North Dakota Law Review

Volume 51 | Number 3 Article 5

1974

The Admissibility of Lie Detector Evidence

Ronald H. McLean

THE ADMISSIBILITY OF LIE DETECTOR EVIDENCE

I. INTRODUCTION

In 1923, Dean Wigmore prophesied that if science ever devised a psychological test for the evaluation of witnesses, the law would run to meet it.[1] Such has not been the case. Instead, American courts have traditionally excluded any type of psychological test that evaluates witnesses. This note will introduce the polygraph technique through a discussion of its historical development, the technique itself, and its fundamental assumptions. Following this discussion, case law and recent trends involving the admissibility of polygraph evidence will be considered. The final segment of this note will confront the issue of whether or not polygraph testimony should be admitted.

II. HISTORY

Throughout history, philosophers, theologians, scientists, and lawyers have sought methods for seeking and determining the truth.[2] The ancient world believed that practical inferences could be drawn from certain physiological phenomena. The Ancient Chinese formulated a test where the suspects were forced to chew rice powder. If it remained dry, they were deemed guilty.[3] The Ancient Greeks also discovered that practical inferences could be drawn from certain physiological phenomena. From 300-250 B.C., the Greek born physician Erasistratus attempted to detect emotion by measuring and recording the change in a subject's pulse rate during emotional situations.[4]

Nevertheless, the systematic use of measurements of physiological reactions in a scientific manner of deception detection has a relatively short history. Most authorities have agreed that the modern

---

1. 2 J. WIGMORE, EVIDENCE § 875 (2d ed. 1923).

2. Streeter & Belli, *The "Fourth Degree": The Lie Detector*, 5 VAND. L. REV. 549, 549-50 (1951). The authors argue that the field of law has been especially unsuccessful having failed with the wheel, the inquisition, the rack, and the third degree.

3. Highleyman, *The Deceptive Certainty of the Lie Detector*, 10 HASTINGS L.J. 47, 52 & n.30 (1958).

4. Note, *Licensing of Detection of Deception Operators in Illinois*, 41 CHI.-KENT. L. REV. 115, 116 (1964). For a further discusion of the historical development of lie detection from the ancient world to the turn of the cenury, see Trovillo, *A History of Lie Detection*, 29 J. CRIM. L. & C. 848 (1939).

history of scientific detection of deception commenced in 1895 when the Italian Criminologist Ceasare Lombroso published his findings on the change in pulse and blood pressure of an accused when questioned about a crime.[5] Lombroso used the same instrument as medical doctors of his time were using to measure blood pressure. Hence he made no claim of having invented a "lie detector" in the present day acceptance of the word.[6] Lombroso's work went unacclaimed and research in this area lagged until 1914.

Shortly thereafter, Austrian psychologist Benussi reported on the results of respiration and its relationship to deception. Benussi's device consisted of an elastic rubber tube strapped around the suspect's chest and was connected to a recording mechanism. With this device, Benussi was able to reflect a suspect's inspiration and expiration pattern of breathing in graphic form.[7] Benussi's counterpart in the area of blood pressure measurement was William M. Marston. Marston's 1915 work at Harvard demonstrated the practicality of detecting deception with the systolic blood pressure test.[8]

What might be the most significant event in the historical development was the 1921 invention of the ink "polygraph" by Dr. James MacKenzie, a famous heart specialist at Berkeley. Although MacKenzie initially intended it for medical purposes, his young student, Dr. John A. Larson, put it to use in detecting a dormitory thief.[9] The MacKenzie machine was basically the same instrument as the blood pressure, pulse, and respiration recorders used today for lie detection tests except that it was composed of several bulky testing units unlike the present-day compact polygraphs.

Within a short time following MacKenzie's machine, a series of "lie detectors" were put on the market. The most significant of these was the device that Leonarde Keeler introduced in 1926. Though it was not the first "lie detection" instrument, it was the first designed specifically for police use and has since become the standard instrument of the trade.[10] Keeler's device consists of a cardiograph for pulse rate, a sphygmograph for blood pressure, a pneumograph for the respiratory movement, and the galvanograph to record galvanic reflexes. Keeler calls it the "pneumo-cardio-sphygmo-galvanograph" or for short the polygraph.[11] The unique contribution to the polygraph development made by Keeler's machine was that it included a galvanometer for recording perspiration increases through

5. Laymon, *Lie Detectors—Detection by Deception*, 10 S.D.L. REV. 1 (1965).
6. *Id.*
7. Highleyman, *supra* note 3, at 53.
8. Note, *supra* note 4, at 116 *citing* Marston, *Systolic Blood Pressure Symptoms of Deception*, 21 J. EXP. PSYCH. 117 (1917).
9. Highleyman, *supra* note 2, at 53 & n.35.
10. Levitt, *Scientific Evaluation of the "Lie Detector"*, 40 IOWA L. REV. 444 (1955).
11. Keeler, *Debunking the "Lie Detector"*, 25 J. CRIM. L. & C. 153, 157 (1934). Keeler himself says it can only be erroneously called a lie detector.

measuring increases in the electrical conductivity of the skin surface.[12] Nothing new was added to Keeler's polygraph until 1945 when John Reid invented an instrument for recording unobserved muscular activity as another index of deception.[13]

III. THE INSTRUMENT AND THE TECHNIQUE

Lie detection is an extremely complicated procedure; in fact, it is probably more complicated than its proponents wish to acknowledge.[14] The polygraph draws upon an integration of the relatively new scientific studies of biology and psychology. The polygraph is not an instrument which can mechanically determine whether a suspect is lying.[15] The polygraph examination is a complex relationship among the examiner, the examinee, and the test instrument. The usefulness of the polygraph depends entirely on the way the examiner functions in this tripartite relationship, on how he questions and interprets the physiological responses.[16] To further complicate the lie detection process, examiners are also instructed to base their findings on various behavior patterns which the polygraph doesn't even record.[17]

The foremost experts in polygraph development, Fred Inbau and John Reid, state that any reliable polygraph instrument must include units to measure respiration and blood pressure-pulse changes.[18] Sometimes a device is added to the basic test to disclose involuntary tightening of arm or leg muscles. For this test, the feet are hooked to a platform and the arms are connected to the armrests.[19] Less commonly used is the galvanometer which consists of two electrodes attached to the subjects hand to measure the galvanic skin response. This galvanic skin response is simply the measuring of the flow of electric current across the hand as the perspiration rate increases. For a variety of reasons this test is considered less sat-

12. Laymon, *supra* note 5, at 2.

13. *Id.*

14. Skolnick, *An Analysis of Lie Detection*, 70 YALE L.J. 694, 695 (1961). Skolnick states, "as compared with fingerprints it requires more personal judgment, and is less straight forward in its scientific underpinnings than blood-alcohol tests."

15. Inbau & Reid, *The Lie-Detector Technique: A Reliable and Valuable Investigative Aid*, 50 A.B.A.J. 470, 471 (1964).

16. Comment, *The Polygraph in Private Industry: Regulation or Elimination*, 15 BUFFALO L. REV. 655, 659 (1969).

17. Radek, *The Admissability of Polygraph Results in Criminal Trials: A Case for the Status Quo*, 3 LOYOLA UNIV. L.J. 289, 291 (1972). The author cites what Reid and Inbau set out as characteristics of liars: a lack of frackness, looking away from the examiner, crossing his legs, using his hands in trying to dust off his clothes or engaging in other similar physical activity.

18. Inbau & Reid, *supra* note 15, at 471. A pneumograph is used to measure respiration patterns. It is a device based on a corrugated rubber tube which is fastened around the chest and which expands and contracts as the subject breathes. A cardio-phygranometer is used to measure blood pressure and pulse variations. This device resembles the inflated rubber cuff that phyicians use to measure blood pressure and pulse rate. Comment, *supra* note 6, at 658.

19. Highleyman, *supra* note 3, at 54.

isfactory.[20] The polygraph, in sum, consists of each of these devices activating a pen that records the particular physiological response from which the operator makes his interpretations and bases his questions.

Before the lie detector examination begins the operator should conduct a pre-test interview with the subject. Inbau and Reid stress that at this time the polygraph's alleged "infallibility" should be impressed on the subject.[21] Thus the innocent will tend to be more relieved and the guilty more likely to be frightened which will have the practical advantage of heightening their responsiveness.[22] The examiner should also conduct a "trial run" or pre-test to establish what is the subject's responsive norm. Here questions aimed at achieving "normal" responses are asked.[23]

The standard test takes between 45-60 minutes. The questions must be unambiguous, unequivocal, and understandable. All questions and answers as well as lapse of time should be recorded. The examination room should be free from noise, interruption, and other extraneous influences. This would rule out, notwithstanding the rules of evidence, a polygraph examination being able to be carried on in a court room.[24]

Two main types of questioning techniques are available to the examiner during the actual polygraph examination. The first is the peak of tension technique and the second is the control question technique.

In the peak of tension technique, the subject is given a list of questions and is told to answer "no" to all. Only one of the questions is relevant to the crime and it should involve some detail of the crime that would be known only to the perpetrator or to an accomplice. The theory behind this technique is that a "peak" will show on the graph because the guilty subject will recognize the crucial detail and will react to it more strongly than to the others, thus implicating himself.[25]

The "control" question technique involves the use of relevant questions, irrelevant questions, and control questions. In this type of questioning, it can be said the subject is led into a lie and

20. *Id.* at 54, *citing* Harman & Arthur, *The Utilization of the Reid Polygraph by Attorneys and the Courts*, 2 CRIM. L. REV. 12, 21 (1955).
"It is argued that the psychogalvanometer measure only the sensory concomitants and therefore alcohol and narcotics tend to impair the efficacy and reliability of results by reducing physiological reactions." *Id.*

21. Inbau & Reid, *supra* note 15, at 471.

22. *Id.*

23. Highleyman, *supra* note 3, at 55. These questions were designed to envoke normal responses which develop "normal" base lines on the graphs, which will be used in interpretation of the subject's reactions to more pertinent questions.

24. Highleyman, *supra* note 3, at 55.

25. Note, *The Polygraph Technique: A Selective Analysis*, 20 DRAKE L. REV. 330, 332 (1970).

this lie is used to provide a norm of the subject's reaction when lying.[26] The control question should basically be a question to which the subject in most instances would lie. The theory of this technique is that the innocent suspect would have greater physiological responses to the control question than to the relevant questions involving the crime.[27]

Each exam usually will not exceed ten questions or five minutes.[28] After the initial exam, several reruns of the exam are not unusual. Rarely can an examiner detect deception through the initial exam. To establish a definite diagnosis, the exam must be rerun until the responses consistently indicate either truth or deception.[29]

IV. OPERATIONAL THEORY

Some authors have stated that the fundamental premises underlying the polygraph consist of two assumptions: (1) that there exists a definite relationship between conscious lying and emotional conflict; and (2) that the subject's emotional conflict creates a corresponding physiological change.[30] At least one author has recognized that there exist two additional assumptions in the basic premises of polygraph theory: (1) that these physiological changes can be recorded and measured by a polygraph; and (2) that the examiner is able to accurately interpret these recordings.[31] These assumptions should be kept in mind when reviewing the general reluctance of the courts to admit polygraph results into evidence.

V. REVIEW OF CASES

Frye v. United States,[32] decided in 1923, is the first reported American decision dealing with the admissibility of lie detector test results. The test in question involved Marston's systolic blood pressure deception test. The defendant had been convicted of murder and appealed on the ground that it was error for the lower court to disallow testimony offered by an expert witness as to the favorable results of the deception test made on the defendant. The Appellate

26. Hutchinson, *A Review of the Current Status of Lie Detection*, 3 CRIM. L.Q. 473, 475 (1960-61).

27. Burack, *A Critical Analysis of the Theory, Method, and Limitations of the Lie Detector*, 46 J. CRIM. L. & C. 414, 419-20 (1955). Burack criticizes the control question technique because known lie reactions to the relevant questions may be less marked in the case of a truthful subject who may be less concerned about lying involving a trivial matter than being questioned about a serious crime.

28. Inbau & Reid, *supra* note 15, at 471.

29. Highleyman, *supra* note 3, at 57.

30. Note, *The Polygraph and Probation*, 9 IDAHO L. REV. 74, 75 (1972); Note, *supra* note 25, at 332.

31. Burkey, *Privacy, Property and the Polygraph*, 18 LAB. L.J. 79, 79-80 (1967).

32. 293 F. 1013 (D.C. Cir. 1923).

Court affirmed the decision refusing the offer of such evidence. The Court of Appeals for the District of Columbia stated:

> We think the systolic blood pressure deception test has not yet gained such standing and scientific recognition among physiological and psychological authorities as would justify the courts in admitting expert testimony deduced from the discovery, development, and experiments thus far made.[33]

This language established the standard for admissibility that has been repeatedly cited in subsequent cases involving lie detector evidence. The Court went on to state that the evidential force of the scientific technique must be recognized only when it has crossed the line between experimental stage to the demonstrable stage. The opinion also stated that courts will go a long way in admitting expert testimony that is founded on a well recognized principle or theory, but the technique from which the deduction is made must have gained recognition in the particular field in which it belongs.[34] Although 41 years have passed and Marston's systolic blood pressure deception tests have been replaced by the more complex Keeler and Reid polygraphs, the courts still cling to the *Frye* decision in proclaiming that lie detector test results are inadmissible because they have not gained sufficient scientific recognition as competent legal evidence.[35]

After *Frye* a series of cases arose holding polygraph evidence inadmissible reiterating the *Frye* rationale.[36] The case of *State v. Lowry*[37] deserves special attention, because the Kansas Supreme Court laid down some specific objections to admission of polygraph test results. The defendant and the prosecuting witness, at the suggestion of the trial court, submitted to polygraph tests but they did

---

33. *Id.* at 1014.

34. Wicker, *The Polygraph Truth Test and the Law of Evidence*, 22 TENN. L. REV. 711, 715 (1953) *citing* the 14th Annual Report of the Judicial Council: "It is interesting to note that although the defendant was convicted in the Frye case and sentenced to life imprisonment, the excluded blood pressure test results indicating his innocence was subsequently corroborated when a third person confessed that he was the actual murderer." *Id.*

35. State v. Pusch, 77 N.D. 860, 46 N.W.2d 508 (1950). In this North Dakota case the trial court refused to permit a polygraph examiner to testify as to the results of a test given to a defender. The Supreme Court upheld the trial court noting that the polygraph might serve a useful purpose in investigation, but not as evidence in court upon the truthfulness of a party's statement. *Id.* at 885, 46 N.W.2d at 520.

36. The next reported case regarding the admissibility of lie detctor test results was decided by the Wisconsin Supreme Court ten years later in State v. Bohner, 210 Wis. 651, 246 N.W. 314 (1933). The court concurred in the reasoning of the *Frye* decision when the defendant attempted to introduce the results of a Keeler polygraph test. The court held the evidence was inadmissible on the ground that lie detector testing had not reached a stage that would warrant judicial acceptance of the results. The New York Court of Appeals ruled similarly in People v. Forte, 279 N.Y. 204, 18 N.E.2d 31 (1938). The Court held that the lie detector did not possess such scientific recognition as to justify the admission of expert testimony deduced from such a test. The broad assertion of the lack of "scientific recognition" continued to bar the admissibility of lie detector results in the early 1940's. The Michigan Supreme Court in People v. Becker, 300 Mich. 562, 2 N.W.2d 503 (1942), held that there exists no scientific recognition that there is any certainty behind the test's results.

37. 163 Kan. 622, 185 P.2d 147 (1947).

not agree to the results of the tests being admitted into evidence. The State, over defendant's objection, was permitted to introduce the polygraph results by the trial court. However, the Supreme Court of Kansas overturned the decision. The court argued that although the examiner could be cross-examined, the instrument itself would escape cross-examination. The court also noted that the instrument might not be able to handle correctly physical abnormalities certain subjects might have, be it nervousness or unresponsiveness. The court finally added that the polygraph had not yet gained scientific recognition and accuracy sufficient enough for being admitted into evidence.[38]

Another case with some special significance is the case of *Boeche v. State*.[39] Although the majority of the court held polygraph test results inadmissible for the standard reasons that it lacked general scientific recognition and reliability, the concurring opinion by Judge Chapell disagreed with the majority's rationale. Judge Chapell argued that a proper foundation had not been laid to qualify the operator nor the polygraph instrument, but that if a sufficient foundation would have been laid, the test results would have been admissible.[40] This appears to be the first time that an appellate judge had suggested that the polygraph had gained scientific recognition.

1951 marked the appearance of two significant cases. In *Henderson v. State*,[41] the Oklahoma Criminal Court of Appeals held that polygraph results were inadmissible in the absence of a demonstration that the polygraph was accurate and had gained scientific recognition. The court noted that the polygraph was correct in 75 per cent of the cases and that tension, abnormalities and unresponsiveness were the causes for the 25 per cent failure rate.[42] The court also insisted that the polygraph was unlike handwriting, fingerprinting, and x-ray testimony by an expert. The court held that those devices:

> [R]eflect demonstrable physical facts that require no complicated interpretation predicated upon the hazards of unknown individual emotional differences, which may and often times do result in erroneous conclusions.[43]

A second case decided in 1951 appears to be the first reported appellate decision to involve the admissibility of polygraph test results

38. *Id.* at 628, 185 P.2d at 151.
39. 151 Neb. 368, 37 N.W.2d 593 (1949).
40. *Id.* at 384, 37 N.W.2d at 600.
41. 95 Okla. Crim. 45, 230 P.2d 495 (1951).
42. *Id.* at ——, 230 P.2d at 501; Inbau, *Some Avoidable Lie Detector Mistakes*, 40 J CRIM. L. & C. 791, 792 (1950). Inbau argues that the remaining 25 per cent is not entirely error, but that 4/5ths of this represents cases where the examiner was unable to make a diagnosis. *Id.*
43. Henderson v. State, 95 Okla. Crim. 45, ——, 230 P.2d 495, 502 (1951).

in a civil action.[44] During the original trial, the judge declared that he would not decide the case until both parties submitted to a polygraph test. The tests were administered and the results were admitted into evidence. On appeal, the Michigan Supreme Court held that the admission of the test results was improper, but that this was not reversible error in view of other evidence in the case.[45] The court found the admission of the test results was improper, because the lie-detector was still in the experimental stage.[46]

Besides the standard rationale for the exclusion of the polygraph, certain courts have raised other objections. In *United States v. Stromberg*,[47] a federal district court stated that to admit lie detector evidence would be to supplant the function of the jury—the very bulwark of our legal system. The court also held that the expert's testimony would violate the rule against hearsay evidence, because a machine could not be examined or cross-examined.[48]

In *People v. Davis*,[49] the Supreme Court of Michigan held polygraph test results inadmissible, because of the great weight such tests would carry in the minds of the jury. To overcome this danger the court argued that the examiner's qualifications and the machines themselves must become more standardized.[50] The Michigan Court reviewed the case law on the admissibility of polygraph test results and concluded that such tests had not yet gained scientific recognition or reliability.[51]

VI. COLLATERAL ASPECTS

Since the results of lie detector tests have been held inadmissible as evidence when offered by either the prosecution or the defense,[52] the courts generally will not permit a collateral reference to such tests.[53] The courts have held it to be improper for any witness or counsel to make reference to the fact that the defendant had submitted to a polygraph examination. The Supreme Court of Minnesota, in *State v. Kolander*,[54] held that lie detector test results were inadmissible and that it was reversible error to allow testimony that

44. Stone v. Earp, 331 Mich. 606, 50 N.W.2d 172 (1951).
45. *Id.* at 611, 50 N.W.2d at 174.
46. *Id.* at 610, 50 N.W.2d at 174 *citing* People v. Becker, 300 Mich. 562, 2 N.W.2d 503 (1942).
47. 179 F. Supp. 278 (S.D.N.Y. 1959).
48. *Id.* at 280.
49. 343 Mich. 348, 72 N.W.2d 269 (1955).
50. *Id.* at 371, 72 N.W.2d at 281.
51. *Id.* at 370, 72 N.W.2d at 281. The recent cases dealing with the admissibility of polygraph tests results have added no new reasons for rejection. The more recent cases have relied on earlier precedent and earlier rationales. *See* State v. Foye, 254 N.C. 704, 120 S.E.2d 169 (1961).
52. Peterson v. State, 157 Tex. Crim. 255, 257, 247 S.W.2d 110, 111 (1951).
53. State v. Bowen, 104 Ariz. 138, 449 P.2d 603 (1969).
54. 236 Minn. 209, 52 N.W.2d 458 (1952). *Accord* Barber v. Commonwealth, 206 Va. 246, 142 S.E.2d 484 (1965).

defendant had refused to submit to such a test. The theory is that this testimony, in effect, reveals the probable results of the polygraph test and a jury might take the defendant's willingness or unwillingness into account in determining innocence or guilt.

People v. Carter[55] recognized that there might be a situation when suspect will refuse to take the test out of fear that a lie detector will fail to show his actual innocence. A suspect's reason for refusal to take the lie detector test cannot always be assumed to be that he fears the lie detector will unveil his guilt. The court also argued that a statement by the defendant showing his willingness to submit to a lie detector test would be a self-serving act, because he runs no risk knowing that the results cannot be used against him.[56]

The courts have also held that there exists no right to pre-trial discovery of polygraph evidence.[57]

The decisions are generally uniform in holding that the admission of lie detector results is error and that any collateral references involving lie detector test results is error.[58] The courts are, however, divided on how they view this error. Some courts treat it as reversible error,[59] while other courts treat it as error that can be overcome by striking the testimony and by an admonition instruction from the bench to the jury.[60] Usually the result has depended upon the effectiveness of the trial courts instruction.[61] However, in a criminal case it is generally reversible error that cannot be corrected by an admonition to the jury, whether reference to a polygraph exam directly related to the test results[62] or was merely a collateral comment.[63]

VII. STIPULATION EXCEPTION

There has been a slow trend departing from the traditional rule of *Frye* in which polygraph evidence has been admitted pursuant

55. 48 Cal. 2d 737, 312 P.2d 665 (1957).
56. *Id.* at 752, 312 P.2d at 674.
57. This argument was also adopted in Commonwealth v. Sanders, 386 Pa. 149, 125 A.2d 442 (1956). Nevertheless, identifying a witness as a lie detector examiner is not error in itself, because no inference can be raised as to the results of any test. People v. Sammons, 17 Ill. App. 2d 316, 161 N.E.2d 322 (1959).
58. State v. Bowen, 104 Ariz. 138, ——, 449 P.2d 603, 606 (1969). Both the Supreme Court of Delaware, in State v. Thompson, 50 Del. 456, 134 A.2d 266 (1957), and the Supreme Court of Arizona, in State v. McGee, 91 Ariz. 101, 370 P.2d 261 (1962), have held that the accused has no right to pre-trial discovery of the results of polygraph tests, because the test results themselves could not be used in evidence by either the prosecution or defense.
59. *E.g.*, State v. Kolander, 236 Minn. 209, 52 N.W.2d 458 (1952); People v. Wochnick, 98 Cal. App. 2d 124, 219 P.2d 70 (Dist. Ct. App. 1950).
60. *E.g.*, People v. Schiers, 160 Cal. App. 2d 364, 324 P.2d 981 (Dist. Ct. App. 1958); Lusby v. State, 217 Md. 191, 141 A.2d 893 (1958).
61. Marble v. State, 313 S.W.2d 451 (Tenn. 1958). The instructions are aimed at countering the tendencies of juries to give conclusive weight to polygraph evidence.
62. State v. Lowry, 163 Kan. 622, 185 P.2d 147 (1947).
63. People v. Aragon, 154 Cal. App. 2d 646, 316 P.2d 370 (1957).

to a stipulation by the parties. The results of such a polygraph examination have been admitted when both the prosecution and the defense have stipulated in writing upon the admissibility of the test findings, prior to the taking of the test.

LeFevre v. State[64] was the first appellate case to deal directly with the admissibility of polygraph test results where there existed a signed stipulation. The defendant agreed to take a lie detector test requested by the prosecution. At trial the defendant attempted to offer the test results to prove his innocence. The Wisconsin Supreme Court gave no effect to the stipulation and relied on earlier decisions[65] holding the polygraph evidence inadmissible for lack of scientific recognition. It should also be noted that the court did not comment on the absence of the operator at trial and, therefore, the *LeFevre* case may not have relied on their unavailability.[66]

This case was followed by *People v. Houser*[67] in 1948, wherein the defendant and his counsel signed a written stipulation with the prosecution. Both parties agreed that the defendant would submit to a polygraph test and that the findings of the operator could be offered as evidence by either the state or the defendant. The results proved to be unfavorable to the defendant. The state, after laying proper foundation, introduced the test results and the defendant was convicted. On appeal the defendant objected and urged the exclusionary doctrine of *Frye*. The California Court of Appeals, unlike the court in *LeFevre*, held that the existence of the stipulation was significant and that the stipulation would be binding on the parties. The court stated:

> It would be difficult to hold that the defendant should now be permitted on this appeal to take advantage of any claim that such operator was not an expert and that as to the results of the test such evidence was inadmissible, merely because it happened to indicate that he was not telling the truth. . . .[68]

This decision is generally credited with establishing the exception to the general exclusionary rule. However, there is an element of the decision that lessens its weight. There is nothing in the *Houser* decision that indicates that the defendant made a timely objection at trial. Instead, it seems that defendant objected initially on appeal.

---

64. 242 Wis. 416, 8 N.W.2d 288 (1943).

65. State v. Bohner, 210 Wis. 651, 246 N.W. 314 (1933).

66. For a discussion of attempted justifications of the case see Comment, *Lie Detector Tests: Possible Admissibility Upon Stiplations*, 4 J. MARSH. J. PRAC. & PRO. 244 (1971).

67. 85 Cal. App. 2d 686, 193 P.2d 937 (Dist. Ct. App. 1948).

68. *Id.* at 695, 193 P.2d at 942.

It is argued that this weakens the decision because a fact not urged at trial cannot be raised on appeal.[69]

The next case involving the stipulation exception question occurred in *Stone v. Earp*.[70] In this civil action, the parties had given conflicting stories. The judge stated that he was not going to decide the case until both the plaintiff and the defendant had taken a lie-detector test. Following the trial judge's statement, the parties stipulated that the test results could be admitted. The results were unfavorable to the plaintiff and the Michigan Supreme Court held that the admitting of lie detector test results was error. The court held lie detector tests were still in the experimental stage and that a stipulation cannot raise the level of these tests to attain the stature of competent evidence.[71]

The first appellate case which directly held that written polygraph stipulation would be given force and admitted over proper objection by the defendant was *State v. McNamara*.[72] As in *Houser*, the prosecution and the defendant signed a stipulation that the polygraph test results could be admitted into evidence by either party. On appeal the defendant urged the Iowa Supreme Court to follow the *Frye* exclusionary rule despite the stipulation. The court, nevertheless, followed the reasoning of *Houser* that the parties should be bound by their stipulation.[73]

New Mexico in two recent decisions has used the exclusionary doctrine to bar stipulated results from being admitted into evidence.[74] Even though the stipulation was valid and proper foundation was laid,[75] evidence as to polygraph examinations and results is still inadmissible because the procedure has not yet gained general acceptance in the particular field in which it belongs.

The stipulation exception trend was aided by an enlightened opinion written by the Arizona Supreme Court in *State v. Valdez*.[76]

---

69. *See* Note, *Evidence—Lie Detector Admissibility Under Stipulation*, 15 ALA. L. REV. 248, 252 (1962). Ward v. Taggart, 51 Cal. 2d 736, 336 P.2d 534 (1959).

70. 331 Mich. 606, 50 N.W.2d 172 (1951).

71. *Id.* at 611, 50 N.W.2d at 174, *citing* People v. Becker, 300 Mich. 562, 2 N.W.2d 503 (1942). The Court of Appeals of Kentucky in Colbert v. Commonwealth, 306 S.W.2d 825 (Ky. Ct. 1957) also refused to allow polygraph test results in evidence even though both parties had entered into an oral stipulation. The court held that more formality should be required to give effect to such an agreement. The court distinguished the *Houser* case on the ground that a written stipulation was involved in that case.

72. State v. McNamara, 252 Iowa 19, 104 N.W.2d 568 (1960).

73. In State v. Freeland, 255 Iowa 1334, 125 N.W.2d 825 (1964), the Iowa Supreme Court refused to extend the *McNamara* rule to the case of unstipulated results. Thus, even in those jurisdictions where stipulated polygraph results can be admitted, the general rule of exclusion is still in force where no proper stipulation is created.

74. State v. Trimble, 68 N.M. 404, 362 P.2d 788 (1961); State v. Chavez, 80 N.M. 786, 461 P.2d 919 (1969).

75. State v. Trimble, 68 N.M. 404, ——, 362 P.2d 788 (1961). The operator testified to his experience and that verified results showed 100 per cent accuracy. The operator also explained to the jury how the machine worked and explained the questioning technique. Finally, he stated his conclusions.

76. 91 Ariz. 274, 371 P.2d 894 (1962).

In this case, the defendant, with his counsel, entered into a written stipulation that the test results could be admitted by either side. The court held that polygraph evidence had developed to the point that its results were sufficiently probative to warrant admissibility, if there existed a stipulation and the discretion of the trial judge was not eliminated.

The Arizona Court laid down the following requirements that would have to be met if stipulated lie detector results were to be admitted into evidence: (1) that the prosecution and defendant both sign a written stipulation that defendant will submit to the test and that it can be subsequently admitted at trial; (2) that notwithstanding the stipulation, admissibility is subject to the discretion of the judge after reviewing the examiner's qualifications and determining whether the examination conditions were proper; (3) that the opposing party shall have the right to cross-examine the operator as to his qualifications, the condition under which the test occurred, the limitations and possibilities of error in the lie detection technique, and at the discretion of the trial judge, any other matter deemed pertinent to the inquiry; and (4) that the trial judge instruct the jury that the expert's testimony does not tend to prove or disprove any element of the crime, but tends only to indicate that at the time of the examination the subject was or was not telling the truth.[77]

The trend towards admitting stipulated polygraph results has continued though the proper foundation must be laid.[78] However, stipulations have been held to be inadequate where the examiner is absent from trial,[79] where the defendant lacked counsel,[80] where defendant had a limited education,[81] where there has been a lack of mutuality in consent,[82] and where the examiner's qualifications were not covered in the stipulation.[83]

VIII. RECENT DEVELOPMENTS

Recently, significant departures from the traditional exclusionary rules have developed in certain federal district courts. Despite the heavy weight of precedent, these courts have suggested that even without a stipulation, the polygraph has a certain amount of scientific validity that the courts should recognize.

77. *Id.* at 283, 371 P.2d at 900. These limitations are important, because they are the only court-made procedural safeguards regarding the admissibility of lie detector results when a prior stipulation has been made.

78. For a list of such cases, see Annot., 53 A.L.R.3d 1005 (1973).

79. People v. Zazzeta, 27 Ill. App. 2d 302, ——, 189 N.E.2d 260, 264 (1963).

80. Conley v. Commonwealth, 382 S.W.2d 865 (Ky. 1964).

81. United States v. Ridling, 350 F. Supp. 90 (E.D. Mich. 1972).

82. State v. Walker, 37 N.J. 208, 181 A.2d 1 (1962).

83. Colbert v. Commonwealth, 306 S.W.2d 825 (Ky. 1957).

In the 1972 case of the *United States v. Ridling*,[84] a United States District Court for the Eastern District of Michigan held that a perjury defendant was entitled to submit testimony of several polygraph experts that, based on their opinions and interpretation of the polygraph tests, the defendant, when he made his alleged perjured statements to the grand jury, believed the statements to be truthful. The Court stated that "the techniques of examination and the machine used are constantly improving and have improved markedly in the last ten years."[85] The court noted that the underlying theory of the polygraph and its reliability are firmly established by its widespread use outside of court and by expert testimony that the polygraph was more reliable than other types of scientific evidence, when interpreted by a qualified examiner. The court also indicated that the polygraph expert's testimony should not be conclusive on the jurors' minds.[86] The court, nevertheless, conceded that many polygraph examiners were unqualified. Thus, the court ruled that the defendant must submit to a court appointed polygraph examiner, who would testify to his findings. This would then be a check on the self-serving nature of the defendant's own expert's testimony. A further restriction in this case is that the court argued that cases involving the issue of perjury were most aptly suited for the use of polygraph testimony. The court felt that perjury cases involved "willful" or "knowingly" giving false evidence and that the polygraph was aimed exactly at this aspect of guilt.[87]

The United States District Court for the District of Columbia, in *United Stated v. Zeiger*,[88] also held that a polygraph expert's opinion testimony as to his results on a test of the defendant should be admitted. The defendant was charged with armed assault with intent to kill. After being arrested, he signed a written stipulation that the results would not be introduced in evidence at his trial. Despite the stipulation, the defendant attempted to introduce the test results. The court held an evidentiary hearing and concluded that the polygraph had now established itself as a scientific tool and was at least 85 per cent reliable.[89] The court admitted the polygraph evidence. Note how much broader the decision was in *Zeiger* than the narrow conditions of admissibility laid down in

84. 350 F. Supp. 90 (E.D. Mich. 1972).

85. *Id.* at 94.

86. *Id.* at 98. The court noted that modern juries are more educated and capable of sorting out "good" evidence from "bad." The court further noted that modern juries already have to decide the weight of other scientific testimony such as radar speed test, finger prints, ballistic evidence, blood tests and voice prints. *Id.* at 96.

87. *Id.* at 93, thus, Judge Joiner denied defendant's request that the polygraph be used on all witnesses. *Id.* at 96.

88. 350 F. Supp. 685 (D.D.C.), *rev'd*, 475 F.2d 1280 (D.C. Cir. 1972).

89. *Id.* at 689.

Ridling.[90] However, *Zeiger* was reversed per curiam by the District of Columbia Court of Appeals.[91]

In *United States v. DeBetham*,[92] the defendant attempted to introduce the results of several polygraph tests to show that he had no knowledge that his co-defendant had heroin hidden in the car in which they were traveling. The court stated that the higher standard set for admission of the polygraph test no longer made sense. Instead, the normal test of scientific evidence should be used: that scientists testify that the test is acceptable in his profession and that it has a substantial measure of precision.[93] Nevertheless, the court felt the overwhelming weight of precedent constrained it and held that the results of the defendant's polygraph examination could not be admitted into evidence.[94]

IX. SHOULD POLYGRAPH EVIDENCE BE ADMITTED AT TRIAL?

These recent cases reflect an awakening attitude concerning the admission of polygraph evidence. The cases also reflect a dissatisfaction with the traditional exclusionary rule and the traditional *Frye* rationale. The purpose of this section is to review the basic objections to the admission of polygraph evidence and whether 52 years after *Frye* the objections are still valid.

A. RELIABILITY

The basic objection of most courts is that the matter of truthfulness cannot be uniformally determined by a mechanical instrument in a reliable manner. Today's polygraph bears little resemblance to the simple detection deception device used in the *Frye* decision. Proponents claim that along with the evolvement of the polygraph has come ever increasing reliability. Reid and Inbau, the leading judicially recognized experts in their field, claim the percentage of known errors is less than one per cent and that the margin of error favors the innocent.[95]

Nevertheless, the proponents' claims are not receiving total acceptance. Various writers continue to question whether the polygraph is reliable enough to warrant admission of test results into evidence.

---

90. Because the Court of Appeals filed no opinion it is not certain whether the court relied on the *Frye* exclusionary rule or questioned the circumstances attendant to the polygraph examination. *Zieger* did not involve the limiting instructions that were present in *Ridling*.

91. 475 F.2d 1280 (D.C. Cir. 1972).

92. 348 F. Supp. 1377 (S.D. Cal. 1972).

93. *Id.* at 1384 *citing* C. MCCORMICK, EVIDENCE 363-64 (1954).

94. *Id.* at 1391. For a further discussion of recent cases involving trial court decisions see Note, *The Emergence of the Polygraph at Trial*, 73 COLUM. L. REV. 1120, 1134 (1970).

95. Note, *The Polygraph Revisited*, 4 SUFFOLK L. REV. 111, 117 (1969). These figures represent a professional study of over 33 years. *See also* Burack, *supra* note 27, at 422. The author states the tests can attain 99 percent accuracy when they are conducted by a qualified examiner and thus they are probably as good as they will ever be.

One writer questions the scientific underpinnings that polygraph evidence is based on—that there exists a regular relationship between lying and emotional states and a regular relationship between emotions and bodily response.[96] Also, academic psychologists and physiologists challenge these underpinnings by claiming the whole area is much more complex.[97] There exists at least nine bodily responses somehow correlated to emotion;[98] the polygraph only measures four of them.[99] There also exist individuals who do not respond in the same emotional way to lying as the normal person. Some individuals are emotionally unresponsive such as sometimes occurs with professional criminals, pathological liars, or persons suffering from circumscribed amnesia. Others have physiological abnormalities such as heart disease, respiratory disease, uncommon blood pressure, hiccoughs, allergies or even colds that would make the polygraph results defective.[100]

The chance of error is heightened by the existence of many unqualified examiners. A number of writers feel the crucial role the examiner plays in itself is an objection to the instrument's reliability.[101] The fallibility of the human operator will always cause the entire technique to be questionable as to its reliability. Inbau and Reid's figure of one per cent error has not stood without attacks. The Harvard Business Review sought to verify Inbau and Reid's claim. They found little supporting data behind Inbau and Reid's claims.[102] Few impartial studies have been done concerning polygraph reliability. One test by a team of psychologists found the degree of success to be only around 70 per cent;[103] while another study by the Institute of Defense Analysis after 200,000 tests found no performance data to support the claims of Inbau and Reid.[104]

B. EXAMINER'S QUALIFICATION

In addition to the fear that the polygraph is unreliable, many

96. Skolnick, *supra* note 14, at 699-703.
91. *Id.* at 703.
98. *Id.* at 700. The nine reactions are: skin resistance (perspiration), respiration, blood pressure, heart rate, blood flow, skin temperature, muscle tension, pupillary diameter, gastric motility and blood oxygen saturation. *Id.*
99. *Id.* at 701. Those four are: blood pressure, heart rate, respiration and skin resistance *Id.*
100. *E.g.*, Highleyman, *supra* note 3, at 58-61. For an in depth discussion of sources of error, see Levitt, *supra* note 10, at 451-4.
101. Levin, *The Lie Detector Can Lie*, 15 LAB. L.J. 708, 711 (1964).
102. Coghland, *The Lie Box Lies*, 1963 TRIAL LAWYER'S GUIDE 173, 181 (1963). The *Harvard Business Review* was only able to verify 36 percent of the reported guilty and only 11 percent of those reported innocent were later verified. The combined verification rate was 18 percent. A claim of 95 percent accuracy with 4 percent undiagnosible, loses much of its weight when 81.1 percent of the findings are unverified. Inbau and Reid's figures are also misleading in that they involve the most qualified and experienced examiners under the most favorable conditions. Highleyman, *supra* note 3, at 61. Otherwise, the figure of error may be 25 percent. *Id.* at 62.
103. Burkey, *The Case Against the Polygraph*, 51 A.B.A.J. 853, 856 (1967).
104. Comment, *supra* note 16, at 660 *citing Hearings Before the Subcomm. of the House*

writers have raised objection to unqualified examiners taking the stand.[105] The role of the examiner is vital in lie detection. The Chicago Bar Association Committee on Criminal Law stated that 95 per cent of the lie detector's results are due to the efficiency and capability of the operator and 5 per cent to the function of the machine.[106] In fact, Inbau and Reid stated in 1964 that 80 per cent of the examiners were incompetent to make a qualified diagnosis.[107]

The examiners' ultimate diagnosis does not only entail examining the polygraph, but takes into consideration the subect's behavioral symptoms and attitudes observed during the test. Thus a high degree of professionalism, training, and experience is necessary. Recent studies have pointed out that experienced examiners have had a significantly higher accuracy scores.[108]

Thus, the polygraph examiners should establish some standards of training and education to insure more reliable results. It could be argued that such consideration of training and experience could be brought out on cross-examination. But cross-examination would be much more effective if there existed minimum standards of qualification on which counsel could base his questioning.

Only a minority of the examiners have a college degree, and many lack any understanding of the basis of the polygraph instrument.[109] The two leading proponents of the polygraph, Inbau and Reid, both state that examiners should have training in psychology and physiology and after this should undergo individualized training for a period of about six months.[110] The American Polygraph Association has also suggested similar standards, but has been unable to make it binding on its members.[111] Thus, a number of states including North Dakota have passed legislation regulating polygraph examiners.[112] No doubt this legislation is of some value in checking the problem of gross examiner incompetence, but none of the state regulations recognize the Reid and Inbau recommendations. Therefore, such legislation has not put an end to the wide disparity in examiner qualifications nor in the wide disparity of reliability that follows as a function of examiner experience and qualifications.

Comm. on Government Operations on the Use of the Polygraph by the Federal Government, 88th Cong., 1st Sess., pts. 1-5, at 426-7 (1964).

105. Skolnick, *supra* note 14, at 707.

106. *A Bar Association's Viewpoint Regardingg the Lie-Detector Technique*, 50 J. CRIM. L.C. & P.S. 99-100 (1959).

107. Note, *supra* note 25, at 347.

108. Horvath & Reid, *The Reliability of Polygraph Examiner Diagnosis of Truth and Deception*, 62 J .CRIM. L.C. & P.S. 276-81 (1971).

109. Note, *U.S. v. Ridling, The Polygraph Breaks the Twilight Zone*, 23 CATH. L. REV. 101, 114 (1937).

110. Inbau & Reid, *supra* note 15, at 471.

111. Comment, *supra* note 66, at 263.

112. N.D. CENT. CODE §§ 43-31-01 to 43-31-17 (Supp. 1973).

C. CONCLUSIVE WEIGHT DANGER

A third objection the courts have raised is the danger that the jury will give conclusive weight to the results of the tests. A recent poll indicates that the public believes the polygraph technique to be infallible.[113] Also, the nature of polygraph evidence would lead to the inherent danger of the jury relying too heavily on the results; polygraph testimony would not be circumstantial, but would be treated as pertaining to the entire issue of litigation.[114] Thus, there exists the prejudicial danger that the polygraph evidence, notwithstanding its probative value, will create a tendency in the jury to treat such evidence as conclusive without reviewing the merits of the case.

It is argued that the tendency of the jury to give polygraph evidence conclusive weight could be met by an instruction from the court to the jury that the expert testimony does not tend to disprove any element of the crime, but tends only to indicate that at the time of the examination the subject was or was not telling the truth.[115] Judge Learned Hand, in similar situations has called the use of limiting instructions "a device which satisfies form while it violates substance; that is, the recommendation to the jury of a mental gymnastic which is beyond, not only their powers, but anybody else's."[116] In *People v. Kenny*,[117] an early New York trial case where polygraph evidence was introduced with a limiting instruction, the jury was polled after trial to determine the weight they placed on such evidence. The polling of the jurors in this case[118] and the results from a study involving a hypothetical case[119] both show that the lie detector was used by the jurors as a substitute for proof of guilt on the merits. This conclusive danger will only grow more dangerous as the reliability of the technique increases. Juries then will place ever-increasing weight on its findings. So the trial will not turn on the credibility of the witnesses but rather on the issue of the credibility of the polygraph examiners.

D. CONSTITUTIONAL AND JURISPRUDENTIAL PROBLEMS

It is doubtless that the polygraph's accuracy and reliability

---

113. Note, *supra* note 109 at 118.

114. F. INBAU & J. REID, LIE DETECTION AND CRIMINAL INTERROGATION 128 (3d ed. 1953). "If lie detector results were admitted as legal evidence, they would be offered and treated as proof of some very important phase of the case, usually the validity of the entire claim or contention of one of the parties." *Id.*

115. Note, *supra* note 4, at 128.

116. *See* Comment, *Post-Conspiracy Admissions in Joint Prosecutions—Effectiveness of Instructions Limiting the Use of Evidence to One Co-Defendant*, 24 U. CHI. L. REV. 710, 711 (1957). *See also* Nash v. United States, 54 F.2d 1006 (2d Cir. 1932).

117. People v. Kenny, 167 Misc. 51, 3 N.Y.S.2d 348 (Queens Co. Ct. 1938).

118. Forkosch, *The Lie Detector and the Courts*, 16 N.Y.U.L.Q. 202, 228-38 (1939). The poll showed that five of the ten that answered said they were so impressed by the scientific value of the lie detector they they accepted its testimony without question.

119. Koffler, *The Lie Detector—A Critical Appraisal of the Technique as a Potential*

have increased since the *Frye* case was first decided. Nevertheless, the admission of polygraph evidence has constitutional threats and threats to the Anglo-American system of jurisprudence that will not disappear with technological change.

1. *Privilege Against Self-Incrimination*

Objection has been raised to the admissibility of the polygraph evidence, when the results are unsatifactory, on the constitutional privilege against self-incrimination.[120] One early writer suggested that there would be no such violation because polygraph results would not be considered testimonial.[121] Nevertheless, the United States Supreme Court, in *Schmerber v. California*,[122] held that the extraction of blood was not of a testimonial or communicative nature but alluded that polygraph evidence would be.[123] No other court has ruled specifically on whether polygraph evidence is testimonial. However, it seems clear that the polygraph evidence is testimonial, because of the basic theory of the technique . . . that physciological changes are a function of psychological changes of the mind. Thus polygraph evidence takes on a communicative nature.

The individual should have a right under the fifth amendment to refuse to take a polygraph test. Likewise, he should be able to waive the privilege against self-incrimination. Such a waiver should only be given effect where there has been a clear warning that the results could be used against him.

2. *Due Process Considerations*

The dissent in *People v. Schiers*[124] was the first case to consider excluding polygraph evidence for lack of due process. Lack of due process, prohibiting the admissibility of lie detector evidence, could be argued in two different manners.

Paramount among due process principles is that the judicial process is to be adversary and not inquisitorial. Any democratic judicial procedure must make the defendant a party in the proceeding and not its mere object. It is true that under certain circumstances the defendant's body may be subjected to an examination, but his freedom of will and mind must be preserved to enable him or her to conduct the

---

Undermining Factor in the Judicial Process, 3 N.Y.L.F. 123, 138-146 (1957). In the experiment, third year law students were used as the jury and again a significant number accepted the polygraph results without question.

120. Note, *Hypnosis, Truth Drugs, and the Polygraph: An Analysis of Their Use and Acceptance by the Courts*, 21 U. FLA. L. REV. 541, 549 (1969).

121. Hardman, *Lie Detectors: Extrajudicial Investigations and the Courts*, 48 W. VA. L. REV. 37, 38-39 (1941).

122. Schmerber v. California, 384 U.S. 757 (1966).

123. *Id.* at 764.

124. 329 P.2d 1, *denying rehearing* to 324 P.2d 981 *per curiam* (Cal. 1958).

defense.[125] American courts have never ruled on the use of lie detector evidence and its conflict with the adversary procedure.[126] So, as Justice Black in *Rochin v. California*[127] stated, notions of due process and justice of other nations should be viewed. The German courts have held that such tests violate German procedure which places a premium on the dignity of the individual. The German courts have said that the dignity of the individual is a principle of democracy and unlike a civil right, a single individual cannot waive it.

Arguably, polygraph testimony should not be admitted in a democratic judicial procedure.[128] There exists two types of judicial systems, authoritarian and democratic. In an authoritarian system, means are judged by their efficiency and the output is the significant feature. This is repugnant to a democratic procedure where there is no talk of means and ends. Each step is significant in itself. Kant indicates that a man is not a mere means to other men's ends, but must be accorded significance as an end in himself.[129] The polygraph denies the individual's dignity in that his unconscious is surveyed while he is present in body, but not in mind.

The due process objection cannot only be based on the denial of individual dignity, but it can also be based on the denial of fairness. Because there is no case law on the point, it may be helpful to view cases involving anlogous situations concerning confessions and due process standards. In both *Rochin v. California*[130] and *Lisenba v. California,*[131] the Supreme Court held that fairness and decency is fundamental to due process. This is the due process standard that the polygraph will have to confront to be admitted. On this point there is a dissenting view. The court in *People v. Schiers,*[132] argued that the lie detector violated the traditions of our law, citing the German example. The admission of lie detector results would be unfair because one side would have an overwhelming advantage due to the conclusive nature of such testimony. There could be no fair trail on the merits. In other areas the law has recognized that fairness demands equalizing positions.[133] For this reason the prosecution in a criminal case cannot introduce character evidence to infer

125. Silving, *Testing of the Unconscious in Criminal Cases,* 69 HARV. L. REV. 683-695 (1956). Justice Douglas, concurring in Rochin v. California, 342 U.S. 165 (1952), argued that an accused can be compelled to be present at the trial, to stand, to sit, to turn this way or that, and to try on a cap or a coat, but that words taken from his lips, capsules taken from his stomach, blood taken from his veins are all inadmissible provided they are taken from him without his consent.

126. Silving, *supra* note 124, at 687.

127. 342 U.S. 165 (1952).

128. Silving, *supra* note 124 at 687-695.

129. *Id.* at 693-4.

130. 342 U.S. 165 (1952).

131. 314 U.S. 219 (1941).

132. 329 P.2d 1 (Cal. 1958).

133. Kaplan, *The Lie Detector: An Analysis of Its Place in the Law of Evidence,* 10 WAYNE L. REV. 381, 412-18 (1964).

the probable doing of an act. Secondly, for the same policy reasons, statutues in most jurisdictions preclude the survivor of a transaction from testifying in a lawsuit against the successors of the deceased party to the transaction.[134]

X. CONCLUSION

The general exclusionary rule of inadmissibility of polygraph evidence at trial has caused dissatisfaction. This is reflected in the stipulation exception trend and recent developments mentioned in this note. Nevertheless, it is time to stop and evaluate this dissatisfaction. The admission of lie detector testimony would revolutionize the whole system of trials and administration of justice. If such test results were allowed into evidence, the jury would tend to conclude that the defendant was guilty by merely not offering such evidence. The adversary system we now have would be displaced by an inquisitorial system where the defendant would be an object of the proceeding, not a party to the proceeding. The admission of such evidence ultimately comes down to the basic policy issue of truth versus dignity. In the administration of democratic justice, truth is but a means where as dignity is an end. The fourth and fifth amendments are but two examples of the sacrifice of efficient methods for individual dignity and fairness. The lie detector's probing of the subconscious is repugnant to such values which are the ends of a democratic judicial process.

RONALD H. MCLEAN

134. 2 J. WIGMORE, EVIDENCE § 578 (2d ed. 1923).