
Polygraph Testing

Thoughts of A Skeptical Legislator

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ABSTRACT: *The controversy over the use of polygraphs by the federal government is not new. There has been a long history of debate within the government over the propriety and wisdom of using the "lie detector." Nonetheless, the federal government, under the leadership of the Reagan administration, is expanding the use of such tests for screening and investigative purposes. This article reviews the history of debate within the government over the use of the polygraph, and it describes legislation that must be enacted to control the proliferation of unwarranted and inaccurate polygraph use.*

It has been with an eerie sense of *deja vu* that I have watched events regarding this Administration's proposal for polygraph use unfold. As a young representative in the early 1960s, I witnessed a similar scenario played out in Washington. There was a major difference though with how President Kennedy reacted to the use of polygraph tests. When details of the widespread threat of polygraph testing during the course of a "leak" investigation at the Defense Department came to light, President Kennedy publicly intervened and stopped the investigation before any tests were administered. At a news conference he indicated that it was "a mistake to suggest a polygraph," and added, "I don't think we need concern ourselves in the future about it" (*Public Papers of the Presidents*, 1963, p. 304).

Unfortunately, President Kennedy's assurances that polygraph tests would not be used no longer prevail in Washington. Recently, the Defense Department (DOD) conducted a "leak" investigation that involved the polygraphing of over 30 Defense Department employees. Further, DOD has proposed revisions to their regulations regarding polygraphs that would greatly increase the use of, and reliance on, polygraphs during investigations and in noninvestigatory contexts as well.

President Reagan, professing to be "up to his kiester in leaks" has endorsed the polygraph as his solution and issued a presidential directive (U.S. Department of Justice, 1983) requiring each agency to issue regulations that, at a minimum, provide that "employees may be required to submit to

polygraph examinations," under the threat of "adverse consequences" (p. 3) if they refuse. Other employees would be subject to preemployment and random screening. This directive and the proposed Defense Department regulations changes would overturn existing rules governing polygraph use throughout the nonintelligence agencies of the federal government. These rules were established in response to congressional and Administration recommendations made back in the early 1960s following the DOD investigation and subsequent congressional review.

In response to this major policy reversal, several committees of Congress held hearings, and legislation was introduced in the House to control government use of polygraph tests. The Government Operations Committee, which I chair, takes a major role overseeing polygraph tests in the federal government. As part of its oversight activities, the committee asked the Office of Technology Assessment (OTA) for information that would assist it in deciding on the wisdom of expanding polygraph use. OTA was established in 1972 to provide nonpartisan information and advice to Congress on scientific and technological issues. The committee also requested studies by the General Accounting Office (GAO) on the scope of polygraph use by the federal government.

From 1963 to 1976, congressional investigations into polygraph use had consistently found that the scientific research base on the validity of polygraph testing was both conflicting and woefully inadequate. More and better research had been a recommendation of most committee reports. When the issue resurfaced in 1983, we thought that the scientific community might have shed new light on the validity of polygraph testing. We needed to know the state of current knowledge on polygraph testing. What was the theory behind it? What was the evidence to support its use? What implications did polygraph testing research have for the proposed changes in government policy?

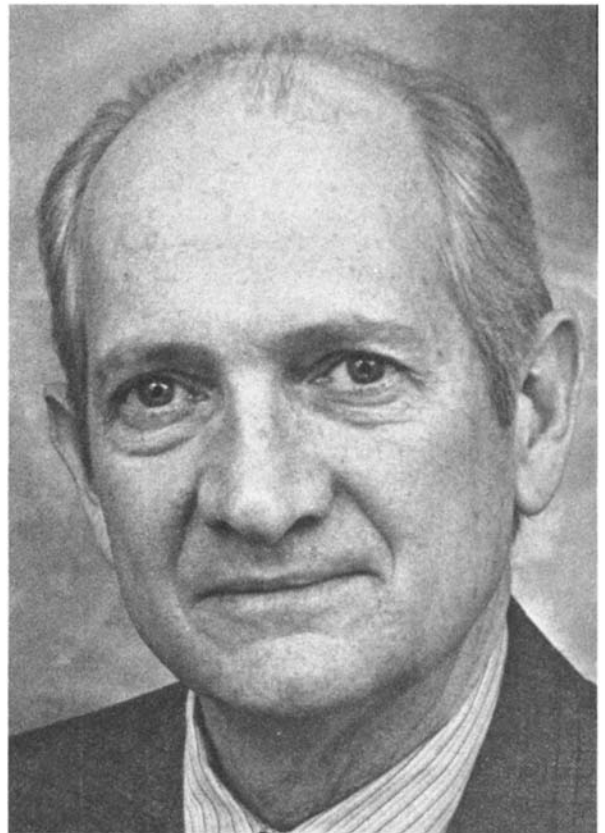
What follows is a brief history of congressional interest in polygraph testing and events leading to legislative proposals to limit use of polygraph tests with government employees. As this article goes to press, the federal government is still trying to develop

a consensus about polygraph use. By virtue of our investigation and OTA's report, the scientific picture has become more complicated. However, the need to control expansion of this technology seems ever more clear.

The History

A memo "leaked" from the Air Force about development of the TFX fighter plane captivated the attention of Washington for a short period during the spring of 1963 and invoked the ire of President Kennedy. The circumstances surrounding the probe into the leak are strikingly similar to those that induced the Reagan administration 20 years later to focus on the polygraph as the centerpiece of its information and personnel security program. The TFX controversy publicly surfaced in March 1963 when the *Washington Evening Star* had a lead article (Fryklund, 1963) that featured an internal Air Force memorandum. The memorandum charged investigators for a Senate committee that was looking into a \$6.5 billion award to General Dynamics for the TFX (later redesignated the F-111 to avoid the bad publicity), with "oral abuse and pressure tactics" (p. 1). Robert McNamara, then Secretary of Defense, ordered the Secretary of the Air Force to find the source of the leak. Although the memorandum was unclassified, it was felt to be very damaging to the department. Air Force Secretary Zuckert called upon his Inspector General to conduct the investigation, giving him a free hand.

The free hand meant that all of the 120 department employees interviewed in the investigation, including the Secretary of the Air Force and other presidential appointees, were asked to sign a written



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Editors note. Representative Jack Brooks (D-Texas) has been a member of the U.S. Congress since 1952. Prior to his election to the House, Representative Brooks was a member of the Texas House of Representatives from 1946 to 1950. Representative Brooks has held many leadership positions in Congress. From 1955 to 1974, he served as chair of the House Subcommittee on Government Activities, and from 1975 to the present he has chaired the House Government Operations Committee, as well as the Subcommittee on Legislation and National Security. Under his leadership, the Government Operations Committee has initiated oversight investigations and has issued reports that have saved billions of dollars and have greatly increased the efficiency of the federal government. Brooks has been a member of the House Judiciary Committee since 1955 and ranking Democrat since 1975, and he played a major role in writing the Civil Rights Act of 1964 and the Voting Rights Act of 1974.

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agreement indicating their willingness to take a polygraph examination. Serious problems developed, however, when an Assistant Secretary of Defense refused as a matter of principle to sign the agreement. Media reports of the refusal and Pentagon officials' descriptions of the threatened use of polygraphs as standard, although concealed, investigatory practice at the department, led to President Kennedy's rebuke. It later led to an abandonment of the investigation and a study of DOD's polygraph policies ordered by the Secretary of Defense. The *New York Times* ("Lie Detectors in the Pentagon," 1963) highlighted the incident with an editorial characterizing this threatened use of polygraphs as "investigative methods that have reached a new low in the Defense Department and have harmed service morale" (p. 18).

It was against this backdrop that Representative Dawson, Chair of the Government Operations Committee of the House of Representatives, asked the Foreign Operations and Government Information Subcommittee to study the federal government's use of polygraphs. The Government Operations Committee (which I have chaired since 1975) is the chief

oversight committee in the House of Representatives and is empowered to review and investigate all government activities. Public hearings were held in which testimony was presented by knowledgeable witnesses. It was learned that, even excluding the National Security Agency (NSA) and the Central Intelligence Agency (CIA), federal agencies had conducted over 19,000 polygraph examinations in 1963. Although the scientific validity of polygraph testing had been at issue for years, there was virtually no scientific research to support its use. Federal witnesses testified, however, that their experience had shown the polygraph to be a helpful investigatory tool in national security cases. In its 1965 report, the committee concluded that "there is no 'lie detector,' neither machine nor human. People have been deceived by a myth that a metal box in the hands of an investigator can detect truth or falsehood" (U.S. Congress, 1965, p. 1).

As a consequence, the committee favored a prohibition on the use of polygraphs in all but the most serious national security and criminal cases and then only when a guarantee could be provided that polygraph examinations would be voluntary. The committee also requested that an interagency committee be established to review and study the federal government's use of polygraphs.

The executive branch responded quickly to the committee's report. President Johnson established an interagency committee with representatives from DOD, the CIA, the Department of Justice (DOJ), and the Office of Science and Technology (OST) to study the polygraph. The DOD adopted its first polygraph directive (U.S. Department of Defense, 1965), which was reviewed by our committee. The committee was gratified by provisions of the regulation for stricter control of the conditions under which polygraph examinations would be given, more research, and the withdrawal of adverse consequences for refusal to take a polygraph test. The DOD regulations did, however, permit the standard use of polygraph examinations for preemployment screening—an area that hardly can be characterized as falling within the definition of the most serious national security cases (i.e., actual instances of security breaches). The committee recommended that personnel screening use should be immediately reconsidered. Further, it recommended that "qualified physicians and psychiatrists" should review polygraph examination records when they are given (U.S. Congress, 1966).

The committee's reactions to the results of the President's Interagency Polygraph Committee's work were similarly mixed. In line with our findings, the interagency committee concluded that there was insufficient scientific evidence concerning the validity and reliability of polygraph testing and that use of

these instruments constituted an invasion of privacy of the individual under examination. The interagency committee recommended, as had the Government Operations Committee, that the "use of polygraphs in the Executive Branch should be generally prohibited and used only in special national security cases and in specified criminal cases" (personal communication to President Lyndon B. Johnson from the U.S. Civil Service Commission, July 29, 1966, p. 2). Apparently, the interagency committee had been convinced by testimony of the polygraph's usefulness in a number of espionage cases.

These recommendations, however, were never fully implemented. In 1973, the Civil Service Commission (now the Office of Personnel Management) issued specific government-wide regulations on the use of polygraphs for preemployment screening of competitive service applicants and appointees (U.S. Office of Personnel Management, 1973). The regulation prohibits the use of polygraph tests in screening for competitive service positions except for agencies that have a highly sensitive intelligence or counter-intelligence mission directly affecting national security (e.g., a mission approaching the sensitivity of the Central Intelligence Agency). Such agencies are to be so certified by the chair of the Civil Service Committee on an annual basis. In addition, the regulation specifies that the refusal to consent to such an examination is not to be made a part of that person's personnel file. These rules are still in effect.

Unfortunately, the regulation is far too narrow to be considered as carrying out the recommendations of President Johnson's Interagency Polygraph Committee. It is relevant only to the use of polygraphs in personnel security screening interviews of competitive service applicants and appointees. The fact that it does not prohibit the use of polygraph tests in screening for exempted civil service employees means that the regulation only covers a portion of the federal work force. Excluded from the "competitive service" category are federal workers such as attorneys, cooks, chaplains, political appointees in the federal government, and employees not covered by the civil service regulation such as those employed in the Tennessee Valley Authority, the Federal Reserve System, and the Post Office. It was estimated that, in 1976, 250,000 to 375,000 civilian employees were not covered (U.S. Congress, 1976). Furthermore, the restrictions on including a refusal to take a polygraph examination in a person's file assume, of course, that an individual is hired. It does not restrict, in any manner, other uses of the polygraph tests. This authorization for the preemployment screening use of polygraph tests stands in contrast to the recommendation of the Government Operations Committee that polygraph use be restricted to

"the most serious national security and criminal cases." As became clear, the investigation of specific incident situations calls for significantly different polygraph testing techniques than does personnel screening (cf. U.S. Congress, 1983b).

Despite the lukewarm nature of the federal policy response to our Committee's recommendations, polygraph use dropped substantially in the decade following the 1963 hearings. Over a decade after its first hearings, the Government Operations Committee, under my direction as chair, again reviewed the polygraph issue. In hearings before the Government Information and Individual Rights Subcommittee, we learned that the government's use of polygraphs had declined substantially since 1963. In fiscal year 1973, only 3,081 exams (over half done by the National Security Agency) were conducted, compared to the 19,796 figure for 1963, which excluded the CIA's and NSA's numbers.

Further, the committee found that only one agency, the Department of Defense, had requested to be certified under the regulation to use polygraph exams in conjunction with screening for competitive service employment. This request had not been granted because it did not conform with the *Federal Personnel Manual's* (U.S. Office of Personnel Management, 1973) requirements. The manual was useful then as it precipitated further changes to DOD's regulations. However, on a larger scale, in the absence of an appropriate reporting requirement, the Committee could not determine if the *Federal Personnel Manual* was being followed and working.

The committee did discover that other agencies had regulations at odds with the *Federal Personnel Manual* or were conducting exams that might be in violation of it because no distinction was being made between competitive service and other employees.

Perhaps most important, the 1976 Committee found that there had not been much new research on polygraph validity since 1963. It concluded that

the nature of research undertaken, both federally and privately funded, and the results therefrom, have done little to persuade the committee that polygraphs have demonstrated either their validity or reliability in differentiating between truth or deception, other than possibly in a laboratory situation. (U.S. Congress, 1976, p. 12)

The committee recommended a complete ban on the use of polygraphs by all federal government agencies for all purposes. As with others, this recommendation has not been heeded.

The Reagan Administration's Polygraph Initiative

The Washington Post (Wilson, 1982) ran a cover story that reported a secret session of DOD's Defense

Resources Board. The story reported that high-level Pentagon officials were informed of internal estimates that President Reagan's defense buildup would far exceed the \$1.5 trillion the White House was publicly claiming. Again, as with the TFX incident almost 20 years earlier, a leak that was embarrassing but not a serious national security problem prompted an investigation to find the source.

As part of an ensuing investigation over 30 Defense Department employees were polygraphed. Many were tested without any prior questioning, despite the Department's polygraph regulation that had originated back in the 1960s to prevent such use of the technique. In its policy statement, the existing DOD directive provided that "the polygraph shall be employed only as an aid to support other investigative techniques and be utilized generally only after the investigation by other means has been as thorough as circumstances permit" (U.S. Department of Defense, 1975, p. 2). Based on the polygraph testing by DOD in response to the *Washington Post* leak, a suspect was identified and was given notice of his removal. But the reporter who had written the story came forward to say that the individual was not his source. The removal was halted and, instead, a reprimand was issued for disregarding DOD regulations, although not for "leaking," and the investigation ended.

As Chair of the Government Operations Committee and its Legislation and National Security Subcommittee, I viewed this incident with alarm. I requested the General Accounting Office (GAO), an investigative arm of the Congress, to review the Defense Department's investigation. They indicated that this investigation set a precedent for DOD "leak" investigations, both in terms of the number and level of officials involved. Further, the GAO discovered that of the 68 DOD investigations of "leaks" since 1975, in only one instance had the polygraph been used and then with only one employee who was the only suspect.

However, despite the extensive use of polygraphs in the Defense Resources Board investigation, the GAO concluded that it had been technically conducted in compliance with the DOD's regulations. In GAO's view, the word "generally" in the policy gave DOD leeway to conduct the investigation in the way it had (personal communication from William S. Anderson, General Accounting Office, to Jack Brooks, October 7, 1983).

Apparently undaunted by the lack of success with the polygraph in the DOD investigation, President Reagan issued a National Security Decision Directive in March 1983 (U.S. Department of Justice, 1983). Press accounts attributed him with contending that he was "up to his kiester" with leaks. Among other elements, the directive required all agencies to

implement regulations that would require employees to take polygraph examinations in the course of leak investigations. Refusal to submit to such tests could result in adverse consequences such as reassignment or withdrawal of access to classified information.

At the same time, the Department of Defense was proposing revisions to their polygraph regulations to greatly expand their use from specific incident investigation purposes to preemployment, preaccess, and continuing random security checks. Like the President, the Department of Defense was proposing the threat of "adverse consequences" for those who refused to take the examinations.

It became clear that a massive policy change was underway. The Administration was seeking both quantitative and qualitative changes in the use of the polygraph. These changes were being implemented without apparent need or assurance that the new policies were scientifically or politically sound. Congressional oversight was urgently needed to evaluate this radical departure from past practice. Because the issue was so urgent, in July 1982, I sought and obtained an amendment to the Defense Department authorization, legislation that prevented implementation of any changes in the DOD's polygraph regulations until April 15, 1984.

In addition, under my direction the Legislation and National Security Subcommittee began an extensive review of these new polygraph policies. As part of its review, the Subcommittee asked the GAO to determine the prior and proposed use of polygraphs throughout the entire federal government. However, from earlier experiences I knew that the fundamental issue in assessing the government's polygraph programs was a determination, to the extent possible, of the *validity* of polygraph testing. If the polygraph could not be shown to work for the purposes proposed, then it should not be used by the government. Other considerations, such as individual privacy, search and seizure (Craig, 1984), and self-incrimination would come to the fore as policy questions only if it was concluded that the test works.

A clear-cut determination of validity was needed. To assist the committee in this task, Representative Frank Horton, the ranking Republican on the committee, and I turned to the Office of Technology Assessment (OTA). OTA was asked to critically review all the available scientific literature relating to the validity of polygraph testing and advise Congress as to its validity.

OTA's conclusions (U.S. Congress, 1983b) about validity of the polygraph under the Administration's proposed uses were disturbing. One finding confirmed our emphasis on limiting polygraph testing to the investigation of specific cases. OTA found

that the polygraph question technique used depended on the use to which the test was put and that the technique with the most extensive research base was not the technique used in preemployment and preaccess screening. For the proposed screening uses, OTA found only four relevant studies, two of which had been conducted by the DOD. Unfortunately, only two specifically addressed validity (one of these was a DOD study). According to OTA "all had serious limitations in study design" (pp. 1-4). Further, OTA found no studies specifically related to wide scale investigations, so-called dragnet investigations. The possibility of dragnet investigations was inherent in the President's Directive, and the DOD had demonstrated their willingness to use them in this manner.

In the context of narrow specific-incident investigations (generally criminal) OTA found extensive research on validity; however, studies varied widely in their conclusions. In 28 studies presenting "acceptable scientific criteria," correct guilty detections ranged from 35% to 100%. Correct innocent detections ranged from 12.5% to 94%. None of these studied national security investigations. Further, OTA found that, in any context, coercing persons to take a polygraph test could theoretically affect validity, although no research had been conducted on this point.

Both the GAO and the OTA, as well as other interested witnesses, presented their findings at the committee's public hearing in October 1983. The GAO's statistics confirmed that the Administration's proposals were sweeping in scope. Under the terms of the president's directive, almost half the federal work force, or over 2.5 million government employees and about 1.5 million contractor employees, were potentially exposed to polygraph exams in leak investigations. Under just one provision of the DOD changes, over 116,000 employees with special security clearances could be subjected to random polygraph security checks. Nevertheless, Richard Willard of the Department of Justice announced additional Administration plans to permit government-wide polygraph use in personnel security screening of employees (and applicants for positions) with access to highly classified information.

Thus, the controversy continues. In its most recent report (U.S. Congress, 1983a), the Government Operations Committee concluded that "the validity of the polygraph is not scientifically supported for the purposes and manner of its proposed use" (p. 13) and recommended against the implementation of the Administration's new polygraph scheme. Public statements by high executive officials discredited the Administration's polygraph policies. Michael Deaver, the President's Deputy Chief of Staff, indicated that he did not support the use of

lie detectors to ferret out White House leakers. Secretary of State, George Schultz, concurred, stating to editors of the *Washington Post* ("News Leakers Deserve Jail, Schultz Says," 1984) that "I'm not persuaded that lie detector tests are the thing to do by a long shot" (p. A19) when questioned about their use in tracking down the source of leaks. Several officials, including some in the White House, indicated an unwillingness to submit to tests to settle discrepancies in the Carter briefing book case. The Justice Department explained their subsequent decision not to use polygraphs in the case by saying it was Administration policy to only use polygraph tests when an investigatory purpose is to be served or there is evidence of a crime, an explanation that is inconsistent with the President's Directive and the Defense Department's proposals. The field office head who discussed polygraph plans with the press was quickly reassigned to the Portland, Oregon office by the FBI director. Media attention continued. Cartoons, depicting the President enthralled with polygraph machines and obsessed with secrecy, have become commonplace in the newspapers.

It is clear that the time has come for Congress to set polygraph policy for the federal government. In January 1984, I introduced H.R. 4681, the Federal Polygraph Limitation and Anti-Censorship Act of 1984, a bill that would correct problems uncovered in years of Government Operations Committee review. The bill would prohibit the use of polygraphs for any screening purposes, and would permit their use only in conjunction with a specific investigation into alleged criminal conduct (including the unauthorized disclosure of classified information) and then only when taken under absolutely voluntary conditions. Such testing could be conducted only after a thorough investigation, only for the development of additional information that is essential to that investigation. Tests could be administered only to an individual reasonably believed to have that information. The bill applies to all agencies of the federal government except the CIA and NSA.

This legislation was extensively reviewed by several House committees in the last Congress. Unfortunately, it was not acted upon by the full House prior to adjournment. I have reintroduced the legislation as H.R. 39 in this Congress, where it will again be considered.

Postscript

In February 1984, President Reagan indicated that he was suspending, at least until the end of the 98th Congress, the polygraph provisions of his directive. This move appeared to be an election year tactic, rather than a serious acknowledgment of flaws in the proposed policy.

Further, this suspension does not directly affect

the Defense Department's polygraph plans. Congress has therefore provided for a freeze in the defense authorization bill on any changes to the department's polygraph policies for fiscal year 1985, except for authority to conduct a polygraph screening test program not to exceed 3,500 exams. Accordingly, DOD has begun such a test program this year. Ultimately, DOD intends to institute a coerced polygraph screening program that will cover over 100,000 employees and require the hiring of 50 new polygraph operators to enable them to conduct 10,000 new screening exams annually. Other agencies are following suit. For instance, the Justice Department intends to widen its polygraph screening program, and the Federal Emergency Management Agency has drawn up a polygraph screening program to be implemented for the first time at that agency (GAO, 1984). Apparently, the Administration continues to believe in the polygraph's efficacy. However, that belief is now based primarily on its utility, that is, its ability to elicit information from examinees and its presumed deterrent effect, neither of which have been evaluated scientifically.

Recently, the highly respected scientific journal, *Nature*, reported another scientific study demonstrating the fallibility of polygraph testing (Kleimuntz & Szucko, 1984). They indicated that "these data, with their unacceptably high error rates, agree with the conclusions reached in a recent U.S. Congress Office of Technology Assessment report" (pp. 449-450). Kleimuntz and Szucko's research is yet another clear indication of the problematic nature of polygraph test validity.

Given the history of bureaucratic initiative in this area, despite repeated recommendations to the contrary and mounting scientific evidence exposing the invalidity of polygraph testing, the Administration has not proposed a very satisfying solution to the current impasse. It is vague, noncomprehensive, and only temporary. Legislation controlling the use of polygraphs within the federal government must be enacted if we are to avoid the cyclical, but steady, proliferation of unwarranted and inaccurate polygraph testing in the government.

The proponents of greater polygraph use by the federal government cite national security concerns to justify their positions. They assume that the testing is accurate and dismiss the negative effects on individuals' rights and privacy as acceptable costs for an enhanced national defense. However, the assumption of accuracy is faulty; the validity of polygraph testing is not scientifically supported. National security concerns, alone, argue against the greater use of polygraph screening. Reliance on this unsupported technique may create a false sense of security, thereby endangering not enhancing our security interests.

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