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Science Can Get the Confession

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BLOOD pressure and respiratory techniques for the detection of deception have been under discussion as legal evidence for nearly thirty years. In this country the respiratory technique has not been seriously considered in any jurisdiction. A combination of blood pressure and respiratory techniques has been presented in three cases, although the principal emphasis in these cases has been on the blood pressure technique. Two decisions have established precedent for the rejection of blood pressure techniques as admissible legal evidence.

The reasons for the rejection of polygraph records are clearly and uncompromisingly stated. In the case of *State v. Bohner,* Judge Wickhem sustained the decision of the lower court in excluding a lie detector test which was requested on behalf of the defendant. In his decision, Judge Wickhem stated: "We are not satisfied that this instrument during the ten years that have elapsed since the *Frye* case has progressed from the experimental to the demonstrable stage." In the decision, Wigmore is quoted: "Looking back at the range of possibilities for experimental psychometric methods of ascertaining concrete data for valuing testimonial evidence, it will be seen that thus far the only new psychometric method that has demonstrated any utility is the blood pressure method which detects lies . . . the record of psychometric achievement with testimony is still meager . . . the conditions required for truly scientific observation and experiment are seldom practicable. The testimonial mental processes are so complex and variable that millions of instances must be studied before safe generalizations can be made." Judge Wickhem continues: "While it may have some utility at present, and may ultimately be of great value in the administration of justice, it must not be overlooked that a too hasty acceptance of it during this stage of its development may bring complications and abuses that will overbalance whatever utility it may be assumed to have."

Although this position was founded on the case of *Frye v. United States,* two additional principles were advanced:

† Late Director of Psychology Dep't, Fordham University, Graduate School. This article was prepared by Father Summers shortly before his untimely death, September 24, 1938.

2. 210 Wis. 651, 246 N. W. 314 (1933).
3. *Id.* at 656, 246 N. W. 314, at 317.
That the necessity for elaborate exposition and validation of the instrument and the theory basic to this technique might result in a trial of the lie detector rather than of the case; and

If the defendant were permitted to introduce, when favorable to himself, the results of tests taken outside of court without the necessity of taking the stand and submitting himself to cross-examination, grave abuses might result.

In the case of *Frye v. United States* the Court of Appeals for the District of Columbia affirmed the decision of a lower court which held inadmissible expert testimony in explanation of a blood pressure deception test. Writing for the court, Judge Van Orsdel based the affirmation on the uncertain character of this test in view of the experiments carried on up to that time. "Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stages is difficult to define. Somewhere in this twilight zone the evidential force of this principle must be recognized, and while the courts will go a long way in admitting expert testimony deduced from a well recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs."

From these decisions, two major aspects of the problem present themselves, the scientific and the legalistic. The scientific phase of the problem embodies the definite and indisputable scientific validity of any instrument or procedure which involves instrumentation, whether used inside or outside of court for the detection of deception. Prescinding from the scientific validity, there are at least four legalistic objections which appear in the literature on this topic:

1. The use of the lie detector would confuse the issue in the minds of the jury.
2. The voluntary introduction by the defendant of favorable evidence regarding his veracity, without the necessity of having such veracity tested before the jury through cross-examination, would be an unfair weapon against the prosecution.
3. The compulsory examination by the lie detector either inside or outside the court would destroy the defendant's constitutional privilege against self-incrimination.
4. The use of the lie detector in preliminary examinations would render technically involuntary any confession induced thereby.

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7. *Id.* at 1014.
9. *Id.* at 657, 246 N. W. 314, at 318.
In an excellent summary of the material on lie detection techniques, McCormack postulates the following requirements for a valid deception technique: (1) that it should isolate the emotional changes produced by conscious lying; and (2) that it should identify the lying statement by its communication with significant reactions. McCormack notes that this technique need not be perfect for admission as evidence. It may have a possibility of error, but the inference is clear that this possibility must be very small. He expresses doubts of the practical value of lie detection techniques in court with juries, although he maintains that a technique which satisfied his scientific postulates would be valuable in preliminary examinations. In answer to the objection that such records might be classified as compulsory, he holds that such responses are not used testimonially and hence are not compelled confessions nor self-incriminations. This view is supported by a discussion in the Harvard Law Review in which it is maintained that the words in such cases would not be testimony. Among the authorities cited is Wigmore who presents the fundamental reasons for the protection of witnesses against compulsory self-incrimination. He points out that this principle is not intended to be a shield for the guilty nor something to be treated as a fetish. "Courts should unite to keep the privilege strictly within the limits dictated by historic fact, cool reasoning, and sound policy."

Generally speaking there is no objection to expert testimony provided such is presented by an established expert and provided the deductions have a sufficient scientific basis. The mere title of psychologist or doctor of medicine or psychiatrist is not a sufficient guarantee of expertness in the matter of detecting deception. The test employed must possess a very high degree of validity, statistical reliability, and objectivity. It must, in short, be such that the results may be interpreted on demonstrated findings so as to exclude all reasonable doubt of error. It is more important that a deception test be definitely established and demonstrable as accurate than that it be accepted even generally "in the particular field in which it belongs", experts being what they are. If the test bear the characteristics of an experiment, or be simply a trick to extort a confession, we believe that its use is never justified.

13. Id. at 500.
14. Id. at 501.
15. Id. at 502.
17. 4 WIGMORE, EVIDENCE (2d ed. 1923) § 2251.
18. (1924) 33 YALE L.J. 771, 772.
is in error of fact when he indorses the statements that the lie detector test is intended to impress on the mind of the accused that "You had better tell the truth," or "You may as well confess, we know you did it." This view is erroneous because it is too sweeping. Where such tactics are resorted to, we believe that the results may be always subject to legal suspicion. Lie detector tests may be used to establish the innocence of an accused person. Such a test may also be requested by a person accused or suspected of the commission of crime. In our work with the lie detector, the test has established the innocence of the accused almost as often as it has established the guilt of the suspect.

Just what constitutes compulsory self-incrimination is a moot point in law. Many things obtained by compulsion are admissible and many of the procedures now accepted originally faced conditions similar to those with which the lie detector technique is confronted at present. Under certain circumstances, a person may be compelled to submit to a physical examination, may be compelled to stand up in court for purposes of identification, may be compelled to make finger prints for purposes of identification by the police or prosecution. Ordinarily the results of a physical examination are admissible if the accused consents to the examination. Such results are inadmissible if the accused did not consent. But he may be forced to submit to examination for purposes of establishing identity. In cases where insanity is offered as a defense by a person accused of capital crime, the state has a right to examine, to test the veracity of the plea. If a person not merely consents to a deception test but requests that he be permitted to undergo such an examination, no phase of self-incrimination is involved, and the admissibility of the evidence would depend largely on the validity of the test suggested or applied.

Although there is weight of evidence on the legal side against the admission of lie detection tests, we cannot escape the weight of authority for the admissibility of well-established and scientific tests. A review of the legal literature on this topic clearly shows that the entire discussion has centered about the admissibility of blood pressure tests of

19. Green, supra note 10, at 809.
20. 4 WYMAN, EVIDENCE § 2255.
deception. Münsterberg’s proposal of a modification of the Jung tech-
nique was never seriously considered from the legal viewpoint. In fact, 
Wigmore in 1909 objected to Münsterberg’s proposal on the basis of 
the recency of the discovery, the want of sufficient verification, the gen-
eral opinion of psychologists that the test was not yet in acceptable form,
the inaccuracy of the methods, and the involved danger of compulsory 
self-incrimination. And yet this objection of Wigmore is not to be 
understood as a general refutation of all lie detection procedures. In a 
later work he clearly expressed the principle: “If there ever is devised 
a psychological test for the evaluation of witnesses, the law will run 
to meet it”.

The legal writings on this issue must be largely speculative until the 
fundamental issue of the scientific validity of the technique and pro-
cedure employed in a deception test have been settled. On the basis of 
the achievements thus far demonstrated by lie detection procedures, it 
is very easy to understand why the courts have been hesitant to accept 
the blood pressure test. Marston states that he achieved an efficiency 
of 94.2% in a test of 35 non-criminal subjects. In a report of the 
examination of twenty criminal cases, he found the blood pressure exam-
ination correct where the results could be verified. Marston’s method is 
criticized severely because of its impressionistic character, so that the 
apparent statistical result is valueless as a critique of the accuracy of 
the procedure. Larson, with a wealth of scientific and police experience, 
Improved the methods of Marston and verified his findings in 528 cases 
out of 861 tested. The Keeler polygraph is essentially the same 
procedure as that employed by Larson. Inbau sees in the Keeler poly-
graph a valuable method for determining guilt or innocence, although 
no claim is made for the infallibility of this procedure: “In experimental 
cases, the outcome of which is of no import to the individual being 
tested, there is an accuracy of approximately 85%. However in 
numerous criminal cases full confessions have been obtained in approx-
imately 75% of those in which the record indicated deception regarding 
the pertinent questions propounded of the suspect.”

28. MÜNSTERBERG, ON THE WITNESS STAND (1908) 91.
29. Wigmore, Professor Münsterberg and the Psychology of Testimony (1909) 3 ILL. 
L. REV. 399.
30. 4 WIGMORE, EVIDENCE § 875.
31. Marston, Psychological Possibilities in the Deception Test (1921) 11 J. CRIM. LAW 
551, 568.
32. Larson, Modification of the Marston Deception Test (1921) 12 J. CRIM. LAW 390; 
(1922) 13 id. at 121; Use of the Polygraph in the Study of Deception, Chicago Dep’t 
33. Larson, LYING AND ITS DETECTION (1932) 362.
34. Inbau, The Lie Detector (1935) 40 SCIENTIFIC MONTHLY 81, 83.
We believe a procedure which starts with an experimental validity of only 85% is an extremely hazardous thing to employ in the investigation of the guilt or innocence of any person. Even the 75% efficiency obtained in the numerous criminal cases leaves a very great probability of error. Neither Keeler’s explanation nor Inbau’s commentary evidences how many of these examinations elicited confessions due to (a) the fear experienced by many ignorant persons on being brought into the presence of a scientific contraption; (b) the cross-examining ability of the questioner; or (c) the reliability of the instrument and procedure as such. The 75% efficiency by no means tells the entire story, for it fails to relate the number of instances in which deception was actually practiced in a manner which eluded the examiner and the instrument. In view of what we shall offer in the remainder of this article, it is interesting to read the comments of these investigators in regard to the psychogalvanometric technique. Inbau states: “The galvanometric change in the body serves as an extremely sensitive criterion for emotionality, but can not by itself be depended upon as a means for the detection of deception.” An ardent advocate of the polygraph, Inbau believes that the psychogalvanometric procedure will work satisfactorily only in conjunction with the blood pressure and respiratory techniques. The objections raised by Marston in 1921 to the psychogalvanometric technique were met by the more discerning Larson who would not easily dispose of the galvanometer procedure. This attitude is very interesting in view of the results of our own work and in view of the 86% efficiency achieved by Prof. Christian A. Ruckmick and his assistants at the State University at Iowa.

For the past five years we have been experimenting at Fordham University with various psychogalvanometric procedures with the object of developing a method for the more exact measurement of emotion. We gradually developed a technique which not only proved valuable for the measurement of the concomitants of emotional reaction, but which enabled us to verify the accuracy of the introspective reports of subjects. The lie detection value of this instrument was given further study. After a long series of tests in which we discovered the principal sources

36. Inbau, loc. cit. supra note 34.
37. Inbau, supra note 34, at 82.
40. Summers, Psychogalvanic Technique in the Detection of Deception (to be published).
41. Ruckmick, The Truth About the Lie Detector. Address before American Association for the Advancement of Science, Dec. 29, 1936.
of error in the previous use of this type of technique, we developed criteria for the interpretation and evaluation of the psychogalvanic responses of a human subject. These criteria were subjected to a most critical evaluation in a test of fifty groups of persons which involved 271 individuals. The situation selected was one which approximated in all details the conditions of a criminal investigation. Our preliminary tests showed an efficiency of better than 99%. The critical test was intended to evaluate our technique and procedure in the discrimination of the guilty, accomplices, and the innocent. In this critical test our procedure showed an efficiency of 98+%.\textsuperscript{42} The circumstances and conditions of the test confirmed us in the conviction that this instrument and procedure could now be employed in actual criminal cases. To date we have examined forty-three criminal cases which range from abduction to murder. In some cases the opportunity was presented for the effective distinction of guilt from complicity. In other instances, innocent suspects were clearly differentiated from both accomplices and the guilty. The results of all our examinations have been confirmed by confessions, or by judicial procedure where additional evidence confirmed the decision, or by subsequent investigation.

To clarify certain phases of the technique of examining criminal suspects and of interpreting the records obtained, Figure I is introduced.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure1.png}
\caption{FIGURE I}
\end{figure}

This is the record of a subject who was found guilty of taking twenty dollars in the experimental test situation mentioned above. The curves

\textsuperscript{42} Summers, \textit{Guilt Distinguished From Complicity}. Address before American Psychological Association, Sept. 4, 1936.
delineate in graphic and permanent form the reactions of the subject while he was being questioned about the disappearance of the money. The chart reads from right to left, i.e., the reaction to the first question is indicated below the small vertical line at the extreme right; and the response to the last question, below the vertical line at the extreme left, these marks noting the point at which each question is asked. Above certain vertical lines may be seen the letters K, G, and P. These refer to questions of knowledge, guilt, and possession that were asked during the test situation, e.g., at K, “Do you know who took the money?”; at G, “Did you take the money?”; and at P, “Have you the money on your person?”

Such questions are called significant because they pertain directly to the matter under investigation. Within one record there are usually included three different but related significant questions, each of which is asked three times. These are interspersed among a larger number of non-significant questions which are two-fold in character: matter-of-fact questions, as, “Are you wearing a black coat?” and “Did you eat breakfast this morning?”; and what have been called emotional standards, as, “Were you ever arrested?” “Are you living with your wife?” and “Do you own a revolver?”

The emotional standards are selected after a careful analysis of the suspect’s life history and after the examination of his psychogalvanic reactions to a preliminary series of questions. When chosen properly, the emotional standards tend to evoke within the individual rather intense psychogalvanic reactions due to surprise, anger, shame or anxiety over situations which he would ordinarily prefer to conceal. In the examination of suspects an emotional standard precedes each significant question. For purposes of interpretation we contrast and compare the reactions to the significant questions with the reactions to the emotional standards. If the deflections to the critical (significant) questions are consistently greater than the deflections to the emotional standards, the individual is consciously trying to deceive the examiner. If, on the other hand, the deflections to the critical questions are not consistently greater than those to the emotional standards, the individual is truthfully expressing his state of mind. This is the essential criterion of interpretation.

An examination of Figure I reveals that the deflections under the symbols K, G, and P are of much greater magnitude than the deflections to other questions within the immediate vicinity. On the basis of the recorded findings the individual was correctly adjudged guilty of taking and keeping the money.

43. The height of a deflection is measured from the point where the curve first begins to rise, to the point where it attains its maximum height.
For the purposes of this paper we have selected some of the records which will enable us to show the type of record obtained and the procedure employed in our psychogalvanometric examinations. In Fig. II the record reads from right to left. The graph is marked off in arcs of circles, the distance between two arcs measuring $\frac{3}{4}$". The chart is run at a speed of three inches per minute. This examination was therefore completed in less than eight minutes. Below the arrows topped by the letters CAM, KC, and KW are the responses to the significant questions. All other deflections accompany responses to non-significant questions. One of the important factors in this procedure is the proper selection of both non-significant and significant questions.

A man was brought to us, arrested on the charge of murder. The circumstances were extremely harrowing and the evidence incomplete. The accused person, although unable to establish an alibi, denied the charge of murder. Our procedure in a case of this type, where the subject has been previously examined, is to make a preliminary examination to discover whether or not there is any evidence of fear produced by extraneous physical force. The second record is made on the basis of the facts of the crime and the supposed implication of the person charged with the commission of the crime. The questions in this examination consist of significant questions which embody three inter-related phases of the crime, interspersed with non-significant questions of a type which will evoke normal emotional responses. After the second record, we require an interval of several hours and, if possible, at least a day. In this case there was an interval between the second and the third records amounting to approximately six hours. The significant questions were:

\begin{align*}
\text{CAM} & \ldots \text{Were you in the home of X on the day of the murder?} \\
\text{KC} & \ldots \text{Did you kill X?} \\
\text{KW} & \ldots \text{Do you know who killed X?} \\
\text{L} & \ldots \text{Did you lie to the last question?}
\end{align*}

The reflections indicate lies if there is a consistently greater deflection on the significant questions than there is on the non-significant questions. It is quite important to make allowance for the effects of habituation. It is equally important to interpret the records in the light of the constitutional type indicated by the record. There are involved many details of a psychological character, which in all probability, would not be of importance for the present discussion. It will be noticed that the record (Figure II) shows consistently higher responses on the significant questions. As the result of this final examination of the subject, we declared that the accused was actually guilty of the murder with which he was charged.
An important consequence followed. The prisoner confessed, but after the preliminary statements of his confession he implicated another individual whom he declared was not only an accomplice, but who really had perpetrated the most appalling features of the murder. This second subject was examined by the police and his alibi was found to be false. He offered another alibi which was also proved on investigation to be false. Through all the questioning he denied any complicity in the murder. Before showing the examination record of this subject, it may be interesting to show a preliminary record from which an explanation may be made of the method we employ to distinguish deception from fear due to causes other than deception, such as annoyance, irritation, or anger.

Groups of graduate students were requested to write a list of things which they found extremely annoying or irritating; things which they did not care to discuss, or about which they did not care to be questioned. Subsequently, we gave each one of these subjects two statements, one of which they were to falsify. The object of the investigation was to pick out the question to which a lying response was given and to compare the characteristics of this response with the effects of annoyance or irritation. Figure III shows a record of this experimental procedure. The lies are indicated by the letter \( L \). It will be easily seen from this record that there is a rise in the deflections to the questions which are asked at \( L \). Although this record shows an increasing deflection on the second and the third \( L \)s, this is not necessary in order that the response be diagnosed as deceptive. The second response to \( L \) may drop almost or quite to the level of the non-significant responses, but the third, if the response be deceptive, will come up to the equivalent of the first response. At \( A \), the subject is asked an annoying question. It will be seen in these responses that there is a very decided falling off in the third response. At \( C \), the subject was asked an additional question which was known to have a highly emotional value for him. The falling off in the deflections of the \( C \)s is very marked.

The man who was suspected of complicity of the murder of \( X \) was questioned on two occasions in our laboratory. Figure IV shows the record of the first examination. The important object to be discovered from this examination was whether or not this suspect had been an accomplice in the murder. The responses to this question are shown under the letters \( HKC \). At these points in the examination, the subject was asked if he had helped to kill \( X \). His responses were negative. This question was asked four times. The record shows a constant diminution in the deflections, the last two falling below the levels of the non-significant questions. After an interval of two days, this subject
was examined a second time. We changed the conditions of the test, having the apparatus at a more sensitive level. The result of this second examination is shown in Figure V. The significant question is shown under the marks HKC where the subject is again asked if he helped to kill X. The increased sensitivity of the apparatus gives us larger deflections throughout. But even here it will be noticed that there is a gradual diminution in the responses elicited as this question is repeated. This clearly shows that the subject is not deceiving. The trial and the subsequent detail discovered by the prosecuting officials confirmed the decisions in both these cases.

This same procedure has been employed with equal success in cases involving robbery, abduction, in other murder cases, in cases of assault, in cases where persons were suspected of complicity in assault, mayhem, or threats to kill.

The record shown in Figure VI was the sequel to an interesting case of robbery. A combined grocery and fruit store was broken into and $1600 taken from the safe located in the store. The evidence of the safe expert for the insurance company indicated that the safe had not been broken open, but had been opened by its own combination and, subsequently, the dials of the safe were battered with a heavy hammer. The police regarded the robbery as an inside job, but after a period of three weeks had absolutely no clues for the solution of the case. We examined all the suspects and eliminated three. The owner of the store took the test very willingly and the record reveals that he was the guilty person. Mr. Z had robbed his own safe. Subsequent to the examination, not more than ten minutes after the decision was given to the police, Mr. Z, after protesting very vigorously, confessed. In his confession, he exculpated his wife from any complicity in the crime. He also gave the location of some of the missing money which was recovered by the police before he left the examination room. The significant questions on this record are at T, K, WM, and I.

At T Mr. Z was asked if he took the money. At K he was asked if he knew who took it. At I he was asked if the job was done in order to get the insurance. At WM he was asked if his wife took the money. His answers to all these questions were in the negative. In a previous record, it was clearly demonstrated that his wife had knowledge of the robbery, but whether that knowledge came subsequent to the commission of the deed or was the knowledge of an accomplice before or in the act of robbery could not be decided from her record. We therefore placed the question in the examination of Mr. Z which would finally decide whether or not his wife had the guilty knowledge of an accomplice. The record shows at the Ts very clear indications of deception. At K
this evidence is still more marked. There is a descent in the level of the second K, but a material rise on the third K. In the response to I, there is a very clear indication of deception. The responses on WM completely exculpate his wife since the second and third responses are at or below the levels of the associated non-significant questions.

In addition to our work in the detection of deception in ordinary cases we have found that we could employ our procedure for the discrimination of real from feigned delusion. We have also been able to show the necessity for more careful discrimination in the psychiatric concept of pathological lying. Many cases of presumed pathological lying turn out to be quite the contrary when a careful deception test is applied. Figure VII represents the test of a subject who claimed to hear God's voice. In the upper part of Figure VII the responses at D are the deflections in a test where the subject was consciously deceiving. It will be noticed that these deflections are significantly higher than the deflections which are associated with the other truthful responses. In the lower part of the record are shown the results of this subject when tested for his delusion. At GV the subject was asked if he heard God's voice, at GVN and GHN he was asked if he heard God's voice now. WT shows the subject's response when he was asked if he believed there was anything wrong with his thinking. The only significant response was made to this last question which can be satisfactorily explained on the basis of confusion. The subject had frequently been treated as a lunatic, and had been committed on one occasion to a mental asylum for observation. This subject really believed, and the record substantiated his belief, that he was receiving direct communication from God. This record is much shorter than a record of a complete examination, but it serves to show the contrast between conscious lying and a real delusion.

The topic of delusion has a very important application in the examination of witnesses. The examination of a subject questioned about the detail or circumstances of a crime may show that the subject's testimony is subjectively correct. If the subject is convinced that he is telling the truth, no lie detecting procedure will indicate the opposite. In Fig. VIII we have a record of such a case. The significant questions in this examination were asked at MR, RE, and BR. The other responses were given to non-significant questions. An examination of this record will show no deception in the responses to any of the significant questions. Although the subject was telling the truth as she interpreted the objective situation, her testimony was at definite variance with a set of ascertained conditions which made her testimony impossible to believe.

Some of the legal writers quoted previously seem to imply that a lie detector test must be 100% perfect and that a test which is fallible in
any degree could not be considered as legal evidence. But Wigmore holds the contrary view: "All that should be required as a condition is the preliminary testimony of a scientist that the proposed test is an accepted one in his profession and that it has a reasonable measure of precision in its indications."²⁴

In this view Wigmore is supported by McCormack. We believe that the validity of our own procedure is slightly minimized by the percentage rating which resulted from our preliminary and critical tests. In its actual application to criminal cases the technical procedure has achieved a perfect score. We believe also that the requirements set forth by Wigmore and McCormack have been satisfied, certainly as to the accuracy of the results obtained. How soon such a procedure will be accepted by the profession generally, depends upon many tangible and intangible factors. The principal basis for rejection arises from the manifold discussion about the nature and measurement of emotions. In our procedure it does not matter whether the psychogalvanic reaction is a measure of emotion itself or an indicator of the bodily tension which accompanies conative activity. From these technical disputes our procedure in regard to the detection of deception has prescinded. And our results have justified the hypothesis that there is a measurable difference of electrical reaction to truth and to falsehood. Our procedure, furthermore, is based upon thousands of individual experiments by which we were able to evaluate the importance of different levels of emotional tension, the influence of psychological types on the forms of galvanic reaction and the relation of the psychogalvanic technique to other forms of deception procedure. Our experiments also show the psychogalvanic procedure is more easily administered, more reliable and less liable to errors of subjective interpretation than any other existing form of deception technique.

NOTE

The foregoing manuscript was completed before the cases of People v. Kenny ⁴⁵ and People v. Forte ⁴⁶ both of which occurred in 1938. In People v. Kenny, held before Judge Colden in Queens County Court, evidence of pathometer findings was admitted and Father Summers appeared as a witness. In People v. Forte, Judge Fitzgerald, in Kings County Court, refused to permit the defendant to be taken to the Bronx.

44. 2 WIGMORE, EVIDENCE § 989.
45. 167 Misc. 51, 3 N. Y. S. (2d) (County Ct. 1938).
46. 167 Misc. 868, 4 N. Y. S. (2d) (County Ct. 1938).
for examination on the Pathometer, holding the evidence not yet admissible. This latter case was pending on appeal at the time of Father Summers' death.

The Court of Appeals subsequently affirmed People v. Forte, but in doing so merely held that there was no evidence of the scientific recognition of the instrument in the record presented. Hence, while affirming People v. Forte, it did not overrule People v. Kenny, and the matter of the admissibility of the Pathometer would seem still open to debate in New York. It seems advisable to withhold further comment on these decisions until a later time since they did not fall within the scope of Father Summers' original article.*

47. 279 N. Y. 204, 18 N. E. (2d) 31 (1938).
48. (1939) 8 FORDHAM L. REV. 120.

*[The above Note and certain revisions in the text were prepared by Dr. Joseph Kubis, Acting Director of Psychology Dept', Fordham University, Graduate School, who is continuing Father Summers' work on the Pathometer.—Ed. Note.]