

Polygraph Testing and Social Intolerance: A Warning to Examiners Outside of the United States

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Abstract

The use of polygraph testing in the applicant screening process for law enforcement positions is widely accepted in the United States and elsewhere. Generally, that testing includes questions related to past behaviors such as involvement in criminal activity, use of illegal drugs, falsified background information, employment misconduct and so forth. More recently some have advocated that such testing ought to include questions related to ‘social intolerance.’ In this paper we argue that testing for such ‘intolerance’ is highly objectionable and is likely to encourage efforts to prohibit polygraph testing, especially so outside of the United States.

Key words: Screening, Social Intolerance

* The authors each have over 50 years of experience in the polygraph profession. Both witnessed the efforts of organized labor, the ACLU, and other similar groups during the 1970s – 1980s to eliminate all polygraph screening exams in the United States that eventually resulted in EPPA. Both authors actively participated in trying to forestall the passage of EPPA and they believe that the proposed testing for social intolerance, if implemented as advanced, represents the greatest threat to the restriction of polygraph testing since EPPA. Corresponding author, Robert Peters, rpeters870@aol.com.

In August and September of 2021, the American Polygraph Association (APA) welcomed new members; 29 of them were residents of countries outside the United States; 31 resided in the U.S. It is likely that this growth in membership in the APA reflects the change in the polygraph examiner community in the past two decades or so; a dramatic growth in the number of examiners from outside the U.S. in comparison to those in that country, known as the home of polygraph testing*.

For those new to polygraph testing, particularly those outside of the U.S., we call your attention to an advisement, maybe something more serious than that, a warning of danger, a real and serious threat. This is necessary because of an article that appeared in a recent APA publication (Nelson & Handler, 2020). This article was authored by two persons who serve on the APA's Board of Directors. Because of their position it is possible, maybe even likely, that what they wrote was approved by, or if not that, supported by the APA Board itself. In the article in question the authors advocated the use of polygraph testing to screen applicants for law enforcement positions with respect to issues related to "social intolerance," defined by them as "an unwillingness or refusal to accept or respect the beliefs or opinions that are different than one's own." (Nelson, Handler, 2020, 70).

We wrote a response to the article in which we opined that the idea of testing for social intolerance was not a welcome one and, in fact, was likely to be dangerous, particularly for those who practice as examiners outside of the U.S (Peters, Horvath, 2021). The nature of that testing would be, or certainly would appear to be, so invasive of applicants' personal thoughts and beliefs, as opposed to their behavior, that it would frighten those who are inclined to want polygraph testing to be legally prohibited as well as those who might take a more moderate view.

The history of polygraph testing in the U.S., particularly in the years when the U.S. Congress considered and ultimately passed into law the Employee Polygraph Protection Act (EPPA**), shows us that in addition to disputing the validity of

* At the present time about 26% of all active members of the APA reside outside of the United States. However, because there are many persons who have not yet paid their current membership dues the member count will likely be different when the "grace" period has ended

** EPPA was legislation passed by the U.S. Congress in 1988. It essentially prohibited all polygraph testing of employees by private employers with a few notable exceptions, such as those in certain security-related businesses. As a result of EPPA many private polygraph examiners in the U.S. lost their business regarding employment-related testing. In addition, membership in the APA was reduced by about 50% (Horvath, 2020).

polygraph testing, opponents argue against polygraph testing on a more subjective level. They contend that more disturbing than the technical and scientific pitfalls of polygraph testing it is the compromise of human dignity inherent in the polygraph process that is an equal if not more significant concern. American labor unions claim that passage of EPPA is one of organized labor's greatest accomplishments because of the protection of personal privacy that the law provides.

We believe that delving into a person's beliefs and thoughts by testing for "social intolerance" would generate even greater, and perhaps justified, opposition to polygraph testing. Our position is that the use of such testing would not only lead to greater opposition to polygraph screening examinations, it would, moreover, also prove to be a practical nightmare for consumers of the polygraph results. What, for instance, would it mean to the consumer to learn that an applicant "failed" a question about "ethnic intolerance", "ageism", "sexism" or any other issues said to be an indicator of social intolerance. Is it likely the consumer would presume that the "failure" would be predictive of unwanted or undesirable on-the-job-behaviors? We don't think so. The issue would simply confound the screening process and would be unlikely to serve consumers' real needs.

Perhaps it is the lack of experience that led the original proponents of this idea to suggest it. They—and presumably many of the readers—were not active examiners in the United States when the APA and the examiner community in general was so devastated by the passage of EPPA, the federal legislation passed in 1988. But we were active then and both of us were involved in various ways in trying to defeat the passage of that legislation and in seeking the help of employers and others to support the polygraph examiner community. Each of us saw firsthand how opponents of polygraph testing lied about what was their evidence against polygraph testing and how they distorted what—albeit little—was actually known about that testing. But politically the opponents succeeded and while their actions did, as some in the examiner community maintain, reduce the abuses in practice by some examiners who were not engaged in ethical and legitimate testing practices, it also hurt other examiners who were legitimate and ethical. EPPA seriously affected the APA and the polygraph examiner community in the U.S. (Horvath, 2020). And, our experience tells us that the pursuit of polygraph testing for issues related to "social intolerance" is likely to lead to a similar outcome, particularly in those countries that at this time have little or no legal restrictions on applicant screening. As we have stated before, we hope we are wrong, but our personal experience tells us otherwise. Polygraph screening

of police applicants, as well as other sensitive positions, is, when properly done, a benefit to employers; when it is not done properly—as we think would be the case for social intolerance testing—is something that most persons would find objectionable.

In our original response to the social intolerance article, we called for the APA Board to take a decision on the issue—pro or con—and to let the examiner community know what that position was. The Board was silent. At that point we took it upon ourselves to poll the Board in an attempt to determine the individual Board members' view. That is, we wished to determine the view of each member, not the outcome of what a Board vote might be. We sent an identical email message to each Board member and asked them to respond to two issues. First, we asked:

1. Do you favor polygraph testing of public safety applicants on issues of social intolerance, such as religious bigotry, gender bias, age bias, racial bias, etc. as proposed by Nelson and Handler

YES

NO

2. Do you believe polygraph testing on issues such as social intolerance can be done in a way consistent with APA standards and with techniques recognized by the APA as being validated?

YES

NO

Please return this message with your votes indicated on the two items requested by October 15 to: rpeters870@aol.com

We asked for a response from each member within a fixed and reasonable time (15 days) and we promised anonymity regardless of what was told to us.

We heard back from two Board members. One of them seemed to be open to the idea of such testing and thought it would be advisable for the collection of evidence regarding its feasibility before taking a position. The other response told us what we already knew, that the Board had not taken a position and that authors' views in published material are not necessarily those held by the Board or its members. Both responses were silent on the fact that the authors of the article in question were two active APA Board members who, unfortunately, did not indicate in their article whether or not the Board approved of their proposal. While we understand that

published material represents the authors' views, in this instance such a sweeping proposal—without comment from the Board— might be easily misunderstood as an “officially approved” document.

Since surveying the Board members, we note that one other person, a Past President of the APA, wrote a letter to the Editor in which he took a position similar to ours. He indicated that practical difficulties in testing for social tolerance would be a real concern. As he stated: “Intolerance, like beauty and intelligence, is often in the eye of the beholder. I would expect a large increase in false positive and false negative outcomes” (Webb, 2021). In addition, he pointed out that in his view the APA should make a “declarative statement about this type of testing,” presumably one that makes clear what the Board's position is.

Regardless of APA Board's position, we urge examiners, especially those who work outside of the United States, to resist any proposal to include matters related to “social intolerance” in any polygraph examination. Such testing would, we believe, generate opposition that is likely to ravage the polygraph profession, adversely impact the validity of testing, and confuse the consumer of the polygraph testing results.

Given the failure of the APA to state its position on testing for “social intolerance” we believe it is important for those who work in countries outside of the U.S., that such testing ought not to be practiced. It will be very likely to provide an even stronger basis for those who oppose polygraph testing to convince others that such testing is a real invasion of privacy. And, in our view, that position might be entirely justified. It does seem that inquiries into matters of “social intolerance” would unnecessarily invade the personal thoughts and beliefs of job applicants — whether for law enforcement or other sensitive positions.

Our general position on this issue notwithstanding, we believe that if police administrators find such testing to be acceptable and wish to go forward, examiners, we think, should proceed with great caution. If the testing must be done, we would advocate that it be done only in concert between an examiner and another professional who is qualified to assess whatever an applicant may reveal regarding “social intolerance”. This might be similar to what is now being done in the testing of sex offenders. It is that independent evaluation by a qualified professional that might make inquiries regarding “social intolerance” tolerable.

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