

**SUPREME COURT OF LOUISIANA**

**No. 01-C-2466**

**JOHNNY M. EVANS, JR.**

**versus**

**DERIDDER MUNICIPAL FIRE AND POLICE CIVIL SERVICE BOARD**

KNOLL, Justice, concurring.

It is with great reluctance that I concur with the majority's holding allowing the admissibility of polygraph test results in the administrative review of a termination decision. First, I wish to underscore that the use of such evidence is confined to administrative proceedings, and in no way can it be used in criminal trials. *See State v. Catanese*, 368 So.2d 975 (La. 1979).

Furthermore, I feel compelled to caution against expanding the role of polygraph tests, the administration and interpretation of which is recognized to be "a developing and inexact science." *See, e.g., United States v. Gilliard*, 133 F.3d 809, 812 (11th Cir. 1998), citing *United States v. Piccinonna*, 885 F.2d 1529, 1535(11th Cir. 1989). Just as the majority of the court recognizes that admissibility of polygraph evidence is limited to the type of administrative proceedings utilized in this case, the majority also notes that plaintiff's employer, Chief Malone, sought polygraph evidence as a last resort, a second point which merits additional emphasis.

The majority observed that Pickens and Johnny "both invoked their Fifth Amendment privileges and refused to testify. ... Chief Malone testified that, because

of the conflicting statements by Pickens and Evans, he ordered Evans to take a polygraph ... .” *Evans v. DeRidder Mun. Fire and Police Civ. Svc. Bd.*, 01-C-2466, p. 3 (La. 2002), \_\_\_ So.2d \_\_\_, \_\_\_. Thus, with Pickens and Johnny unavailable to testify, Chief Malone was left in a precarious position. On the one hand, allegations of profound misconduct were made against one of his officers, a person in a position of great public trust, and on the other hand, to learn the truth, Chief Malone had only hearsay statements and the conflicting word of the officer.

To get to the heart of matter, Chief Malone resorted to a polygraph test. It was a last resort, and the majority’s opinion indicates that the evidence garnered from the test could not alone decide the matter: “It is province of the Board to determine the weight to be given this evidence. *Further, in this case, the Board had other evidence to support the allegation that Evans disclosed confidential information.*” *Evans*, 01-C-2466, p. 10, \_\_\_ So.2d at \_\_\_ (emphasis added).

Accordingly, the majority saves for another day the question of whether polygraph evidence alone could justify a termination decision, or indeed, justify by itself any other governmental action. Even so, the point should not be lost that in the instant case, this court sanctioned the initial step, i.e., the decision to administer a polygraph test, only after finding that the proponent of the test was left with no other viable options. In so doing, while finding polygraph evidence admissible under these limited circumstances, the majority’s holding can be said to stand for the proposition that future efforts to employ machinery to diagnose human veracity should likewise be employed rarely and sparingly. However, I would not leave this significant caveat to be implied, but would explicitly so hold.