mr. Ery made a dying declaration identifying Mr. Fay as the murderer, and testimony by a state polygraph expert who said Mr. Fay showed deception on a "lie detector" test when he denied shooting Mr. Ery.

Mr. Cheetwood and defense attorney Adrian Cimerman filed a joint motion for a new trial based upon the new evidence. Common Pleas Judge Gale Williamson granted the motion Thursday and ordered Mr. Fay released pending his next court appearance Nov. 17.

Will Recommend Dismissal

By that date, the prosecutor said, he will recommend dismissal of the case against Mr. Fay.

After Mr. Cimerman served a copy of the judge's order on prison officials in London, Floyd Fay gained his long-awaited freedom.

"I made it!" were his first words on walking out of the medium-security prison about 25 miles west of Columbus, where he had been serving a life sentence with no prospect of parole until 1993.

Smiling broadly, he shook hands with his attorney, a Wood County public defender, and said he felt relieved. "It's been a long wait. A lot of patience. A lot of hard work by a lot of people – this guy right here," he said, throwing an arm around Mr. Cimerman's shoulders.

The jubilant Mr. Fay said he would return to the Toledo area and try to regain his job with Conrail. James Jeffries, Mr. Fay's former supervisor at Conrail, said recently he

would like to have “Buzz” Fay back. He said Mr. Fay probably was the best carpenter he had in his crew.

Work Against Polygraph Tests

Mr. Fay, formerly of 10635 Ford Rd., also vowed to spend as much time as necessary to work against the use in criminal trials of polygraph tests such as the one that helped mistakenly convict him.

“I think that the polygraph should be eliminated from all use everywhere,” he said. “It’s a farce.”

Mr. Fay added that he has no animosity toward the jury which convicted him or the prosecutors, but said he is considering filing a lawsuit against the polygraph operators who were used by the prosecution.

Mr. Fay, a native of Akron, also is expected to return soon to that city where his mother is in Akron General Hospital awaiting a coronary bypass operation.

Originally placed in the state high-security prison in Lucasville, Mr. Fay was transferred in 1979 to London, where he worked as a clerk. Most of his free time was spent in the law library researching his case.

Floyd Fay has been writing letters to The Blade for several months, claiming his innocence. He closed them “The Wood County Hostage,” or “Doing Life Over A Polygraph.” Blade staff writer Jim Yavorcik obtained and examined a transcript of the trial, interviewed many of those involved in his conviction (including a few jurors), and traveled to London, O., to interview Mr. Fay.

In an interview with The Blade Sept. 25, Mr. Fay described himself as “a law and order man.” He had done volunteer work with the Summit County sheriff’s department and was a member of the Buckeye State Sheriff’s Association.

But Floyd Fay said his experience in prison has left him without “the trust for the judicial system I had before.”

Most of his hopes for a new trial had centered on attacking the polygraph test as the main piece of evidence that convicted him. But his lawyer developed leads in the case indicating what Mr. Fay had contended all along – that someone else committed the murder.

The case was reopened last week when Mr. Cimerman presented his new leads to the prosecutors. The identities of the persons who possibly were involved in the shooting were learned.

Mr. Cheetwood, his investigator, John Holm, and Perrysburg Detective Ken Vajen went to Karlsruhe, West Germany to question a man serving in the U.S. Army there who provided them with key information about the case.

Robbery Was ‘Botched’

“The evidence obtained in West Germany clearly indicates that Mr. Fay did not commit the crime for which he was convicted,” Mr. Cheetwood said Thursday.

The serviceman is believed to have driven the getaway car in what was to have been a robbery, but was “botched,” Mr. Cimerman said. The prosecutor declined to say whether the serviceman will be granted immunity from prosecution.

Based upon the new information, an 18-year old Perrysburg man was arrested Thursday morning. Authorities also are searching for another man from the Perrysburg area believed to be in his late teens.

Names of those believed involved are not being released since both were under 18 at the time of the killing and their cases initially will be processed through Juvenile Court. Mr. Cheetwood said he will ask to have the pair certified to stand trial as adults.

System Generally Works Well

The prosecutor said the criminal justice system generally works well and that he could not recall any other case in which an innocent man was convicted in Wood County.

He said Mr. Fay received a fair trial by a just of 12 persons who found him guilty on the evidence presented. But the new evidence “compelled us to work as hard to see an innocent man freed as we’d work to convict a guilty man,” Mr. Cheetwood said.

The prosecutor, who is winding down his tenure as a public official since he is not seeking re-election, said he was not aware of any specific program by the state to compensate a person in Mr. Fay’s position.

“How can you compensate someone for two years of their life?” he asked.

Mr. Cimerman, just two years out of the University of Toledo law school, thanked the prosecutors for acting diligently after he presented the new evidence to them.

Reinstatement Of Death Penalty

He said the case shows that although our justice system is the best known to man “it is not perfect.” He also said that the Fay case presents a strong argument against reinstatement of the death penalty since Mr. Fay was convicted of aggravated murder, a crime which carried the death penalty until July, 1978 in Ohio.

Mr. Cimerman added that the failure of Mr. Fay to testify at trial probably led the jury to its finding of guilty – especially after lie detector experts testified that the defendant had been “deceptive” when he denied shooting Fred Ery.

A criminal defendant has the right not to testify and the decision not to do so should not have been held against him, Mr. Cimerman said. The burden is on the state to prove a man guilty, not on the accused to prove his innocence.

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Examiners, Procedures Vary

Accuracy Of Polygraph Subject To Controversy

Recent developments surrounding the release of Floyd Fay from the London Correctional Institute where he had served more than two years have directed concern toward the use of polygraph results in criminal trials.

The polygraph measures some of the involuntary physiological changes that can occur when a person is not telling the truth. These include alterations in heart rate, breathing, and skin resistance to electricity.

A group of three or four pens, connected to sensitive electric and mechanical equipment, marks graph paper to record the changes.

Persons who promote the polygraph technique claim that the accuracy rate of tests administered by a properly qualified examiner is about 90 per cent.

'Properly Qualified'

But the meaning of "properly qualified" is unclear because many states, including Ohio, do not regulate polygraph examiners in any way.

John Reid and Fred Inbau, authors of what is considered the Bible of polygraph study ("Truth and Deception: The Polygraph Technique"), indicate that the machine is not infallible, but term it a very reliable aid in determining truth or deception.

The technique, they say, has a degree of accuracy equal to or greater than most currently approved forms of evidence used in criminal or civil trials.

In arguing for judicial approval of the technique, though, they noted that the examination procedures and the examiner himself must be closely scrutinized.

Greatest Danger

Dr. David Lykken, a University of Minnesota professor of psychiatry and psychology, opposes the polygraph on both scientific and philosophical grounds.

Dr. Lykken, whose first published work on polygraphs appeared in 1959, said "science has nothing to do" with the tests, and adds that most examiners know little or nothing about psychophysiological principles involved in it.

A polygraph test's greatest danger may be that it is far more likely to err when a person is telling the truth, he says.

That is because the subject already is under stress if he is suspected of wrongdoing. And if he tells the truth on the so-called control questions for which examiners are expecting a lie, the test's accuracy falls even more.

But proponents note that a polygraph test is never given against one's will.

Polygraph evidence is inadmissible in a criminal trial in many states. A 1978 Ohio Supreme Court case established the special conditions under which polygraph results may be admitted in this state.

The conditions are:

- The prosecutor and the defendant must sign a written agreement under which the defendant submits to the test and agrees to the admission of its outcome as evidence, along with the examiner's interpretation.
- The judge must be convinced that the examiner is qualified.
- Either side must have the opportunity to cross-examine the person interpreting the test.
- The judge must tell the jury that the examiner's testimony does not tend to disprove or prove any element of the crime.

Such an agreement was worked out in Mr. Fay's case, Prosecutor John Cheetwood said. Wood County Common Pleas Judge Gale Williamson admitted the evidence, although in one post-trial hearing he had second thoughts – on the record – about having done so.

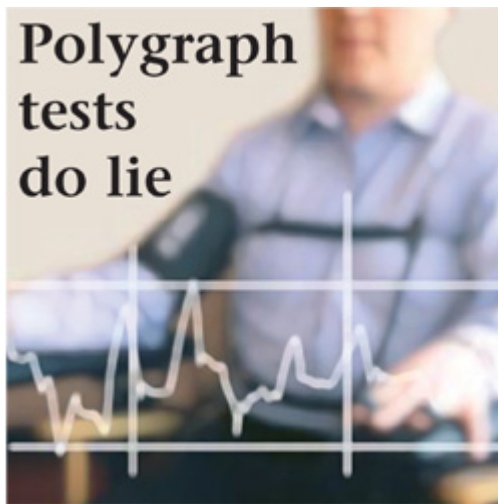
--- Jim Yavorcik

http://www.insidetime.org/articleview.asp?a=88&c=polygraph_tests_do_lie

Polygraph tests do lie

By Professor Ray Bull, from **insidetime** issue September 2007

After extensive research, Professor Ray Bull concludes that even in the most favourable circumstances, polygraph lie-detection accuracy is not high



Throughout history it has often been assumed that lying can be detected by examining changes in bodily activity - but we are actually deceiving ourselves if we believe there will ever be an error-free way of detecting deception. Polygraph tests in particular should not be ascribed special status.

I make this conclusion as the chair of a working party convened by the British Psychological Society to examine research into the most popular polygraph tests and assess their use in real life situations. The working party's report, which was published in January and entitled "A review of the current scientific status and fields of application of Polygraphic Deception Detection", concluded that the accuracy of polygraphs is not high and that the rate of incorrect decisions is too significant to ignore.

Of course polygraph tests are not currently used in criminal investigations in the UK, but they are in many other countries including Belgium, Canada, Israel, Japan, Turkey, Singapore, South Korea, Mexico, Pakistan, the Philippines, Taiwan, Thailand and the USA. In a number of countries the courts have been apprehensive about admitting testimony concerning the 'outcomes' of polygraphic lie detection and the BPS report should be of assistance in this regard.

Polygraph tests work by measuring changes in bodily activity such as heart rate, blood pressure, respiration, and palmar sweating. Three

out of the four most popular lie detection procedures assume that while answering so-called 'relevant' questions, liars will be more aroused than while answering so-called 'control' questions.

Yet this premise is somewhat naïve, as truth tellers may also be more aroused when answering the relevant questions, particularly when these relevant questions are emotion evoking, for example an innocent man, questioned about murdering his beloved wife, might experience strong feelings about her. An innocent examinee can also become more aroused due to fear, which may occur, for example, when the person is afraid that his or her honest answers will not be believed.

Moreover, a suspect may admit having guilty knowledge but nevertheless deny guilt. This happens when the suspect admits being present but denies the specific alleged acts, for example in an alleged sexual assault where the suspect admits the sexual acts but claims that they were consensual.

In our report we examined the available evidence to establish whether the polygraph is a useful procedure for the UK. Scientific laboratory studies, which generally show somewhat favourable results for polygraph testing, are strongly attacked by polygraph opponents. Amongst other things, they argue that the 'guilty' participants, who are asked to commit a mock crime, have little incentive to try to beat the polygraph test and that innocent participants are unlikely to be concerned about the relevant questions.

Field studies illustrate the accuracy of polygraphs in the 'real world' but their quality is subject to debate. One of the main problems is establishing with certainty whether the suspect is actually innocent or guilty. Confessions are widely accepted as ways to establish the ground truth, however a guilty suspect who passes a polygraph test is unlikely to confess, and with no confession the incorrect polygraph decision will not be noted.

Most field studies have been carried out using the Control Question Test (CQT) technique, which compares responses to specific questions about the crime (relevant questions) with responses to control questions, which are expected to arouse anxiety but to a lesser extent than the relevant questions. Overall field studies show the CQT polygraph technique catches guilty suspects in 83 per cent to 89 per cent of cases. But innocent suspects do less well, with between 11 per cent and 47 per cent being classified as guilty.

The two field studies conducted using another polygraph technique, the Guilty Knowledge Test, revealed very good results regarding the classification of innocent suspects (94 per cent and 98 per cent of innocent suspects were correctly classified) but rather poor results regarding the classification of guilty suspects. In these two tests only 76 per cent and 42 per cent of guilty suspects were 'caught' and correctly classified.

This is probably because some guilty suspects may be able to 'cheat' polygraphs by suppressing their physiological reactions with the help of countermeasures. Mental countermeasures include meditation, training in hypnosis to produce 'amnesia' for the offence, and biofeedback training. Guilty people can also use physical countermeasures such as using drugs prior to the examination to dampen physiological responses or increasing their arousal on control questions by inflicting physical or mental pain on themselves or producing muscle tension. This reduces the differentiation in bodily activity.

Proponents of the polygraph test argue that it is highly improbable that countermeasures can succeed because properly trained examiners would notice that the examinee is trying to fool them. However, several studies, some conducted by polygraph supporters, have shown that the use of countermeasures can be very effective in defeating polygraph tests, and that they sometimes remain unnoticed by polygraph examiners.

One of the most famous countermeasures test was conducted by Floyd 'Buzz' Fay, a man who was falsely convicted of murder in the USA on the basis of a failed polygraph examination. He took it on himself to become a polygraph expert during his two-and-half years of wrongful imprisonment. He coached 27 inmates, who all freely confessed to him that they were guilty, in how to beat the control question polygraph test. After only 20 minutes of instruction, 23 of the 27 inmates were successful in defeating the polygraph examination.

After studying such evidence as this we concluded that even in the most favourable circumstances polygraphic lie detection accuracy is not high, so an over-reliance on an imperfect procedure may lead to undue relaxation concerning the developing of: other methods of identifying or screening wrongdoers; and other ways of ensuring security and preventing crime. The belief that people who 'pass' a polygraph test are, therefore, cleared of suspicion is a false belief.

* Professor Bull is from the University of Leicester and Chair of the British Psychological Society's working party on Polygraph Deception Detection. * Reproduced by kind permission of Barrister magazine

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<https://antipolygraph.org/blog/?tag=polygraph>

Ohio Judge Orders Victims in Sexual Assault Cases to Submit to Lie Detector Tests

March 20th, 2010 [AntiPolygraph.org](#) No comments

[Rachel Dissell](#) of the *Cleveland Plain Dealer* reports that [Cuyahoga County Juvenile Court](#) Judge Alison Floyd has ordered the victims in four sexual assault cases to submit to polygraph "testing." In addition, Floyd has ordered the perpetrators of the assaults, who have already been found guilty, to submit to polygraph tests for sentencing purposes. It would appear that Judge Floyd acted *ultra vires* in ordering the victims to submit to lie detector testing.

The Ohio legal system has a long and shameful history of relying on the pseudoscience of polygraphy, from the case of [Floyd Fay](#), who in 1978 was wrongly convicted of murder based on polygraph "evidence," to the more recent case of [Sahil Sharma](#), where in 2007 Summit County Common Pleas Judge Judy Hunter

Lies, damned lies and polygraphs

"Tea leaves and witchcraft" are keeping hundreds of qualified, innocent people out of government jobs.

BY JEFF STEIN

Last April a young woman placed a desperate call to Dr. David Lykken, a psychology professor at the University of Minnesota.

She'd just flunked a routine FBI lie-detector exam question about whether she used drugs. But she'd never used drugs, she insisted to Lykken, author of "Tremors in the Blood: Uses and Abuses of the Lie Detector."

"She was the daughter of a San Francisco policeman," Lykken recalled in a telephone interview, "and had grown up with a phobia about drugs because of all the horrific stories her dad would tell when she was a child. Her friends all knew that if they lit up a joint when she was around she'd walk out."

Nevertheless, the woman was barred from FBI employment, becoming one of scores of government job applicants victimized by faulty polygraph tests each year. "Polygraphs are a little more accurate than flipping a coin," says Lykken, who has received desperate pleas from people condemned by the all-powerful but errant government tests. There is now serious talk of lawsuits from outraged job applicants who failed the polygraph.

Lykken is not alone in his condemnation of the widely used tests. "The use of the polygraph to look at someone's general honesty is garbage," says John Furedy, a psychologist at the University of Toronto who has written widely on the subject.

In fact, say critics, it can be the most innocent who "fail" the tests. Their nervousness at having their credibility questioned can send the polygraph machine's pens flying over the paper, which credulous examiners count as "a lie." For accomplished liars, like CIA turncoat Aldrich Ames, on the other hand, lie detectors are easy to beat. "It's tea leaves and witchcraft," said a senior U.S. intelligence agency scientist, who has long campaigned for the elimination of polygraph tests.

Defenders of the polygraph, like James Murphy, head of the FBI's polygraph unit, blame "incompetent" examiners for mistakes, according to sources familiar with Murphy's explanations to Senate Judiciary Committee investigators in the wake of the Ames revelations.

Murphy could not be reached for comment, but Lykken, past president of the Society for Psychophysiological Research, blames the technique, not the technicians, for polygraph failures. "The field as a whole is incompetent, and they're using a foolish procedure," he said. "The idea of basing any significant decision on the basis of a polygraph exam is ignorant, it's foolish, it's dangerous."

Lykken believes the polygraph is "perhaps" useful for inducing confessions from criminal suspects, but even that can backfire. When Marine Sgt. Clayton Lonetree was shown the results of a lie detector test indicating he'd given Soviet spies the run of the U.S. Embassy in Moscow in the 1980s, he began to believe it himself -- even though it was untrue, according to later news accounts. Lonetree's "confession" led the CIA on a goose chase that for years deflected suspicion from Ames.

Ames beat the polygraph easily. Anyone can -- with a little coaching. One day an Army intelligence officer called Lykken and poured out his frustration that he'd flunked a polygraph for no apparent reason. He asked for advice. "I told him he could alter his breathing rate and blood pressure when responding to certain kinds of questions," Lykken said. The officer retook the test and called back gushing with gratitude. "The only hard part was learning how to keep a straight face," he said with a laugh.

Likewise, Drew C. Richardson, an FBI supervisor with a Ph.D. in physiology, boasted to a polygraph conference a few years ago that he'd taught his 10-year-old son how to beat the Control Question Test, the standard exam used to ferret out Russian "moles." The FBI transferred Richardson out of polygraphs and forbade him to talk about lie detectors in public anymore -- including to Senate Judiciary Committee investigators.

The Control Question Test measures the difference between a control question ("Have you ever done anything you're ashamed of?") and a specific question ("Have you ever smoked marijuana?"). If the specific question elicits more of an emotional response than the control question, then the subject is said to have "attempted deception." But such a response, say critics, may merely reflect a generalized anxiety, the sources of which can only be guessed at.

"It's a fine instrument for interrogation if you already have strong evidence of someone's guilt," says Furedy, "but a lousy way to find out if someone is lying about smoking pot."

Some critics put slightly more credence in the "Directed Lie" test, developed by Dr. Sheila Reed at the Department of Defense Polygraph Institute at Fort McClellan, Ala., which trains hundreds of polygraphers for the Pentagon, Secret Service, National Security Agency and FBI annually. That test requires a subject to state an obvious lie -- "I have sex with my brother every day" -- on the premise that any lie produces indications of stress, which thus provide examiners a better "base" from which to measure a subject's later, deliberate attempt at deception.

Though an improvement, the Directed Lie Test still does not necessarily separate "the anxious innocent from the anxious guilty," says Lykken. "Perhaps you're anxious because you're guilty, or perhaps you're anxious because you're anxious about the topic." Either way, says Lykken, the charts come out hopelessly muddied -- except to examiners who believe they've "found something."

Ironically, polygraph testing of job applicants has been so widely discredited that only government intelligence agencies are allowed to use it freely today. In 1988, President Reagan signed legislation banning it in private industry. Only employees suspected of theft or sabotage can be "put on the box."

But for all their efforts, critics have failed to budge a powerful "old boy network" of FBI, police and former military officials who have what Reed calls "a child-like faith" in lie detectors -- and especially the standard Control Question Test, which most still rely on despite orders to switch to the Directed Lie Test.

The upshot, say critics, is reliance on a system that lets spies go free while rejecting qualified job applicants.

Or worse. A man named Floyd Fay was arrested for murder in Ohio in 1978. Prosecutors, with no credible eyewitnesses or other solid evidence, offered Fay a deal: Take a lie detector test. If you pass, you go free; if you flunk, the results would be used in court. The gambit -- still legal in 20 states -- seemed a sure thing to Fay, certain of his innocence. But Fay flunked, stood trial and was eventually sentenced to life. Only after the real killers were found -- three years later -- did Fay go free.

The stakes aren't as high for the more than 6,000 FBI applicants polygraphed each year, but Lykken has been so angered by some cases that he recently wrote a personal letter to FBI Director Louis Freeh. "It is not only scandalous what you're doing to the dreams and aspirations of these young people, but the kinds of people that are failing (the polygraphs) are the kinds of people I'd like to see working for your agency," Lykken wrote.

Freeh has not acknowledged the letter.

April 10, 1997

Jeff Stein covers national security and federal law enforcement issues for Salon.

<http://www.shadowwar.0catch.com/ploygraph3.htm>

For current employees and applicant who may be required to be polygraphed...

"...[I]f I were somehow forced to take a **polygraph** test in relation to some important matter, I would certainly use these proven **countermeasures** rather than rely on the truth and my innocence as safeguards; an innocent suspect has nearly a 50:50 chance of failing a CQT administered under adversarial circumstances, and those odds are considerably worse than those involved in Russian roulette."

These are the words of David T. Lykken, emeritus professor of psychology, past president of the Society for Psychophysiological Research, and author of *A Tremor in the Blood: Uses and Abuses of the Lie Detector* (New York: Plenum Press, 1998).

The following is the complete text of Chapter 19 of Dr. Lykken's book. Everyone should read it before ever agreeing to be polygraphed. (You will never willingly agree to be polygraphed after learning the idiotic assumptions that polygraphy is based on.)

A TREMOR IN THE BLOOD: USES AND ABUSES
OF THE LIE DETECTOR

Chapter 19

HOW TO BEAT THE LIE DETECTOR

This detestable machine, the **polygraph** (the etymology of which shows that the word means "to write much," which is about all that can be said for it).... It is such an American device, such a perfect example of our blind belief in "scientism" and the efficacy of gadgets; and ... so American in the way it produces its benign but ruthless coercion.

ÑWILLIAM STYRON{1}

A deceptive subject might try to beat the lie test by inhibiting his physiological reactions to the relevant questions. Some people can attenuate their responses even to very strong or painful stimuli if they know when the stimulus is coming.{2} Because the pattern of a control question lie test is fixed, a sophisticated subject should be able to tell when the relevant questions are about to be presented. Some persons have much better control of their reactions than others do. There are even

ethnic differences. When Bedouin tribesmen of the Negev desert were examined on the **polygraph**, they were found to be far less reactive than Israeli Jews, whether of Near Eastern or European origin.^{3} Moreover, most people will become habituated to any stimulus, such as a question, that has been frequently repeated, reacting less strongly to that stimulus than they did at first. A criminal suspect who has been extensively interrogated might, as a result of this habituating repetition, become less reactive to the relevant questions on a lie test administered later.

During the 1960s, my university accepted a secret research contract from the Air Force to study the effectiveness of **countermeasures** against lie detection. My job in this project was to train the experimental subjects. They practiced controlling their responses to my questions while observing their own reactions on the polygraph—the technique now known as "biofeedback." When I thought they were prepared, I would send them on to the chief of our university police department, a **polygraph** examiner of long experience, who would administer a formal lie test. This work had just gotten well under way when a new university president canceled all secret research contracts, including ours. (I never understood why the Air Force insisted on the "secret" classification, since the only thing about our project that could really be kept secret was the source of the funding.) But we had gone far enough by then to convince me that some people could learn to attenuate their relevant responses and beat the lie detector in that fashion—but that it is very difficult for most people and probably impossible for many.

Methods of Beating the Lie Detector

A much more effective method of beating the lie detector, however, is to augment one's reactions to the control questions.^{4} However disturbed one may be by the relevant questions, the scoring rules require that the examiner cannot diagnose "deceptive" if the control reactions are just about as strong or even stronger. Knowing the principles of the method, a subject can identify the control questions when the examiner goes over the list in the pretest interview. During the test, the subject will try to sit calmly, breathing regularly, while listening to and answering the relevant questions. After each control question has been presented and answered, he will do something to augment his response. Any self-stimulation that is not visible to the examiner will tend to increase the normal **polygraph** reaction, covert actions such as biting one's tongue or lip, tightening one's anal

sphincter, or strongly contracting one's toes, for example. A tack secreted in one's sock can be used to produce a good reaction on the **polygraph**.^{5} So too can psychological self-stimulation, such as trying to mentally subtract 7s seriatim from 924 as quickly as possible after answering "No" to the control questions. Tensing the arm or stomach muscles, by contrast, will produce give-away movements of the **polygraph** pens and must therefore be avoided.

Not knowing how to go about it, most unsophisticated subjects make no real effort to beat the lie detector or, when they do try, their efforts are easily detected. They cough or hold their breath or move in their chair or tighten their arm muscles under the blood pressure cuff. And these activities usually occur during or just after the relevant questions and, therefore, tend to augment the very responses that will lead to a "deceptive" diagnosis. Even if he is expecting a more sophisticated attempt at "beating the machine," the typical polygrapher is likely to be deceived by the approach outlined above. John Reid once denied my contention that criminals could beat the **polygraph** by self-induced reactions, which, he said, "are so obvious and unnatural that they are a clear indication of guilt."^{6} He apparently forgot that he proved my point himself years ago. Using muscular contraction and pressure, he found "that all the typical blood pressure responses of deception can be produced artificially at will" and that "the manner in which these blood pressure changes were effected was imperceptible to the operator."^{7} Just as the polygrapher depends on the respondent's na•vetŽ for the lie test to work in the first place—exaggerating the test's accuracy, deceiving him with the "stim test," misleading him about the function of the control questions—so too might the sophisticated subject capitalize on the fact that most examiners do not expect skillful **countermeasures** and, not looking for them, will not see them. In the field experiments discussed in Chapter 8, the CQT was quite successful in detecting lying although it did little better than chance in detecting truthful responding. If, unbeknownst to the experimenters, guilty suspects in these studies had attempted skillfully to beat the lie detector by the methods discussed above, is it possible that the frequency of false-negative errors might also have approached—Even exceed—50%?

Methods Taught by Floyd Fay

I mentioned earlier my correspondence with Floyd Fay while he was serving the first two years of a

life sentence for murder. His conviction, since proven to have been in error, resulted in large part from testimony by a polygrapher that this defendant had failed a stipulated lie test. At his request, I had sent Fay some information about polygraphic interrogation, including an article of my own that explains how one might attempt to "beat" the Control Question Test. After some months, I received from Fay a letter that read, in part, as follows:

Since reading the article you sent me ... I have been running my own experiment. The prison that I am in forces anyone that is suspected of violating a prison regulation into taking a **polygraph**. I have been able to get to nine of these people prior to their taking a test. Out of the nine that I KNOW were guilty of the "offense" that they were accused of, nine have beat the test! I realize that this is a small group to work with, but the 100% "hit rate" is nothing to laugh at. All I have done is have them read the article that you have sent me and then explain exactly what you were saying and they have all beat the test.

It would be difficult for a researcher to set up a controlled study to determine whether guilty suspects, to be tested under real-life conditions, could be trained to beat the lie test. Fay dose not claim to be a scientist but I think he has helped to illuminate an inaccessible corner. As he remarks, nine out of nine is nothing to laugh at. Attorney F. Lee Bailey once offered a prize of \$10,000 to "anyone who can beat the lie detector." I think that it would be only fair if Mr. Bailey would pay off this bet to Mr. Fay, in wholly inadequate compensation for Fay's two years spent in prison, falsely convicted by the lie detector that Bailey claims to be almost infallible.

Methods Taught by the Raskin Group

While he has his checkbook out, Mr. Bailey ought also to send some \$10,000 presents to a number of students at the University of Utah. In laboratory research by Raskin and his colleagues, {8} "guilty" subjects were trained in the use of **countermeasures** to be applied while control questions were being presented during their examinations. The actual training consisted of instructing subjects

to press their toes to the floor, to bite their tongue, or ... to count backward by 7s from a number larger than 200 when the control questions were asked. Each countermeasure subject was instructed to begin the countermeasure as soon as he or she recognized a control question, stop just

long enough to answer, and then continue the countermeasure until the next question began. Each countermeasure subject was then read a set of questions from a typical CQT and was coached in using his or her countermeasure unobtrusively so that it would not be detected by the **polygraph** examiner during the subsequent test. None of the questions used in this practice test was used in the actual **polygraph** examinations, and subjects were not informed of the order of the questions during the examination. The countermeasure training required a maximum of 30 min.{9}

The countermeasure training did not require attaching subjects to a **polygraph** to give them the opportunity to learn how their countermeasure maneuvers affected their physiological recording. The results indicated that

the mental and physical **countermeasures** were equally effective: Each enabled approximately 50% of the Ss to defeat [i.e., appear truthful on] the **polygraph** test.... Moreover, the **countermeasures** were difficult to detect either instrumentally [i.e., by inspecting the physiological records] or through observation.{10}

The Right Way to Beat the **Polygraph**

No good social purpose can be served by inventing ways of beating the lie detector or deceiving polygraphers. As Fay's prison example shows, the most avid students of such developments would be professional criminals rather than the innocent suspects and the truthful job applicants who now fall victim to the trust that we Americans invest in this technology. (On the other hand, if I were somehow forced to take a **polygraph** test in relation to some important matter, I would certainly use these proven **countermeasures** rather than rely on the truth and my innocence as safeguards; an innocent suspect has nearly a 50:50 chance of failing a CQT administered under adversarial circumstances, and those odds are considerably worse than those involved in Russian roulette.)

In the preceding chapters, I have tried to show that no test based on the **polygraph** can distinguish truthful from deceptive responding with high validity, and that it is unlikely that a real lie detector will ever be invented. Similarly, I have tried to show that there are no behavioral cues that an experienced observer could employ to become a "human lie detector" of such accuracy that courts, employers, and the rest of us should defer to his expert judgment. We have seen that **polygraph** tests and honesty questionnaires are being

increasingly used in the United States to decide which job applicants should be hired and which employees should keep the jobs they have. And we have noted that this trend has continued in the absence of any evidence at all that either test actually differentiates between the trustworthy and the dishonest. We have discovered that American businesses, like the ancient nobility, maintain their own private police, armed with lie detectors rather than with clubs, and that employees suspected of crimes against the company are tried by **polygraph** and punished by dismissal, without the protection of due process.

Turning to the official criminal justice system, we have discovered that the lie test is finding its way more frequently into the courtroom. We have acknowledged that, if the lie test were accurate as its proponents claim, then in the interests of justice we should not only admit lie test evidence at trial but we should base the trial verdict directly on the lie test findings. But, perhaps thankfully, we have noted that in fact the lie test is not nearly so accurate as its advocates contend, that its validity is likely to be even lower on the selected cases in which it is now admitted by some courts, and that the consideration of such evidence is certain to impair, rather than facilitate, findings of fact in the traditional way. The use of the lie detector by the police as an investigative tool, while subject to abuse like any other tool, is not inherently objectionable, and may improve the efficiency of the administration of justice through its effectiveness in inducing confessions. But we have learned that such confessions, like those that were induced by the rack and thumbscrews, may not be valid and must always be carefully checked for authenticity.

For all these reasons, then, it seems apparent that the truth technology must be regarded as a growing menace in American life, a trend to be resisted and, it may be hoped, beaten by measures more dependable and lasting than secreting a tack in one's sock. The 1988 Employee **Polygraph** Protection Act was an important step in the right direction. Extending that act to cover federal, state, and local government employees should be the next step. I believe, however, that the only safe solution, the only way to truly beat the lie detector, is to demythologize it. If lawyers, employers, judges, legislators, and government bureaucrats knew what you know now about the lie test, then the menace would be manageable. The first purpose of this book is to contribute to that end.

Some polygraphers are merely greedy opportunists.

One would not regret their having to move into some more useful line of work. But most polygraphers are honorable people, firmly convinced that they are building a respectable profession that will benefit society. One must regret having to turn one's face against this group, advocating reforms that would put them out of business. I agree that, if they could distinguish truth from falsehood with great accuracy, then professional polygraphers would eventually sit at every crossroad of American life, passing the virtuous and forestalling the malefactors. I accept the sincerity of those who believe that their judgments are accurate 95% or 99% of the time—but I know that they are wrong. These claims are wildly implausible and the available evidence denies them. This one critique will not dismantle a deeply entrenched mythology that American children come to accept along with Santa Claus and the Easter Bunny but that, unlike those harmless fairy tales, they continue to believe as adults. At least I hope to shift the burden of proof, which polygraphers have always shirked, back where it belongs—onto the shoulders of the "truth" merchants themselves.

NOTES

1. From his Introduction to *A Death in Canaan*, by J. Barthel (New York: E.P. Dutton, 1976).
2. D. Lykken, I. Macindoe, and A. Tellegen, Perception: Autonomic response to shock as a function of predictability in time and locus, *Psychophysiology*, 1972, 9, 318-333; D. Lykken and A. Tellegen, On the validity of the preception [perception?] hypothesis, *Psychophysiology*, 1974, 11, 125-132.
3. S. Kugelmass and I. Liebllich, Relation between ethnic origin and GSR reactivity in psychophysiological detection, *Journal of Applied Psychology*, 1968, 52, 158-162.
4. G.H. Gudjonsson, How to defeat **polygraph** tests. In A. Gale (ed.), *The Polygraph Test: Lies, Truth, and Science*, London: Sage, 1988.
5. J. Reid and F. Inbau, Truth and Deception, 2nd ed., Baltimore: Williams & Wilkins, 1977, p. 207. The examples of respiration deception responses," on pp. 61-66 of this text, provide useful hints for persons hoping to beat the lie test. Self-induced during the control questions, such reactions will lead most examiners astray.
6. Letter to the editor of *Student Lawyer*, October 1979, responding to an article critical of

polygraphy, "Bloodless Executioners," by John Jenkins, in the May 1979 issue of that journal.

7. J. Reid, Simulated blood pressure responses in lie-detector tests and a method for their detection, *American Journal of Police Science*, 1945, 36, 202-203. It should be admitted that the clinical lie test will be much harder to beat than the polygraphic lie test since examiners like Reid put greater weight on their clinical impressions, suspicions, and intuitions than on the **polygraph** records themselves.

8. C.R. Honts, R.L. Hodes, and D.C. Raskin, Effects of physical **countermeasures** on the physiological detection of deception, *Journal of Applied Psychology*, 1985, 70, 177-187; C.R. Honts, D.C. Raskin, and J.C. Kircher, Mental and physical **countermeasures** reduce the accuracy of **polygraph** tests, *Journal of Applied Psychology*, 1994, 79, 252-259.

9. Honts, et. al., Mental and physical **countermeasures**, pp. 253-254.

10. Ibid., p. 252.

rekeyed from page 389 from Psychology: A Journey by Dennis Coon

from: http://books.google.es/books?id=CxO35bZzDloC&pg=PA389&lpg=PA389&dq=%22floyd+fay%22+%22polygraph%22&source=bl&ots=bFDUjjLIBH&sig=vkdLOYZnj4Pg1QFk1NiMduorSCQ&hl=en&sa=X&ei=KgUvUc6kIYOi0QW5v4B4&redir_esc=y#v=onepage&q=floyd&f=false

Even when questioning is done properly, lie detection may be inaccurate (Grubin & Madsen, 2005). For example, a man named Floyd Fay was convicted of murdering his friend, Fred Ery. To prove his innocence, Fay volunteered to take a lie detector test, which he failed. Fay spent two years in prison before the real killer confessed to the crime. Psychologist David Lykken (1998, 2001) has documented many cases in which innocent people were jailed after being convicted on the basis of polygraph evidence.

If Floyd Fay was innocent, why did he fail the test? Put yourself in his place, and it's easy to see why. Imagine the examiner asking, "Did you kill Fred?" Since you knew Fred, and you are a suspect, it's no secret that this is a critical question. What would happen to *your* heart rate, blood pressure, breathing, and perspiration under such circumstances?

Source: <http://forejustice.org/db/Fay--Floyd.html>

Floyd Fay

Years Imprisoned: 2

Charge:Animal mutilations [This is incorrect. Floyd Fay was actually convicted of Murder. Note by Morrison Bonpasse 28 Feb. 2013]

Sentence:Life Imprisonment

Year Convicted:1978

Year Cleared: 1980

Location of Trial: Ohio

Result: Judicially Exonerated Released

Summary of Case:

Wrongly convicted of abduction.

Conviction Caused By:

Innocence Proved By:

Defendant Aided By:

Compensation Awarded:

Was Perpetrator Found?

Age When Imprisoned:

Age When Released:

Information Source 1:“Miscarriages of Justice in Potentially Capital Cases,” Hugo Adam Bedau & Michael L. Radelet, Stanford Law Review, November, 1987, Vol. 40, p. 112+.

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http://books.google.es/books?id=LmIRiw6lggMC&pg=PA19&lpg=PA19&dq=%22floyd+fay%22+%22polygraph%22&source=bl&ots=0zCvqtIDNg&sig=TWzgRx7MfTmHbQNIMpjySFAHLVU&hl=en&sa=X&ei=KgUvUc6klYOi0QW5v4B4&redir_esc=y#v=onepage&q=%22floyd%20fay%22%20%22polygraph%22&f=false

The Antisocial Personalities by David T. Lykken

page 19, in Chapter: The Classification of Criminal Types

The Innocent Inmate

Although most prison inmates claim to be innocent, at least of the particular offense for which they were convicted, we should not forget that a few, let us hope a very few, are innocent in fact. Through my work as a critic of the polygraph test – the mythical “lie detector” – I have been involved in a number of cases of men who were convicted, largely on the basis of having failed polygraph tests, sentenced to prison and then, years later, proved to have been innocent. Their alleged crimes included rape, sexual abuse of children and, in several cases, homicide. Floyd Fay, for example, was arrested in 1975 and charged with robbing a convenience store in Toledo, Ohio, and shooting the proprietor, who made a tenuous death-bed identification of the masked robber. Fay had no previous criminal record and, absent other evidence linking him to this crime, the prosecutor offered to drop the charges if Fay would pass a polygraph test; Fay was required to stipulate, however, that the results could be used against him in court should he fail the test. Floyd subsequently failed two successive tests by different examiners and this was sufficient to lead the jury to convict him of aggravated murder.

Sentenced to life in prison, Fay read up on the polygraph test, found my name in that literature and wrote to me asking for assistance. Meanwhile, however, a bright young attorney volunteered his help and, like a real-life Perry Mason, uncovered evidence leading to the identification and confession of the real killers (Cimerman, 1981). A free man again after serving 2 years in an Ohio prison, Floyd told me that he was glad his alleged crime had been murder “because then at least you get some respect.”