

IN BOISE, Idaho, last year a woman described by her employer as "honest and dependable" was fired from her job as assistant manager of a quick-service grocery. Her offense: refusal to take a lie detector test.

About the same time in Miami a black youth imprisoned for allegedly firing at police during a riot won a new trial on his claim of innocence. The new evidence consisted primarily of a lie detector test he took and passed.

To hear lie detector opponents tell it, the first case is anything but unique. Supporters, meanwhile, say the second tale is far more common than most people realize and than detractors admit. Discounting the hyperbole from both camps, the two incidents illustrate the uses to which lie detectors are being put to these days as well as the arguments switching about the instrument and its practitioners.

That people are still using the lie detector is surprising in itself. By all rights, it should have been scowled out of existence by now. How many other American institutions (and the lie detector is peculiarly American) list among its critics civil libertarians, the Nixon administration, organized labor, the late J. Edgar Hoover and Congress? Add to its woes a dislabeled attitude toward it by most scientists and lawyers, a generally bad press, a 30-year-old curb on its formal use in the courts and a natural human aversion to a machine which purports to inform its operator whether an individual is lying or telling the truth.

Yet with all of this going against it, the lie detector, or polygraph, has hung in there. Not only has it survived, but it is flourishing and breaking new ground. Its uses range far from supplying employers with a weapon for combating worker theft to providing political figures such as former White House aide Charles Colson with a backup to denials of wrongdoing, from screening potential spies to shooting up faltering mar-

Big in Business

THE POLYGRAPH of 1973 is not much different from the instrument which Leonard Keeler, considered the father of modern lie detection, had developed by the late 1920s. These physiological testing compo-

nents register on rolling graph paper the cardiovascular, breathing and perspiration changes taking place in the individual being tested. Attempts to deceive the examiner, according to the theory, will trigger reactions sharply out of kilter with the norms established for the individual. How valid and reliable is the technique, and whether an operator with relatively little formal physiological and psychiatric training can take into account the variables in different human beings, are the stuff of endless debate between advocates and foes of the polygraph.

It is in the world of commerce that the polygraph is used most extensively, either from firsthand experience or because they see it as a way of screening out dishonest job applicants, catching and firing those who do slip through, and deterring others.

As might be expected, labor unions, backed by groups like the American Civil Liberties Union (ACLU), have been trying to bar polygraph examinations as a condition of employment, both through provisions in collective bargaining contracts and through blanket prohibitions enacted by state legislatures. They are also pushing a bill by Sen. Sam Ervin (D-N.C.), that would prohibit the detector testing within the federal government or by any firm engaged in interstate commerce. It was to Ervin that the lady from Boise wrote for help. Her story, say opponents, personifies the destructive powers which the polygraph can visit upon the innocent.

The woman was discharged after she returned to take a polygraph test during an investigation into an alleged shortage of funds. She had applied for the job knowing that she would have to undergo a pre-employment lie detector test and would be expected to submit to future tests if the company decided they were necessary. But she said she found her initial test so unpleasant because of the highly personal and irrelevant questions asked of her that she vowed never to take an-

The Greening

Of the Lie Detector

By Daniel Knapport

The writer is a Washington freelancer.



other one, even if meant losing her job, she found it meant more. Although the company acknowledged that she had reacted the test on "phynology," and that she had been a "honest and dependable employee," the Idaho Department of employment declined to pay her the unemployment benefits she was otherwise entitled to. It ruled that her action defied company policy and thus constituted "subordination." Union officials claim the woman is likely to find that her experience with the detector may well arise in subsequent job interviews and "dog her for years to come."

WHILE SEN. BERRY'S correspondent was running around of the polygraph in Boise, George Curtis in 1970. Curtis contended he was an innocent bystander who got caught in the crossfire between the gunman and the police, and the sniper after they accidentally shot him. No weapon was ever produced by the prosecution, and the

state's case rested primarily on the testimony of five white policemen.

After he was convicted and gotten to five years in prison, Curtis was tested by Warren Holmes, a Miami polygraph examiner who is probably the most prolific in the South. Holmes declared that Curtis was telling the truth. On the basis of Holmes' finding, the Miami Herald looked into the case, and some investigating of its own and through publicity won a new trial for Curtis. Dade County Circuit Court Judge Alfonso Sepe, who will preside over the second trial, recently ruled that Holmes may testify and introduce his polygraph test results. The trial has been held up pending an appeal on the lie detector issue by State Attorney Richard Gerstein, who says he is opposed to "justice by machine" (Ironically, Gerstein used Holmes extensively in pre-trial work and thinks the world of his ability. Gerstein also was the beneficiary of the lie detector several years ago when he voluntarily took a test to clear himself of corruption charges.)

Curtis case and others like it help explain why some defense lawyers view the lie detector as a useful addition to our system of justice and want to see polygraph court results admitted as evidence into court. Fredrick Bahnel, an associate of F. Lee Bailey,

calls the polygraph "the great equalizer," dispensing justice without consideration of race or class. What chance, Bahnel asks, does a poor black suspect stand in many parts of the United States when the evidence is stacked against him and his ability cannot be readily corroborated?

The Judge Suggests

THE USE OF the lie detector on suspects during stages surrounding a trial—and occasionally during a trial—is apparently more widespread than even the legal community is aware. Warren Holmes testified at a hearing in a U.S. district court in Washington last year that in the previous 12 months he had administered nearly 1,000 court-related lie detector tests. He spoke of a "camaraderie" between defense and prosecution lawyers in Florida that he said does not exist in other parts of the country. In many jury trials, for example, Holmes said, a judge will suggest—or even "direct"—that a conflict in testimony be resolved by subjecting the defendant to a polygraph test. There is no way to liberally force a person to take a lie detector examination and according to Holmes, if the defendant protests too strenuously the judge will not enforce the command. But usually, he related, the defense goes along with the idea because of the opportunity for vindication. Prosecutors reap benefits, of course, if the defendant flunks the test.

Predictably, Gerstein disputes Holmes' choice of the word "camaraderie" to describe the relationship between prosecutors and defense lawyers within his jurisdiction. Neither Gerstein nor the ACLU's executive director in Florida was aware of judges pressuring defendants into taking polygraph examinations, as described under oath by Holmes. Judge Sepe, however, was not surprised at Holmes' claim. He recalled a "vast" of instances not long ago in which judges were directing or inducing defendants to take tests.

Holmes is not alone in utilizing the lie detector to relax the adversary nature of our criminal justice system. Fairfax attorney Blaine Friedlander regularly sends his clients to Glenn Maggard, owner of the Atlantic Security Agency, an Alexandria lie detector firm. Friedlander, a cheerful, round man, talks happily of the benefits

that have flowed to defendants, society and the criminal justice system through his use of the lie detector.

"Not knowing the facts is the basic fact of a case here. I can spot the problem and work out a solution." Sometimes, he says, that means a prosecutor will be persuaded to drop charges when shown that a lie detector test supports his client's claim of innocence. But when the test tells Friedlander that his client is guilty the solution frequently means confronting the client to plead guilty, getting at the root of the problem which prompted the crime and even working with the court on a program of probation and rehabilitation.

The clients, incidentally, that Friedlander sends over to Maggard for polygraph tests include those assigned to him by the court. Nonetheless, he does not feel that it is exceeding his responsibility as a defense attorney, even if his actions sometimes seem to benefit the prosecution. "I don't see a responsibility to society too. I have a responsibility to my client. I don't use the polygraph win or lose... but to establish truth."

The Admirable Issue

AS SOME lawyers like Friedlander, is to get polygraph evidence admitted into evidence—in behalf of their clients. Such evidence has been largely inadmissible since 1923, when the U.S. Court of Appeals held down a rule for which he states courts and all federal courts have already adhered to. The judges of 50 years ago concluded that the relatively unproven lie detector they encountered lacked the necessary scientific credentials to warrant entry into the courtroom. F. Lee Bailey, supported by the American Polygraph Association, has been conducting a sort of campaign-to-pollinate around the country, trying to persuade federal and state trial judges that today's machines and operators are vastly more qualified. The time has come, he argues, to overturn the 1923 decision. The polygraph, and in a sense the lie detector, is an opponent of the de facto exclusion of the lie detector evidence into criminal trials as the Nixon administration. Motivated See A12, Page C2



The Greening Of the Lie Detector

11E, From Page C1

the prosecution determination to win all this leave the jury? Will its American concerns, U.S. attorneys, under the direction of the Justice Department, are waging a spirited fight in federal courtrooms against attempts by defendants to put polygraph operators on the stand. A Justice official declined to me that should the government be unsuccessful on this front, the administration was prepared to ask Congress for a law barring admission of polygraph evidence in federal cases. If it does not, it will find a friend—at least on this issue—in Sen. Edwin, who says he'd be willing to introduce such a bill.

Surprisingly, two groups which ought to be in the thick of the admittedly bitter battle have been standing on the sidelines. The ACLU, which has been fighting for years against polygraph tests as a condition of employment, has taken no position on the court issue, hesitant to restrict a defense lawyer who wants to exonerate his client with a voluntary lie detector examination. The American Bar Association has taken no interest in the subject, even though recognition by the courts could pose some sticky problems for attorneys, judges and juries.

For example, if the defense is allowed to present test results as evidence, shouldn't the prosecution have the right to rebut that testimony with

finding their services in demand by firms and non-paying amateur customers.

During last year's election, two candidates for the district attorney's office in Los Angeles each sought to prove the other a liar by agreeing to take lie detector tests. The plan fell through when the operator backed out, concluding that pollies and polygraphy were intractable bedfellows.

The latest prominent personage to look to the polygraph for vindication is Charles Colson, the former special counsel to President Nixon. Colson reportedly underwent—and passed—a lie detector examination which cleared him of any involvement in the Watergate bugging. What isn't known is exactly what questions were asked and, more importantly, whether Colson was told that the results would be made public. Spectacles of the Colson variety are rare, a professor of psychology at the University of Pennsylvania said. One of a handful of FBI lie detector tests has a scientific interest in what he says, is a carefully researched which he says shows that it is easier for an individual to beat the machine if he does not "have the consequences" of the deception. Such a test is greatly simplified. Orme adds: "If the subject knows he cannot test—if, that is, he understands the test—results will be tossed out should they contradict his defense. Colson could not be reached to discuss the test. But his law partner, David Shapiro, said the question of "withholding results" just never came up."

Washington has been the setting for occasional efforts to use of the lie detector in the past. Two years ago, for example, the U.S. District Court in San Francisco ruled in favor of admitting polygraph results in a trial although the U.S. Court of Appeals reversed that ruling before the trial. In October, the U.S. District Court in San Francisco ruled against a similar polygraph ruling in a case involving the government of the Strategic Arms Limitation Talks. And, one month later, the U.S. District Court Judge Alvin K. Hellerstein in San Francisco ruled that polygraph evidence in a criminal trial over the objection of the prosecution. The defendant was acquitted.

The detector adherents have at least some cases, and although they appear to have some momentum going for them, the legal issues is still far from resolved. Meanwhile, practitioners are

discussant decided to employ lie detector tests. The first subject they approached was Arthur Sylvester, assistant secretary of defense for public affairs. Sylvester, legend has it, told the investigators what they could do with their lie detector. McNamara and President Kennedy backed him up. The Government Information Administration, which launched an extensive study into polygraph usage by federal agencies.

The Pentagon has brushed off recommendations from the House Information subcommittee and the Institute for Defense Analysis that research was needed to establish the validity and reliability of lie detectors. And, despite the lack of scientific evidence, the government's principal intelligence-gathering agencies make extensive use of polygraphs. Both the Central Intelligence Agency and the National Security Agency require all prospective employees to take a test.

One federal agency that is not named of the lie detector is the Federal Bureau of Investigation. More than 20 years ago the late J. Edgar Hoover barred agents from administering tests without specific authorization from the director—a policy still in effect. Hoover, who had publicly minned the value of the polygraph, reportedly felt that reliance on the instrument would jail investigators into premature conclusions.

In fact, the federal government is probably administering fewer lie detector tests today than it was 10 years ago. The hand-holding investigation conducted by the House Information subcommittee under Rep. John Moran (D-Calif.) brought about a variety of results. In the number of tests given, it also led to upgraded standards for government employees who took tests.

Maintaining Respectability

THE CURRENT polygraph boom outside government files in the face of expenditures held at the close of the Moss investigation. Although they officially confirmed their inquiry to the federal use of lie detectors, the congressmen were so afraid that what they learned about the field of poly-

graphy that they took some healthy swipes at the entire industry.

It was thought at the time that this congressional debunking of lie detector would set back private polygraph practitioners. Instead, the opposite occurred. Members of the industry, once a quarrelsome community blemished by what even its own leaders conceded were too many charlatans and incompetents, pulled themselves together and traveled a familiar American road to respectability—the formation of a single professional group. In their Association. Creation of the APA, along with such organizational trappings as a code of conduct, membership qualifications, study committees, self-policing mechanisms and a certificate that can be framed and hung on the wall, convinced many outsiders—including businessmen and judges—that lie detection was a serious and worthy profession. (Most probably do not realize that the APA is without a headquarters or a fulltime staff, relying on the volunteer efforts of its members.)

At the same time, leaders in the field of lie detection invited scientists to study the technique. Not many bothered to accept the offer, but among those who did were some men who turned out to be veritable allies of the APA. One of the most prominent was the University of Pennsylvania's Warren Holmes. Although Orme feels more research is required to establish scientific validity, he thinks enough of his potential to have admission of polygraph evidence into court—provided that demanding criteria are met.

What impressed Orme was a demonstration by concerned polygraph operators to refine their technique, overcome their claims and limit their objections. Consequently, Orme now says that a skilled operator can achieve an accuracy record of about 80 per cent, meaning that in 80 out of 100 tests he can accurately judge whether the subject is attempting deception. Another 15 per cent of the tests will have to be classified as inconclusive, meaning that for one reason or another the operator cannot get a clear reading. The margin of error will hover in the neighborhood of 5 per cent. Not perfectly, says Orme, but the notes that not many accepted medical tests produce fewer errors. And lawyer-proponents of the polygraph will readily match up that record against the reliability of such scientific evidence as eyewitness testimony.

"A Very Healthy Field"

THESE ACHIEVEMENTS by polygraph practitioners have apparently produced financial gains as well as newfound respect. Reliable and objective figures are difficult to come by, but what data is available points to a distinctly upward growth pattern for the industry. The APA, for example, estimates that between 200,000 and 300,000 lie detector tests were administered last year in the United States. The association itself claims a membership of almost 1,000. Six years ago, when it was established, the number was 450. The current Washington Metropolitan Area Yellow Pages lists 18 firms under the heading of "Lie Detector Services." In 1964 there were 11.

Shoelting Co., the manufacturer of the most popular polygraph (Galaxyda Instrument Co. is the only other maker), declines to give out any sales figures. To do so, said a spokesman, might encourage potential competitors. But the spokesman did allow that "at this time it's a very healthy field." That appraisal would seem to be borne out by the claims of at least two private polygraph operators, Miami's Warren Holmes and Alexandria's Glenn Maggard.

Maggard said that he and an assistant administered more than 2,000 tests during 1972—compared to 1,651 in 1971 and 776 in 1970. His first year in business, both Maggard and Holmes say they charge \$75 per test.

And always there are new possibilities. Maggard has discovered a use for the polygraph that no one heretofore has seen. In the Air Force, where he learned his trade, he says, a couple walk into his office seeking help with a marital problem. Usually the trouble boils down to one partner suspecting the other of infidelity. By successfully passing a polygraph test, according to Maggard, is a far more effective way of removing doubts than the most ardent assurances of faithfulness.