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September 4, 2009

G.W. Maschke
AntiPolygraph.org
Van Trigtstraat 53
2597 VX The Hague
The Netherlands

Via U.S. Mail and Facsimile to 1-206-666-2570

Re: Coffey v. SF Weekly, Maschke, et al.

Dear Mr. Maschke:

I represent Patrick T. Coffey, the subject of an article entitled "Is Patrick Coffey Fit to Be Screening Police Applicants?" which appeared on your blog on August 20, 2009. Your article referred to, and contained a hyperlink to, an article entitled "The Lie Detective" by Matt Smith in the August 19 - 25, 2009 issue of SF Weekly, Volume 28, Number 30. I enclose a copy of your article and of the SF Weekly article, which quotes both you and your blog.

The SF Weekly article attributes various quotes and opinions to Mr. Coffey, some of which are not his and some of which are taken out of context to make him appear prejudiced. For example, Mr. Coffey did not refer to any such questions or topics as "Are you racist? A dissembler? A bully?", and there is no professional in his field who would ever test with such questions, which are not testable subjects with the polygraph.

The SF Weekly article attributes to Mr. Coffey controversial views about the changing national face of Holland and France, when in fact he told Mr. Smith that this was based on a "60 Minutes" story he had watched and that, in context, the comments were made on your blog about your possible perceptions. The SF Weekly article labels Mr. Coffey as a "peculiar choice" by the SFPD, when in fact by all measurable criteria he is a highly qualified professional with twenty-three years of experience. The SF Weekly article questions Mr. Coffey's contract with the SFPD, saying the issue should be raised because Mr. Coffey's alleged bias and prejudice may make the polygraph tests he administers unreliable. You are quoted therein as saying, "He's got a lot of biases coming to the table. To have someone with that mentality screening police applicants is inappropriate." Your blog article also questions Mr. Coffey's fitness to screen police applicants.

G.W. Maschke
AntiPolygraph.org
September 4, 2009
Page 2

The SF Weekly article falsely states that Mr. Coffey paid \$10,000 to settle a claim that he had performed a voice-stress analysis on a subject without permission. Your article does, as well. In fact, Mr. Coffey has never performed any such voice-stress analysis, and he never paid any such settlement.

Finally, the SF Weekly article suggests that Mr. Coffey isn't bigoted against Arabs and Muslims who happen to be fee-paying representatives of regimes which condone torture, but that he may be against ordinary Arabs and Muslims with their minds set on a career with the San Francisco Police Department. As a matter of fact, Mr. Coffey has never failed an SFPD applicant of Arab extraction or of the Muslim faith. Devout Muslims actually do quite well in such tests, as they tend to have a conservative lifestyle which does not conflict with being in law enforcement.

The statements in your article, in the SF Weekly article you reference, and their implications, constitute an unprivileged publication concerning Mr. Coffey which has exposed him to contempt, ridicule, and obloquy, which may have a tendency to injure him in his occupation and trade. See *Weinberg v. National Enquirer, Inc.* (D.C. 1982) 564 F.Supp. 924. If the defendant juxtaposes a series of facts so as to imply a defamatory connection between them or otherwise creates a defamatory implication, he may be held justly responsible for the defamatory implication, even though the particular facts are correct. *Weller v. American Broadcasting Companies, Inc.* (1991) 232 Cal.App.3d 991, at 1003, fn. 10, 283 Cal.Rptr. 644.

It is settled law that falsely quoting or insinuating a plaintiff's state of mind that causes damage to reputation constitutes actionable libel. *Masson v. New Yorker Magazine* (9th Cir. 1992) 960 F.2d 891, 898-99; *Selleck v. Globe Int.* (1985) 166 Cal.App.3d 1123, 1132.

A statement of opinion remains actionable if it implies the allegation of undisclosed defamatory facts as the basis for the opinion. *Gill v. Hughes* (1991) 227 Cal.App.3d 1299, 1309; *Kahn v. Bower* (1991) 232 Cal.App.3d 1599, 1609; *Unelko Corp. v. Rooney* (9th Cir. 1990) 912 F.2d 1049, 1053. A defendant is liable for what is insinuated, as well as for what is stated explicitly. *Maidman v. Jewish Publications, Inc.* (1960) 54 Cal.2d 643, 651, 7 Cal.Rptr. 617, 355 P.2d 265.

Comments, opinions, and criticisms may be defamatory even though they are based on true or privileged statements of fact. The publisher is liable unless the comments themselves are privileged. *Maidman, supra*, 54 Cal.2d 643, 649.

A single sentence may be the basis for an action in libel even though buried in a much longer text. *Washburn v. Wright* (1968) 261 Cal.App.2d 789, 795. Although the original statements may be those of a source, every repetition of a defamation is a separate publication and gives rise to a new cause of action, even though the repeater states the source. *Di Giorgio Corp. v. Valley Labor Citizen* (1968) 260 Cal.App.2d 268, 67 Cal.Rptr. 82.

G.W. Maschke
AntiPolygraph.org
September 4, 2009
Page 3

In addition, punitive damages are recoverable, if the implications made were not true and you had reason to know that they were not true. See *Dun & Bradstreet v. Greenmoss Builders* (1985) 472 U.S. 749, 86 L.Ed.2d 593; *Burnett v. National Enquirer, Inc.* (1983) 144 Cal.App.3d 991, 193 Cal.Rptr. 206.

The courts of this country have regularly acknowledged the “important social values which underlie the law of defamation” and recognized that “[s]ociety has a pervasive and strong interest in preventing and redressing attacks upon reputation.” *Rosenblatt v. Baer* (1966) 383 U.S. 75, 86, 86 S.Ct. 669, 676, 15 L.Ed.2d 597.

As Justice Stewart in that case put it with his customary clarity: “The right of a man to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being - a concept at the root of any decent system of ordered liberty. ... The destruction that defamatory falsehood can bring is, to be sure, often beyond the capacity of the law to redeem. Yet, imperfect though it is, an action for damages is the only hope for vindication or redress the law gives to a man whose reputation has been falsely dishonored.” *Id.*, at 92-93, 86 S.Ct., at 679-680 (Stewart, J., concurring). See *Milkovich v. Lorain Journal Co.* (1990) 497 U.S. 1, 110 S.Ct. 2695.

Since the latter half of the 16th century, the common law has afforded a cause of action for damage to a person’s reputation by the publication of false and defamatory statements. In Shakespeare’s *Othello*, Iago says to Othello:

“Good name in man and woman, dear my lord,
Is the immediate jewel of their souls.
Who steals my purse steals trash;
‘Tis something, nothing;
‘Twas mine, ‘tis his, and has been slave to thousands;
But he that filches from me my good name
Robs me of that which not enriches him,
And makes me poor indeed.” Act III, scene 3.

The need to redress defamation is as important now as when the tort of defamation was first recognized, perhaps more so. In an organized and centralized society, where at least economic relationships are likely to be based on an impersonal or reputational level as opposed to the more decentralized and personal approach characteristic of a bygone era, how we are perceived takes on greater significance. For better or worse, in today’s world, most of us are known by our reputations.

G.W. Maschke
AntiPolygraph.org
September 4, 2009
Page 4

Your statements, repetitions and implications were materially false and damaging to Mr. Coffey, as they indicated that he is a bigot and that his alleged prejudice against Arab immigrants makes him unsuitable for his profession as a polygraph consultant to the San Francisco Police Department. As a result, Mr. Coffey has been receiving death threats, seven so far.

Without conceding that any demand for retraction is required, I hereby demand that, within ten days of the date hereof, you publish a full and complete retraction.

Please have your counsel contact me if he or she wishes to discuss the terms of the retraction.

Very truly yours,

A handwritten signature in black ink, appearing to read 'C. L. Briggs', with a long horizontal flourish extending to the right.

Carleton L. Briggs

Encls.

cc: Patrick T. Coffey (w/encls.)

AntiPolygraph.org News

A blog for news about polygraphs, voice stress analyzers, and other purported "lie detectors."

• [Home](#)

Switcher

[Home](#) > [Polygraph](#) > [Is Patrick T. Coffey Fit to Be Screening Police Applicants?](#)










Is Patrick T. Coffey Fit to Be Screening Police Applicants?

August 20th, 2009

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Following up on his previous article on the San Francisco Police Department's reliance on polygraph screening—despite broad scientific consensus that it is invalid—*S.F. Weekly* reporter Matt Smith takes an in-depth look at the man the SFPD has hired to polygraph applicants: Patrick T. Coffey, who received "\$81,463 during the last fiscal year" for his services. Smith addresses bigoted postings that Coffey made to the AntiPolygraph.org message board in 2005 under the moniker "TheNoLieGuy4U" and also reveals that Coffey paid \$10,000 to settle a 2002 lawsuit by a man who alleged that Coffey "performed a voice-stress-analysis exam on him without permission."

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- [AntiPolygraph.org Home Page](#)
- [Contact](#)
- [FOIA](#)
- [Get Involved](#)
- [Make a Donation](#)
- [Message Board](#)
- [NAS Polygraph Review](#)
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- [January 2009](#)
- [December 2008](#)
- [November 2008](#)
- [September 2008](#)
- [August 2008](#)
- [July 2008](#)
- [June 2008](#)
- [May 2008](#)
- [April 2008](#)
- [March 2008](#)
- [February 2008](#)
- [December 2007](#)
- [November 2007](#)
- [October 2007](#)

- [September 2007](#)
- [August 2007](#)
- [July 2007](#)
- [June 2007](#)
- [May 2007](#)
- [April 2007](#)
- [March 2007](#)
- [February 2007](#)
- [January 2007](#)
- [December 2006](#)
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SFPD polygraph expert's controversial views

By Matt Smith

published: August 19, 2009

Courtesy of Patrick Coffey



Coffey with a client in Qatar.

Subject(s):

Matt Smith on SFPD polygraph expert's controversial views

The way polygraph examiners such as Patrick Coffey see it, when a person is pressed with truly uncomfortable questions — Are you racist? A dissembler? A bully? — beads of sweat will appear on his palms. His breathing will quicken, or just as suspiciously, slow down. His heart will beat faster. His blood pressure will rise, and the sensors strapped to this deceptive person's body will feed results to a computer armed with an algorithm that will show he's a liar.

According to popular advice on cheating the lie detector, the key to passing is to stay calm. No matter how uncomfortable you are, breathe normally. Pretend you're in an ordinary school exam; remember mind over matter.

Coffey doesn't believe the polygraph can be easily beat. It requires remaining preternaturally calm while being asked tough questions. And that's how I would describe his demeanor when I recently cross-examined him about his views on Muslims. When I asked him whether he was a bigot, I could feel my own throat tighten with nervousness. Coffey's radio baritone, however, continued with the same even patter he might have used to recite a recipe.

"Don't try to back me into that kind of corner," he said. "I grew up with an Asian mother. I learned the Vietnamese language from a very early age."

I came away from listening to Coffey's mellifluous voice thinking he may have been telling what he considered to be the truth. Few people, after all, believe themselves to be prejudiced. But I wondered whether this professional lie detector might be fooling himself.

Last week I wrote about how the San Francisco Police Department still uses a lie detector to screen recruits, despite the fact that scientists have roundly debunked its effectiveness. Using such a discredited method to help choose cops, I noted, could disqualify the best prospects and give a passing grade to skillful liars.

I also noted that Coffey, whom the city paid \$81,463 during the last fiscal year to conduct the screening tests from his Burlingame consultancy, believes scientific criticism of his favored method is unfair.

But what I didn't describe is what a peculiar choice the SFPD has made in selecting Coffey as the one who would conduct what scientists agree is a hit-or-miss method for determining whether aspiring cops are truthful when they say they should be trusted with guns.

In the spring of 2005, on www.antipolygraph.org, a Web site dedicated to scientific

debunking of the polygraph, Coffey wrote of prominent polygraph critic George Maschke, a Ph.D. linguist who works as a Farsi translator in the Hague, "I doubt even without the polygraph that you could now meet security criteria to serve in any capacity given your choice to 'work' in socialist Holland, which like France is losing it's idcnity [sic] to Islamic Immigration there." In a later post on Maschke's site, Coffey wrote, "George should stay in Holland or some other Socialist nation. He is apparently more comfortable in a nation like that, or France, which has lost its/their respective identities to massive Arab/Islamic immigration."

Maschke said that during 2005 Coffey lurked on his Web site for some time under various aliases, making caustic comments. "He basically became quite a troll on our message board, and I eventually banned him, and he came back under a variety of monikers," Maschke said, adding, "He's got a lot of biases coming to the table. To have someone with that mentality screening police applicants is inappropriate."

I asked Coffey about his statements. He said he was merely making a casual observation about changing times: "The Holland or France that you or I might have visited in our childhood might not be the Holland we would have visited years ago," so Maschke "may have a different perspective than the average man on the street here, because of his interaction with these people on a personal and professional level. Compared with the man on the street here in the U.S., what he feels is reality might not be that of the average person here."

I have no specific evidence that Coffey's feelings about Muslims, Arabs, or even Dutch people have tainted the way he screens applicants for the SFPD. But the issue should be raised because the statistical accuracy of a polygraph exam, according to a 2002 National Academy of Sciences study, is only slightly better than random guesses in identifying potential liars or truth-tellers. This large accuracy gap leaves plenty of room for bias.

"The potential for discrimination is certainly there," said David Faigman, a UC Hastings law professor who served on the National Academy of Sciences polygraph panel. "What we do know is there's a high degree of subjectivity and a high degree of human interaction relevant to the test. When you have those two things, you have to be concerned that bias or prejudice manifests itself."

Iftekhhar Hai, president of the United Muslims of America Interfaith Alliance, found it outrageous that a screener of police recruits would express what Hai considers anti-Muslim views. "I think that's just such an uninformed statement," he said. "It's a classical case of ignorance. In the United States itself, there are seven million Muslims.

"The number two man at the Department of Homeland Security is a Muslim," Hai said, pointing to Arif Alikhan, assistant secretary for the Office of Policy Development. "To collectively put the 1.2 billion Muslims in the world into that narrow-minded interpretation is sheer stupidity. I think that kind of analysis is a buzzword for bigotry and hatred."

Coffey again rejected the idea that he's a bigot. "I give up my time to help people who are indigent and who are tortured. I do it pro bono quite often," he said, in reference to an aspect of his private lie-detector practice in which he assists U.S. attorneys representing asylum visa applicants.

At one point, I even thought I may have caught Coffey lying about his own practices. Imagine: an SFPD polygraph screener with his pants on fire!

In 2002, Coffey was working as a private investigator and was hired by a San Francisco clothing store. The store's tailor, Jesus Guerrero, claimed he had been sexually harassed by a salesman, Reggie Myrick, who denied the accusation. Coffey's job was to determine who was telling the truth. Guerrero sued Coffey, claiming the then-private eye performed a voice-stress-analysis exam on him without permission.

Coffey told me several times during two interviews that he has never used voice stress analysis, which he believes to be less scientific than the polygraph. He said he merely interviewed Guerrero, who mistakenly believed Coffey had performed a voice stress analysis on him.

I was unable to reach Guerrero or his attorney for their version of events. But I did find Myrick.

Coffey "asked me a bunch of questions from years back, up to current events, and I answered truthfully. He said I passed," the salesman said. "My body wasn't hooked up to a lie detector. It was a computer voice analysis test."

Whether Coffey actually performed voice stress analysis, or merely made it seem like he did, the polygrapher did end up paying a \$10,000 settlement to Guerrero, according to court records.

In the end, I didn't go away convinced I knew the truth. And I have a feeling I wouldn't have, even if I'd hooked Coffey up to a hit-or-miss lie detector machine.

Coffey says he is a former intelligence officer with the Navy and U.S. Defense Intelligence Agency. Despite his inscrutability, and irrespective of whether he's as bigoted as his Internet statements might suggest, he seems to have the mindset of an old Cold Warrior, seeing enemy sympathizers behind doors where others might not, and friends in unlikely places.

Along with his work aiding U.S. attorneys for purported victims of foreign torture, Coffey boasts that he's helped train the state security corps of two authoritarian dictators. He describes having taught polygraph techniques to the secret service detail of Qaboos bin Said al Said, the sultan, prime minister, and foreign minister of Oman, whose regime, *The New York Times* reported last May, "is taking the familiar approach of authoritarian states in the Middle East, relying on security services and restrictive laws to silence and frighten the people."

Coffey says he also has provided polygraph training to the state security and intelligence services of Sheik Hamad bin Khalifa Al-Thani, emir of Qatar. According to Amnesty International, Sheik Hamad oversees a regime where "allegations of torture and other forms of cruel, inhuman, and degrading treatment or punishment continue to be reported."

Coffey was proud enough of his Qatar work that he sent me a photo of himself with one of his Qatari hosts — which suggests, at the very least, that he isn't bigoted against Arabs and

Muslims who happen to be fee-paying sultans or emirs. What concerns me is how he perceives ordinary Arabs and Muslims with their minds set on a career with the San Francisco Police Department.