

Mr. HERNDON. Because he is not a proper subject, suitable for polygraph interrogation.

Mr. KASS. Why not?

Mr. HERNDON. Because a person who is mentally incompetent is usually—a doctor would probably answer this better than I. I am not qualified as a psychiatrist. But a person who is mentally incompetent is considered divorced from reality, and therefore it would be completely useless to interrogate a man who is divorced from reality in an effort to interpret what he is saying or his physiological response to what he has said.

Mr. KASS. Are all persons who are mentally incompetent divorced from reality?

Mr. HERNDON. Not necessarily.

Mr. KASS. How would you make a determination that they were divorced from reality? Do you give a person a psychological interview prior to a polygraph examination?

Mr. HERNDON. We do not.

Mr. KASS. Does a psychiatrist sit in the examination room?

Mr. HERNDON. No, sir; he does not.

Mr. KASS. How can you make a determination that a person is mentally incompetent and is divorced from reality?

Mr. HERNDON. The average interrogator, particularly in the Bureau, with 10 years of experience of interviewing thousands and thousands of people, builds up a certain commonsense approach as to whether or not this man is a reasonably intelligent person, or competent, that he can properly participate in an interview. Our job is to interview a person. I think the average agent who has experience interrogating people can sense when he is talking to someone who is not mentally sound. Therefore, he would not proceed with the polygraph interrogation.

Mr. KASS. Aren't there times when a person will be in touch with reality, will be able to answer the questions, will have sufficient memory to remember what you are asking him about, and yet could be declared by a psychiatrist or the courts to be mentally incompetent?

Mr. HERNDON. That is very true.

Mr. KASS. How do you know whether the person you are giving the examination to, how do you know in each of the 1,100-some-odd cases you gave last year, for example, that the person was or was not mentally competent to take the test?

Mr. HERNDON. We have some background data on these individuals, and we have had brought to our attention nothing which would indicate that they are mentally unsound. In other words, we have a background investigation. This man has never been in a mental institution; his service record indicates he is perfectly normal; we have nothing to indicate—let me put it that way—that he is mentally unsound. And from everyday, commonsense interrogation procedures, there is nothing to indicate this man is not competent to carry on an interview.

Mr. KASS. Of these 1,100 cases you gave last year, how many of these ever finally go to court; do you know?

Mr. HERNDON. I can't answer that exactly. We do not use the polygraph as admissible evidence. It is strictly an investigative aid.