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Contents

Polygraph Accuracy: An Analog Study Hugh E. Jones and Sarah Salter	69
Confession After Test Valid in Ohio: <u>State v. Ferris</u> George E. Jeffery	75
A Guide to Conducting Polygraph Examinations in Sexual Matters David M. Hager	78
Nonverbal Detection of Deception: A Bibliography Norman Ansley and Brenda Knill	90
State Department Regulations on the Polygraph	106
Law Notes - Case Decisions on Admissibility Norman Ansley	117
Historical Note: Feel the Pulse: Defoe's 1730 Proposal	122
Abstracts	123

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POLYGRAPH ACCURACY

AN ANALOG STUDY

By

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Abstract

Nine volunteers were given polygraph examinations to test the accuracy of the polygraph technique in determining which person had committed a mock crime. Each person was administered a Know Solution Peak of Tension test followed by a Modified General Question Test (POT & MGQT). The nine were equally divided into three groups, with one guilty person in each group. There were three different items in each theft, a one-hundred-dollar bill, a gold Krugerrand coin, and a 9mm automatic pistol. The polygraph technique correctly identified the three guilty persons in each group and five of the six innocent persons. The charts for one innocent person were inconclusive. Chance for complete detection of all guilty persons is 3.7%.

Background

There are a number of analog research projects which have studied the accuracy of a single polygraph technique, but few have attempted to use two techniques as is used many times in the field. This modest project of nine subjects examined the accuracy of two common field techniques that are often used together where case facts allow, the Know Solution Peak of Tension test (POT) and a Modified General Question Test (MGQT), the latter being one of several common control question tests.

METHOD

Examiner

The examiner received his basic polygraph training at the Southwest School of Polygraph, a course that was accredited by the American Polygraph Association. The examiner is licensed to conduct polygraph exams in Florida and Alabama. The examiner is the current Vice President-Private of the American Polygraph Association and has eight years of experience as a polygraph examiner.

Subjects

The nine volunteers were all acquaintances of the co-author (Salter). There were five females and four males. The non-deceptive subjects were three females, ages 14, 27 and 29 and three males, ages 14, 28 and 52. The deceptive subjects were two females, ages 21 and 30 and one male age 26.

Polygraph Accuracy

Equipment

A Stoelting Ultrascrobe polygraph instrument was used for all tests. It produces four channels of physiological information: Vascular Blood Volume and Heart Rate, Electrodermal (GSR), and two channels of Respiration, one thoracic and one abdominal. The physiological measures are recorded on a chart moving at 2.5mm per second. The charts were marked to reflect the beginning and end of each question as it was asked and the subject's answer. The equipment was calibrated in accordance with standard procedures.

Environment

Tests were conducted in a semi-soundproof room with ordinary office lighting, heating, air conditioning and decor. No pictures or other distractions were within the subject's line of sight during the test except during the POT tests the list of alternatives was taped to the wall in front of the subject. It was a standard polygraph interview room (Weir & Ansley, 1954; Arther, 1972).

Techniques

The Known Solution Peak of Tension test is a widely used method taught in all accredited polygraph schools. This method involves asking the subject, under instrumentation, if he/she knows which item on a list (which is read) is the item that is missing or stolen. The investigator, victim and the perpetrator will know which item is the stolen item. None of the items will have any significant meaning to the innocent subjects. In this research, the key items, a 9mm automatic pistol, a gold Krugerrand coin and a one-hundred-dollar bill were put in a list of items that might be found in an office desk. Each test was started with the prefix question, "If you are the person that took that missing item from my desk, you will know exactly what that missing item is". Then the list of items was read with the prefix "Do you know if that item is ". There were eight items on each list.

The Modified General Question Test (MGQT) used is a control question technique as taught in the DoD Polygraph Institute. The control questions were positioned at questions six and ten and the relevant questions were at positions three, five, eight and nine. Questions one, two, four and seven were irrelevant.

Scoring

The Peak of Tension tests were evaluated in the manner described by Reid and Inbau (1977). Particular attention was given to specific, consistent and significant physiological responses that occurred at the key item in one, two or all three parameters being measured. Particular attention was also paid to indications in the charts where the parameters being measured grew to a peak at the key item and subsequently leveled off or fell off.

The MGQT was scored numerically following the method taught at the DoD Polygraph Institute (Weaver, 1980).

Research Methodology

In this research we decided to use separate groups with one guilty and two innocent. Since the testing took place over a three day period, the examiner wanted to make sure that none of the first subjects told any of the latter subjects what the mock crime was about. To insure this did not happen, the item stolen was varied from group to group. The use of cells in polygraph research has been used before (Widacki and Horvath, 1978, and Kubis, 1973). In this project we used triads with one guilty and two innocent persons in each of the three cells. The examiner was blind to the condition of each person in the triad, but knew the item that was stolen. Chance rate for detection in each group is 33%; for the detection of the guilty in two of the three groups is 11%; and for detection of the guilty in all three groups is 3.7%.

The nine people selected by the co-author were randomly divided into one of the three groups and to either a guilty or innocent role. In group one, on the first day of the project each subject was given an appointment time. Upon arrival they were escorted into a private office by the experimenter, Sarah Salter, who gave them a set of instructions then left them behind a closed door. The instructions advised the subjects that they had come to the office to apply for a high paying job for which they were qualified. Two sets of instructions told the subjects to wait about one minute, then exit the office telling the receptionist that they forgot something in their car. They were to go to their car, fumble around on the floor for a few seconds and return to the office and close the door. The third set of instructions advised the subject to go to the desk, open the bottom right hand drawer and remove the 9mm automatic pistol. The subject was to conceal the weapon, take it to his/her car and place it under the seat and return to the office and close the door. The examiner, who was in a closed private office, was notified to proceed after each subject returned from his/her car. The examiner then entered the office the subject was in and escorted that person to another office and began the job interview. The examiner was subsequently interrupted and advised that the item in the bottom right hand drawer of his desk was missing. Each subject was advised that they had been in the office alone and was a suspect. Each was asked to take a polygraph test. Each agreed.

The motivation of the deceptive subjects was increased by a statement in their instructions that said, "Some of the previous research has indicated that the more intelligent a person is the better chance the person has of "beating" the test.

In the second group the subjects were handled the same way, except they did not have to go to their car. Two sets of instructions advised the subjects to sit and wait for the interviewer and the third set advised the subject to take a South African Krugerrand from the bottom right hand drawer of the desk. After an appropriate time pause, experimenter Salter entered the office to insure the instructions had been read and understood and then notified the examiner to proceed. The same procedure was followed here as in the first group.

Polygraph Accuracy

The third group was handled exactly the same way except the item to be stolen was a one-hundred-dollar bill.

RESULTS

Deception

The combined techniques detected the guilty person from among the suspects in each of the three groups. The Peak of Tension tests (POT) evaluated alone detected 100% of the guilty persons and the control question tests scored alone detected 100% of the guilty persons. The agreement between the tests was 100%.

Truthfulness

The combined techniques supported the claims of innocence in five of the six cases, with one of test combinations resulting in an inconclusive call because the subject (a 14 year-old male) could not sit still. His first chart of the POT series was clear and supported his claim of innocence, but the remainder of his charts were too distorted from movement to allow for a conclusive opinion. None of the Peak of Tension tests on the innocent suspects contained consistent significant physiological responses that would indicate deception nor did any of them display the peaking trend that is consistent with deception. Five of the six MGQT tests conducted were evaluated to be truthful, agreeing with the POT tests.

DISCUSSION

This research is limited by a small number of subjects and is a purely analog situation. However, the finding of 100% accuracy, excluding the one inconclusive test, is not out of keeping with other analog research results.

For example, Blum and Osterloh (1986) reported accuracy of 97.5%, correctly detecting all truthful and all deceptive subjects, but missing some details among the deceptive stories. P. Davidson (1968) reported accuracy of 97% with the Guilty Knowledge Technique, varying the motivation, and missing one who was in the low motivation status. Hekel, Brokaw, Salzberg and Wiggins (1962) were 100% accurate in supporting truthful denials of a crime, but less successful with non-delusional psychiatric patients, 87.5%, and worse with delusional psychotic patients, 69%. All were innocent of a crime they believed had taken place. Kronbergerova and Dufek (1969) were able to solve nine of ten cases using peak of tension tests to locate where weapons had been hidden and in the tenth case, they had the right building, but not the right room. Raskin and Hare (1978) achieved a 87.5% accuracy in a mock crime experiment with psychopaths and non-psychopaths in a prison population without finding a significant difference in detection rates between the two groups.

This research achieved some realism with an experienced examiner using a field polygraph instrument with standardized polygraph techniques in a proper setting; all factors necessary to achieve meaningful analog results (Kircher, Horowitz & Raskin, 1988). Although the combination of techniques is not all that unusual in the field, it has been neglected in the

laboratory studies of polygraph validity. There is one study that has considerable similarity. Bitterman and Marcuse (1947) investigated a real theft, but all of their subjects were truthful, a fact not known when the tests were administered. The eight-one (81) subjects were given a relevant-irrelevant polygraph examination by untrained psychologists. The inconclusive tests were cleared up by giving peak of tension tests. We used the peak of tension test first followed by a control question test, MGQT.

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CONFESSION AFTER TEST VALID IN OHIO:

STATE v. FERRIS

By

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Before the trial of Kenneth Ferris, a polygraph examination was conducted at the Middletown Police Department for the Warren County Prosecutors Office. Ferris was suspected of molesting two children, a four-year-old boy and a five-year-old girl. Prior to the polygraph test, Ferris had been indicted and was represented by counsel, who was at the Police Department. Ferris was given a Miranda Warning before the test, and was told that he could consult with counsel at any time.

Upon completion of the test phase, Ferris was given another Miranda warning (verbal), and he replied that he understood his rights. Thereafter, he admitted to the examiner that he had sexually molested both children.

At trial defendant Ferris attempted to suppress his confession, but the motion to suppress was denied. His confession was used against him at trial. Upon his plea of no contest, he was found guilty of gross sexual imposition. Ferris appealed, and the appeal was granted by the Court of Appeals, Twelfth Appellate District of Ohio, Warren County, Ohio, and published as State v. Ferris, case number CA88-05-042; with the memorandum and judgment entry of 17 January 1989.

The issue was whether the trial court's denial of the motion to suppress was in violation of the agreement between the prosecutor and appellate that the results of his polygraph test would not be used against him. An agreement was entered into between the state and appellant whereby appellant would submit to a polygraph examination; and if the results of the polygraph examination indicated that appellant was telling the truth, the charges would be dismissed. If, however, the results indicated that he was lying, those results would not be used against him at trial.

Appellate Ferris claimed the post-test statements should have been excluded from evidence pursuant to the agreement made between the parties. The state argued that the post-test statement was not part of the test "result" such as the graphs, examiner's opinion. Ferris argued that the results included all statements, admissions, and confessions made before, during, and after the actual test. He also argued that the motion to suppress should have been granted because he was denied his Sixth Amendment

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Valid Confession

right to be represented by counsel when the examiner commenced the post-test interrogation without alerting appellant's counsel that he was able to be present at that time. The state argued that the examiner did give Ferris the opportunity to have counsel present, but that he waived that right. The content of the agreement between the parties was not in dispute.

The polygraph examiner stated that the test consists of three separate phases: the pre-test, the testing phase, and the post-test. The examiner stated that it was common practice to include all three of these phases when conducting a polygraph examination and that each is essential and each is recognized by the American Polygraph Association as part of the polygraph examination. The examiner, who was not aware of the agreement, read the appellant his constitutional rights during the pre-test phase, explaining that anything he said could be used against him in court. Appellant was instructed that if he wished to speak to his attorney at any stage of the examination that they would stop and allow him to do so. Appellant indicated that he understood that he was able to make such a request at any time. In response to appellant's question, the examiner indicated that he would probably know the results at the conclusion of the test and that if it was appellant's wish and desire to discuss them, he would not have any problem with that. The record indicated that after the testing phase the examiner asked Ferris if he still wished to discuss the test results, and he replied in the affirmative. Appellant was again told that he did not have to talk, and was again advised of his Miranda rights, which Ferris said he understood. In the conversation that ensued, Ferris confessed.

The Appellate Court said the evidence showed that the post-test phase had been completed at the time that appellant chose to make a confession. Having made the determination that the confession was not a part of the test results and thus not covered by the agreement, the court had only to decide whether the confession was coerced. A tape recording of the polygraph examination was available. The Appellate Court concluded that the evidence shows that the conversation which took place after the test was completed was initiated due to appellant's request, prior to testing, to discuss the test results. When Ferris indicated a desire to discuss the result, the examiner reminded him of his Miranda rights and clearly indicated that he had the right to have his attorney present, and that he was free to leave. Appellant then made a knowledgeable and intelligent waiver of his rights to consult with counsel and to remain silent. The court noted the Miranda warnings, and added that they found no authority for the proposition that a confession is inadmissible for the sole reason that in point of time it followed a polygraph examination. The court found no abuse of discretion by the trial judge in making his decision to deny the motion to suppress the statements made to the polygraph examiner. The judgement was affirmed.

Jones, P.J., concurring separately was of the opinion that the incriminating statements made during the post-examination were inadmissible because the post-examination interrogation is part of the process. However, that Ferris did answer the examiner's questions after the actual examination, voluntarily, even though he was not required to do so and was so advised.

George E. Jeffery

Koehler, J., in dissenting, suggested the remarks were the product of deceptive tactics to isolate Ferris from his attorney. Some Circumstances as they existed:

Ferris and his counsel mutually agreed the defendant would submit to a polygraph examination.

In the presence of counsel and again after entering the lab, prior to the pre-test interview, Ferris was advised of his constitutional rights and signed a permission form that he understood those rights.

Upon completion of the test phase, all recording attachments were removed. Ferris was given an opportunity to offer information as to whether or not he had any problems during testing.

Since Ferris had earlier expressed a desire to discuss his test results, the examiner felt the logical course of action was to re-mirandize the defendant. He again, in fact for the third time, was advised (verbally) of his constitutional rights before any further conversation or questioning. His waiver was such that this examiner felt he had knowingly and intelligently waived those rights including his Sixth Amendment right to have counsel present during the post-test questioning.

After his confession and before leaving the lab, Ferris again affixed his signature to the permission rights form, this time acknowledging that he had continued to waive his rights, was well treated, submitted freely knowing he could stop at anytime, and leave or consult with his attorney.

Summary:

Hopefully this article will assist other polygraphists whether they be law enforcement or in the private sector, who at the request of the prosecution or a law enforcement agency may be called upon to test a defendant under similar circumstances.

As a matter of law and fairness, we know if an individual invokes any constitutional right the request must be honored. So often, as examiners, we experience frustration in balancing the rights of the defendant and protecting the rights of the young children that allege they are victims of sexual molestation. Further complicating the matter, in too many cases, is the tender age of the victims. In the Ferris case the Court of Common Pleas concluded the 4-year-old was not competent to testify, but that the 5-year-old was competent. Our profession is so unique when you consider the thousands upon thousands of cases that have been successfully resolved by polygraphists across the country. If we are to succeed and make a difference we must continually remind ourselves that the courts have consistently used a "totality of the circumstances" approach in their review of cases to determine if a defendant knowingly and intelligently waived his or her rights. As a matter of professional ethics, our focus will continue to be the same as the courts, however, we must never lose sight of the victim's rights.

A GUIDE TO CONDUCTING POLYGRAPH EXAMINATIONS IN SEXUAL MATTERS

By

David M. Hager

Introduction

In recent years, there has been a noticeable increase in the number of sex related crimes reported to law enforcement agencies. With this increase, comes the likelihood that we in the polygraph profession will increasingly be asked to conduct examinations of individuals who are either suspected of, or have been victimized by this type of crime.

Preparing for the Examination

Before conducting a sex related examination, it is imperative that we prepare ourselves. This requires reviewing the investigative case file, interviewing the investigator assigned to the case, and reading the statements made by the Suspect, Victim, and Witnesses. By doing this, we will have a good idea of what did or did not happen, thus helping us formulate, in our mind, what questions will prove or disprove the allegation(s).

Once these preparatory steps have been accomplished, we can then give thought to conducting the examination. First, is the decision of where the examination will be conducted. The room should not be stark, like a police station interview room, but have a pleasant, quiet, neutral atmosphere. This type of atmosphere helps to ensure the rapport necessary for this type of examination as well as help to establish the examiner's credibility as a non-biased seeker of the truth. Second, consideration needs to be given to the timing of the examination. The Examinee should not be given a polygraph examination after several hours of interrogation or after a lengthy, emotional interview. In these instances, the examination should be scheduled for a day or two after the interrogation or interview.

Pre-Test Interview

As in all types of polygraph examinations, a critical phase is the pre-test interview. It is during this phase that we develop the information which will determine the type of test we conduct, the questions we will ask, and establish the rapport needed to facilitate a confession from a deceptive Examinee. Examiners are not alike, and each has his/her own style and methods for conducting the pre-test. This guide will not attempt to teach anyone how to conduct a pre-test interview. The following, however, are some general guidelines found to be very helpful in building good rapport with the Examinee, as well as in ensuring a successful examination.

The author is a special agent in an agency of the U.S. Department of Defense. The opinions and conclusions expressed in this article are those of the author and do not necessarily represent the views of the Department of Defense or any agency of the Department of Defense.

Whenever we meet someone for the first time, we make many value judgments concerning that individual, such as: Can I trust them? Do they like me? etc. We form a mental image as to the kind of person we are dealing with. It is extremely important that we, as examiners, project an image of being professionals, with no biases or prejudices towards the examinee. Always extend your hand in a friendly manner while introducing yourself to the examinee. If we act like the bad policeman, we will have a difficult time convincing the examinee that we are not biased. The examinee should also be told what is going to take place during the examination. Example:

"John, you know why you are here. Someone has claimed that you raped her. I am, therefore, going to have to advise you of your rights for (read the offense). I am also going to ask you to put in writing your willingness to undergo a polygraph examination today. I will then explain polygraph to you and you and I will discuss the allegations against you, in detail, during which time we will work up the questions that I am going to ask you on the test today."

Once you have explained to the examinee what is going to happen, he/she should be willing to cooperate with you and listen to what you have to say.

Now that the examinee knows basically what is going to happen, he/she should be prepared to listen. We must then set the tone for the examination. Many times examiners have asked, "How do I get an individual prepared to answer the control questions without them objecting?" Some of the common objections often heard are, "Why are you asking me that question? How does that apply to me being accused of raping that girl? What business is that of yours?" The most effective way to avoid a situation such as this, is to tell the examinee, right from the beginning, what you will be discussing, that is, sexually related issues. Example:

"John (Mary), we are not here today to discuss the theft of money or some other type of crime. We are here to talk about a crime involving a sex act. When we mention the word sex, I know that, to many, it might be embarrassing and even offensive, but, none the less, that is what you and I must talk about. I am not going to talk about sex in order to embarrass or humiliate you in any way, but to allow me to gather all the facts I need to develop the questions I will ask on this test today."

The examinee now knows what you will be talking about, which will make it easier for you to ask your opening question and pre-set your control questions.

Opening Questions:

A good opening question is a must. This question can serve several purposes. It allows the examinee to hear a question concerning the issue for the first time, thus, allowing him/her to talk about the issue and release some of his/her nervous energy. It also allows the guilty person to tell you how he/she feels about what happened. Example:

Examinations in Sexual Matters

(Suspect) "John, what kind of person do you think would force his way into a girl's room and force her to have sex with him?"

(Victim) "Mary, what kind of person do you think would report that she had been raped, when nothing really happened?"

It is important that we listen carefully to the answers given by the examinee when asked this question. Many times, the deceptive individual will tell you exactly why they did the "evil deed." Remember, it is always easier to tell the truth than it is to make up a lie.

By utilizing the opening question in this manner, we can also pre-set the control questions.

Depending on your training, the introduction and setting of control questions usually occurs near the end of the pre-test interview, after you have reviewed the relevant questions with the examinee. This is not an attempt to get anyone to change; however, after asking your opening question, you can pre-set your control questions and eliminate any objections to these questions when you introduce them later.

Example 1:

Examiner: "John (Suspect), what kind of person would break into a girl's room and force her to have sex with him?"

John: "I don't know, maybe someone who was hard up or drunk."

"Examiner: "Well, John, I support that could be the kind of individual I'm looking for; however, we have been gathering statistics for many years on these types of crimes, and with all the data we have collected, we have observed a profile of the type of individual who would rape someone. The person I am looking for is sexually maladjusted, lives in a sexual fantasy world and lives out his fantasies through masturbation. This person derives great pleasure in participating in things that are taboo, like unnatural sex acts such as, oral sex, anal sex, masturbating after looking at pornography. Basically, someone who is perverted. John, does this describe you?"

John: "Heck no!"

Examiner: "Great, because if you said you were, I would have to believe that what that girl said you did is true. Great! John, since you said that you weren't that type of person, I need to be able to verify that, so there will be some questions on the test today to see if you are this type of person and, since you said you weren't, you should have no problem answering them. Right?"

John: "Well, uh, er, no, I guess not."

Example 2:

Examiner: "Mary (Victim), there have been many times when women have reported that they were raped, and the crime actually occurred. Women have

been raped. However, there have also been many times when women have reported that they were raped when nothing really happened or the sexual act was consensual. Mary, what kind of person do you think would report that they had been raped when nothing really happened or the act was consensual?"

Mary: "I don't know, maybe someone who is confused or wants to get even with someone, or someone who wants attention."

Examiner: "You are correct. Those are some good examples of the type of person who would falsely report a rape. There is also another type. For years we have been studying women who falsely report a rape, and what we discovered is this. These women live in a sexual fantasy world. Their fantasies sometimes become so real they can't separate reality from fantasy. They live out their fantasies thorough masturbation and, since they have a warped sense of reality, they like to participate in sex acts that are unnatural such as, oral or anal sex, or masturbation with objects. When they can't separate reality from fantasy, this is when they falsely report that they have been raped. Mary, I don't believe you are this type of person. Are you?"

Mary: "No, sir!"

Examiner: "Good, because I have to ask you some questions on the test today that will tell me if you are, and since you have told me you are not, you should have no problem with the questions right?"

Mary: "Right."

As you can see, the examinee is now expecting you to ask questions on the examination relating to this area. You have already explained to him/her why you are going to ask these types of questions and, since they have stated that they are not "this type of person," it will make your setting of the control questions easier.

Polygraph Explanation

The purpose of this guide is not to teach anyone how to conduct a pre-test; however, to conduct a proper pre-test, a good explanation must be given as to how polygraph works. By doing so we convince the deceptive individual that we can in fact determine when someone is lying and, at the same time, convince the non-deceptive individual that we can prove they are telling the truth.

Each examiner has his/her own method of explaining how the polygraph works; however, something very helpful is to follow a simply progression of facts. Example:

(1) The first thing is, tell the examinee that it takes 100% of the truth to pass the test.

(2) We know 100% of the truth because it is recorded in our subconscious mind which acts like a giant video recorder.

Examinations in Sexual Matters

(3) When we are asked a question, our subconscious mind shows us a motion picture of the event and we simply confirm what our mind is showing us when we confirm the truth.

(4) We can also lie. Why do we lie? FEAR.

(5) Relate how the autonomic nervous system reacts to physical stress and fear.

(6) No physical stress is involved in the examination. This leaves fear.

(7) At this time, give an explanation of the components of the polygraph instrument.

(8) Recap that people lie because of fear and the only reason a person would be afraid during a polygraph examination is if they intentionally plan to lie during the examination.

(9) It is now time to discuss the case with the examinee.

Case Discussion

It is important to allow the examinee to tell you about the case in his/her own words. Listen carefully and compare what they tell you to what you learned when you reviewed the case file. Pay close attention to the terminology used by the examinee. What does he/she call the sex act(s) and body parts. This will be useful when you formulate your relevant questions. You don't want to ask someone about performing fellatio when they call it something else (a b---j--); they may not know what you are talking about. It is important that you do not interrogate at this time, but it may be necessary to clear up any disparities between what they are now telling you versus what they related on their previous statement. After a discussion of the case with the examinee, you are now prepared to formulate and introduce the relevant questions.

Relevant Questions

If you have properly set the tone for your examination as outlined earlier in this paper, your examinee should have an idea of the type of questions you are going to ask during the examination, and should be ready for you to introduce the relevant questions.

When formulating the relevant questions, be specific concerning the acts that are alleged to have occurred. Don't use scientific or legal terminology such as: fellatio, intercourse, sexually molest, rape, etc. These words may mean different things to different people. An example of this is an examination that was conducted on an individual who was accused of touching his 16-year-old daughter's breasts, placing his fingers into her vagina, and asking her to have sex with him. The examiner utilized a two-question Zone Comparison Test with the relevant question being, "Did you sexually molest your daughter, Michelle?" The examiner rendered a NDI opinion. A review of this examination by another examiner was conducted.

It was the opinion of the reviewing examiner that the test was invalid based on the use of the technical term "sexually molest." The reviewing examiner conducted a retest on the Suspect, asking the following questions: 1) Did you ever touch that girl's breasts for any sexual purpose? 2) Did you ever put your fingers into that girl's vagina? 3) Did you ever ask that girl to have sex with you? Based on these questions, the suspect was found to be DI. The suspect confessed to the acts during the post-test, but maintained that he did not "sexually molest" his daughter.

When questions containing technical terms are used, or the physical acts themselves are not tested, the examination may not produce accurate results. Whatever terms the examinee uses to describe the physical acts, are the terms that should be utilized in the relevant questions, thus minimizing the possibility of the examinee misunderstanding or rationalizing the meaning of the question.

When testing victims, it is acceptable to ask relevant questions that require a "Yes" answer. Example:

1. Did that man put his fingers into your vagina?
2. Did that man have sex with you?
3. Did that man push you onto the bed?
4. Did that man tell you he would kill you if your told anyone what happened?
5. Did that man fondle (play with) your breasts?

I do not recommend that you take a short statement and ask, "Did you lie when you said? or, "Did you lie in your statement?" Questions such as these places the examinee in the position of being one-step removed from the offense, thereby toning down the "threat of being caught."

It is important to keep things simple when selecting the type of test to utilize. If the examinee denies having sex with the victim, simply ask, "Did you have sex with that girl?" He could not have raped her if he didn't have sex with her. A thorough case review will dictate the questions that should be asked. Just remember these three simple rules:

1. Test only the physical act(s).
2. Do not use technical or legal terms.
3. Use the simplest test technique.

Control Questions

Once the tone has been established for the examination and you have pre-set the control questions as outlined earlier, you are ready to introduce and set the control questions.

Examinations in Sexual Matters

Prior to asking the control questions, you must introduce the examinee to the type of questions you are now going to ask. It is during this introduction that we remind the examinee that he/she has already answered these questions, and that we simply want to be able to state, after the examination, that he/she is not the type of person who could have committed this crime. For example:

Examiner: "John, remember earlier when I asked you what type of person could have raped this girl?"

John: "Yes."

Examiner: "Remember, I told you that the type of person I was looking for was sexually maladjusted, liked to participate in unnatural sex acts and fantasized about sex. He would live in a sexual fantasy world and live out the fantasies through masturbation. Do you remember that?"

John: "Yes."

Examiner: "You told me that you weren't this type of person and that this profile did not fit you, right?"

John: "Right."

Examiner: "Well, John, I have no reason to believe that you are this type of person; however, if you are I will know, by the time this test is completed, that what that girl said you did is true, so I want to verify that you aren't this type of person. Sound fair?"

John: "Sounds fair."

Examiner: "Great. Now here are the questions that I am going to ask on this test. These questions will allow me to verify whether or not you are this type of person."

By making this introduction, we are helping insure "no" answers to the control questions, thus allowing less objection to the questions themselves.

Although I am going to list several control questions and ways of introducing and setting each question, this list is not exhaustive. The types of questions are only limited by the examiner's imagination. Consideration should be given to how to introduce the question so that it makes sense to the examinee.

When introducing, setting, and asking your control question, never simply ask the question. Remember, the purpose of this question is to allow the concept of psychological set to take place. The question should be somewhat related to the relevant issue and something that the examinee has probably done. The following are some control questions that have been used effectively in the past, with an example of how to set each one:

Question 1. (All sexes) Between the ages of ____ and ____ did you ever masturbate?

Introduction:

Examiner: "John, we believe that the individual we are looking for is sexually maladjusted. We also know that around the ages of 10 to 12, a young man/woman starts a phase of life called puberty. It is during this time that individuals notice that when they touch themselves down there, it feels good. They start recognizing that there is a difference between girls and boys. During this phase, they start to interact with the opposite sex. As children they play "doctor;" as teenagers, they pet, feel each other and, eventually, have their first sexual encounter with the opposite sex. This is normal behavior and interaction during puberty. John, we have found that there are others who do not have a normal interaction as a child. At an early age, instead of playing with the opposite sex, they channel their sexual energies and desires inward toward their own body. When this individual becomes an adult male, we have a man who is either a latent homosexual, an outright homosexual, or a man who is sexually maladjusted. John, are you this type of person?"

John: "Heck, no."

Examiner: "Great, then there is only one way you can answer this question and that is, "No." The question is (read masturbation question and then say, "No, right?").

Try as you may, there are some people who will not say "no" to this type of question. To counteract a possible admission, try one of the following:

You have? My gosh, how many times?

You have? But not more than twice a month or so, right?

Really? But never after looking at pornography?

(For Males) In front of a mirror?

(For Females) Never with an object, right?

Question 2. (Males) Prior to your _____ birthday, did you ever force your sexual desires on a female?

Introduction:

Examiner: "John, what kind of individual would force himself sexually on a female? Someone who is sexually maladjusted. He forces himself on a woman because, while growing up, he did not have the interaction with the opposite sex to really know what to do. You told me that you weren't sexually maladjusted, didn't you?"

John: "Right."

Examinations in Sexual Matters

Examiner: "Then there is only one way you can answer this question and that is, "no." (Read the question, then say, "You can say no, Right?")."

Question 3. (Females) Prior to 1987, did you ever fantasize about having sex with someone you do not know? (Alternative: a movie star, a stranger).

Introduction:

Examiner: "Mary, remember I told you that the person who makes false claims about being raped lives in a sexual fantasy world where the fantasies are lived out and reinforced through masturbation? Sometimes, the fantasies become so real that in the person's mind they are no longer a fantasy. When this occurs, these women sometimes report that they have been raped when, in fact, nothing really happened. Mary, does this behavior fit you?"

Mary: "Oh, no."

Examiner: "Great. Then, Mary, there is only one way you can answer this question, unless you have been lying to me, and that is, "No." (Read question then say, "you can say no, right?")."

Question 4. (Males - especially good for homosexual cases). Prior to 1987, while in a public restroom, did you ever sneak a peek at another man's penis?

Introduction:

Examiner: "John, how many times have you gone into a public restroom, walked up to the urinal, unzipped your pants, and felt eyes on you? You look over at the next stall and there is this guy looking at your penis. I know it is natural when you walk into a restroom, to look around, and you might get a glimpse of another man's penis, but to sneak a peek at another man's penis is weird and perverted. You've never done anything even close to that, have you?"

John: "Heck, no."

Examiner: "Great. Then you can easily answer this question, "No." (Read the question and tell him, "Your answer is no, right?")."

Question 5. Prior to _____, did you ever participate in an unnatural (or abnormal) sex act?

Introduction:

Examiner: "John, remember I told you that the person I am looking for likes to participate in things that are taboo to most normal people, like you and me, and are considered by society to be unnatural? I am going to ask you about participating in an unnatural sex act. But, before you ask me what an unnatural sex act is, I want you to know that when I have asked this

question in the past, I have heard everything from sex with animals, masturbation with objects or after reading pornography, to oral sex, anal sex, and homosexuality. One person told me that oral sex was the most disgusting thing that he could imagine. I may or may not agree; however, I need to know if you are perverted in this way. Are you?"

John: "No, I'm not."

Examiner: "Great, then there is only one way you can answer this question and that is, "No," right?"

John: "Right."

Examiner: (Read question then add, I am glad you can say no because that will make my job easier.)

Handling of Admissions to Control Questions

The above questions are examples that have been successful in the past. However, there are times when it is not as easy as these examples may lead you to believe. Some people want to tell you everything that they have done. To stop the admissions, try these phrases:

Masturbation Question:

1. Oh, really? How many times? But never more than a couple times a year, right?
2. Surely not with an object, right?
3. I hope not after looking at pornography, right?
4. But never in front of a mirror, right?

Unnatural Sex Acts Question:

1. Oral sex, really? How many times?
2. Really, oral sex?
3. Anal sex? How gross. Were you drunk or something?

It is important to remember that the control question is supposed to create a concern for the examinee. If he/she makes enough admissions, the question may no longer bother him/her and the examiner should consider asking a different question.

Control Questions for Teenagers:

Many times the victims of sex offenses are teenagers. Caution should be given when testing teenagers and extreme caution should be given to a person under the age of 15. The control question technique is based on the premise that when your examinee answers "no" to a control question, they are

Examinations in Sexual Matters

probably telling a lie. Teenagers, however, usually have not had enough sex or life experiences to have done many of the things we concentrate on in our control questions. Here is a list of some control questions that work well with teenagers:

1. Have you ever fantasized about having sex (making love)?
2. Have you ever touched your own naked body for any type of sexual gratification?
3. Have you ever lied to someone who trusted you about your sexual activity?
4. Have you ever lied to anyone about your sexual activity?
5. Have you ever let a teenage boy touch your breasts?
6. Did you ever touch a schoolmate's penis?

It is important when selecting your control questions that you remember that their introduction must be logical and appear relevant to your examinee. Your questions must be strong; the stronger the better. We owe it to the individual being tested to have a place to react, because the relevant questions are often embarrassing and emotion evoking. In fact, there is probably no such thing as a control question being too strong in a sexually related polygraph examination.

Closing Statement

After reviewing all of the questions on the test with the examinee, you can help the examinee establish "psychological set" by making a simple closing statement. Example:

"John/Mary, there is only one person in the world who knows 100% of the truth to all of those questions. You. In approximately forty minutes there will be two of us. The thing I must tell you is this, unlike tests you may have taken in high school or college, wherein you got an A for a grade of 95%, 95% on this test is an F. You have to be 100% truthful to pass this test. There are no questions on this test that are any less important than the others. You have to pass them all in order to pass the test. Understand? Great."

Take a short break and do not allow the examinee to comment on your closing statement.

By making a closing statement of this nature, the examinee will believe he/she must pass all of the questions. The nondeceptive individual will channel his/her fears and anxieties toward the control questions and think that because he/she has done some of the things in the past, he/she will fail the examination and the examiner will believe he/she did the crime. The deceptive individual, on the other hand, will not be concerned with the control questions as he/she knows they are lying about the direct allegation(s). Your closing comments, therefore, help to establish the examinee's

David M. Hager

psychological set, thus giving the examinee every possibility of passing the examination.

Note

Many of the methods for question formulation outlined in this paper can be utilized with most of the polygraph examination techniques. The purpose of this paper is not meant to teach someone how to conduct a polygraph examination, but to help an examiner outline a strategy to approach this difficult type of examination - one involving a sex related offense.

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NONVERBAL DETECTION OF DECEPTION, A BIBLIOGRAPHY

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STATE DEPARTMENT REGULATION ON THE POLYGRAPH

The regulation "Use of Polygraph Examinations" was published by the United States Department of State in their Department Notice of January 13, 1989.

USE OF POLYGRAPH EXAMINATIONS

The following regulations governing the use of polygraph examinations in investigations of State Department employees and contractors carried out by the Department are effective immediately and will be published in the Foreign Affairs Manual at 3 FAM 165.

Chapter 1

AUTHORIZED USES OF POLYGRAPH EXAMINATIONS

A. General

1. A Department of State official may ask a Department employee or contractor to agree to take a polygraph examination only in accordance with these regulations and only for those purposes set forth either in section B of this Chapter and specifically authorized by the Secretary of State without delegation or in section C of this Chapter.

2. An individual may be asked if he or she is willing to take a polygraph examination for a purpose in section B.1.-3. or C. An individual may volunteer to take an exculpatory polygraph examination under B.4. In the case of examinations under section B.1.-3. or C, the individual may be asked if he or she is willing to take the examination, and for those under B.4. the examination may be given, only after approval in writing in each specific case by the Secretary, the Deputy Secretary, the Under Secretary for Management, the Inspector General (for examinations under B.1. involving criminal investigations conducted by his office) or a person whom the Secretary has designated in writing. The authority to designate such a person may not be delegated. The polygraph shall be employed only when the person to be examined has consented in writing to the examination.

3. The person being considered for polygraph examination shall be given timely notification of the date, time, and place of the examination as well as his or her right to obtain and consult with legal counsel. Legal counsel may be available for consultation during the polygraph examination.

4. Except for examinations administered pursuant to paragraphs B.2.a., and C of this Chapter, individuals shall not be asked if they are willing to take a polygraph examination until such time as all other reasonable investigative steps have been taken. Polygraph examinations shall be considered as supplementary to, not as a substitute for, other forms of investigation that may be required under the circumstances.

5. When an individual is asked whether he or she is willing to take a polygraph examination, he or she shall be advised of the consequences, or

State Department Regulations

lack thereof, of his or her refusal to be so examined. The individual shall also be advised of the scope such examination would assume and provided with a copy of this Regulation.

6. Applicants for employment, voluntary assignment, or voluntary detail to positions requiring access to specifically designated information in special access programs designated by the Secretary under B.2.a. below; and personnel applying for voluntary detail to certain positions in the Central Intelligence Agency, the National Security Agency, and the Defense Intelligence Agency as provided under C below; who are requested and who refuse to take a polygraph examination shall not be selected for or assigned to such position. Such refusal shall be without adverse consequences to their previous position or status.

7. Persons who are requested and who refuse to take a polygraph examination in connection with determining their continued eligibility for access to specifically designated information in designated special access programs, in accordance with paragraph B.1.a., below, or continued voluntary detail to certain positions in the Central Intelligence Agency, the National Security Agency, and the Defense Intelligence Agency, in accordance with paragraph C, below, (including incumbents of positions subsequently determined to require polygraph examination as a condition of access, voluntary assignment or voluntary detail), may be denied access or assignment or detail, provided that the Department shall ensure that such individual is retained in a position of equal grade and pay that does not require polygraph examination.

8. When deception is indicated by the examiner's interpretation of polygraph charts in polygraph examinations conducted under these regulations, an in-depth interview of the subject will be undertaken by the examiner and/or investigator immediately following the running of the chart, to resolve any indication of deception. If the indication of deception cannot be resolved through such means, the subject will be so advised. If it is determined after reviewing the polygraph examination results, that they raise significant questions of deception, additional investigation may be undertaken and the subject shall be given an opportunity to undergo additional examination using the same or a different examiner.

9. In the case of polygraph examinations conducted under the provisions of paragraph B.2.a., below, if such additional examination is not sufficient to resolve significant questions relevant to the subject's clearance or access status, a comprehensive investigation of the subject shall be undertaken, utilizing the results of the polygraph examination as an investigative lead. If such investigation develops no derogatory information upon which an unfavorable administrative action to the subject may be independently based, no department officials may take such action unless approved by the Secretary in specific cases, based upon his or her written finding that the information in question is of such extreme sensitivity that access under the circumstances poses an unacceptable risk to the national security. In such cases:

a. The Secretary shall notify the subject, in writing, that, although the investigation which followed the indication of deception during

State Department Regulations

the polygraph examination did not in and of itself provide an independent basis for denial of access, a determination to deny such access to the subject had been made, based upon the finding of the Secretary that access under the circumstances poses an unacceptable risk to the national security. After receiving such notice, the subject may request the Secretary to reconsider his determination if he or she believes that such reconsideration is warranted.

b. Copies of the determination as well as the Secretary's notification to the subject shall be retained only by the Secretary's office and the Bureau of Diplomatic Security. This provision does not preclude use of such records in the event of litigation, or informing individuals of the subject's level of clearance.

c. No notification other than provided for in subparagraphs a. and b. above, shall be made.

10. No unfavorable action will be taken by the Department solely on the basis of a polygraph examination chart that indicates deception, except as provided in subsection A.9. Unfavorable administrative action shall not be taken against a person for refusal to take a polygraph examination, but actions may be taken pursuant to sections A.6. and A.7.

11. Polygraph examinations administered by Department of State polygraph examiners or pursuant to Department of State authorization shall be conducted only as prescribed by this Regulation.

12. The Assistant Secretary for Diplomatic Security and the Inspector General shall deliver quarterly reports to the Secretary of State on the administration of polygraph examination under this Regulation. The reports shall include the number of examinations authorized and conducted during the reporting period, and a description of the circumstances under which each examination was authorized and conducted, but shall not include the names of individuals examined.

13. Unless these regulations further limit authority to delegate, the duties and functions prescribed by these regulations shall only be exercised by the name official, his or her superior or a person acting for him or her by delegation during absence.

B. INVESTIGATIVE CASES FOR WHICH THE POLYGRAPH MAY BE AUTHORIZED

1. Criminal Investigations. A polygraph examination may be authorized in a criminal investigation when the following apply:

a. The crime involves an offense punishable under Federal law by death or confinement for a term of 1 year or more;

b. Investigation by other means has been as thorough as circumstances permit;

c. The development of information by means of a polygraph examination is essential to the conduct of the investigation;

State Department Regulations

d. The person being considered for examination has been interviewed and there is reasonable cause to believe that the person has knowledge of or was involved in the matter under investigation;

e. The case under investigation is sufficiently important to merit the examination; and

f. The scope of the polygraph examination is limited to the activities under investigation.

2. Personnel Security Investigations. A polygraph examination may be authorized in connection with personnel security investigations as follows:

a. Access to Specifically Designated Information in Designated Special Access Programs. A polygraph examination may be authorized to assist in determining the initial eligibility (and aperiodically thereafter on a random basis to assist in determining continued eligibility) of Department employees and contractor personnel who volunteer for assignment to positions in programs carried out jointly with employees of the Intelligence Community. Such positions may require access to specifically designated classified information protected within special access programs which are established pursuant to E.O. 12356 and which the Secretary, without delegation, also specifically designates under this subparagraph for the use of polygraph examinations. Such specific designation shall be based upon the request of the Assistant Secretary for Diplomatic Security, who shall certify in writing, or obtain the certification of an appropriate official of the Intelligence Community, that unauthorized disclosure of the information in question could reasonably be expected to: (1) jeopardize human life or safety; (2) result in the loss of unique or uniquely productive intelligence sources or methods vital to U.S. security; or (3) would compromise technologies, plans or procedures vital to the strategic advantage of the United States. The scope of any polygraph examination administered under this subparagraph shall be limited to the counterintelligence topics prescribed in Appendix A of this Regulation.

b. Resolution of Certain Personnel Security Investigations. The use of the polygraph may be authorized for Department employees and contractor personnel, when credible derogatory information developed in connection with a personnel security investigation for a top secret clearance of a Department employee or contractor causes substantial doubt whether access or continuation of access to classified information is clearly consistent with the interests of national security, and all other efforts to resolve the adverse information have been taken. The scope of a polygraph investigation under this subparagraph shall be restricted to the activities under investigation.

3. Counterintelligence Investigations.

a. A polygraph examination may be authorized for use in connection with the investigation of an unauthorized disclosure of classified information or other counterintelligence investigation of Department employees and contractor personnel, provided that the following apply:

State Department Regulations

(1) Investigation by other means has been as thorough as circumstances permit.

(2) The development of information by means of a polygraph examination is essential to the conduct of the investigation; and

(3) The individual being considered for examination has been interviewed and there is reasonable cause to believe that the person has knowledge of or was involved in the matter under investigation.

b. The scope of a polygraph examination under this subparagraph shall be restricted to the activities under investigation and relevant counterintelligence topics set forth in Appendix A of this Regulation.

4. Exculpation. The use of the polygraph may be authorized for the purpose of exculpation only if the request for such examination was initiated by an employee or contractor who is the subject of a criminal, personnel security, or counterintelligence investigation. The scope of a polygraph investigation under this subparagraph shall be restricted to the activities under investigation. The Department may not offer an examination for the purpose of exculpation.

C. CASES FOR WHICH THE POLYGRAPH SHALL BE USED

Voluntary Assignment or Voluntary Detail to Intelligence Agencies. Polygraph examination shall be required for Department employees and contractor personnel to assist in determining their eligibility for initial or continued voluntary detail for duty in positions at the National Security Agency, the Central Intelligence Agency, and the Defense Intelligence Agency for which a polygraph examination is required by those agencies. The scope of any polygraph examination administered for details under this section, with the exception of details to the Central Intelligence Agency, shall be limited to the counterintelligence topics prescribed in Appendix A of this Regulation.

D. LIMITATIONS

1. Any final administrative determination rendered in cases in which a polygraph examination is taken shall not be based solely on the results of an analysis of the polygraph charts except as provided in A.9. or where the results are exculpatory. Responses to technical questions shall have no probative value.

2. The results of a polygraph examination and record of results shall be considered privileged information and shall not become part of an individual's personnel file. Such results shall be disseminated only in accordance with subsection B.2. of Chapter II of this Regulation. Results of an analysis so disseminated, other than results exculpating the individual, may be used in subsequent investigations only as an investigative lead.

3. No unfavorable administrative action may be based upon an individual's refusal to undergo polygraph examination in connection with the provisions of this Regulation but actions may be taken pursuant to sections A.6.

State Department Regulations

and A.7. Refusal to undergo polygraph examination under these provisions shall in no manner affect other personnel actions, including the person's official evaluation report, or eligibility for promotions, awards, or positions that have not been determined to require polygraph examination as a condition of employment, assignment, detail or access.

4. Information concerning a person's refusal to undergo polygraph examination shall, in all cases, be given the full privacy protection provided by law and these regulations. Specifically, information concerning a person's refusal shall not:

a. Be recorded in the person's personnel file, investigative file, or any other file. As an exception, in criminal cases, a refusal may be recorded in the polygraph examination technical report maintained in DS.

b. Be communicated to a person's supervisor, and in the case of a contractor employee, a person's employer, unless such action is necessary in support of action to be taken under the provisions of subsections A.6. and A.7. of this Chapter. In criminal cases, the fact of refusal to undergo polygraph examination shall not be communicated to persons other than those directly involved in the administration, control or conduct of criminal investigations.

Nothing in this paragraph 4 shall be read to preclude the preparation of the report required in paragraph A.12.

CHAPTER II CONDUCT OF POLYGRAPH EXAMINATIONS

A. PROCEDURES

1. General. Polygraph examinations may be conducted only by certified polygraph examiners employed by the Department of State or by examiners certified to administer polygraph examinations for other U.S. Government offices. Examiners shall meet at a minimum the requirements established by the Department of Defense in Chapter 3 of DoD regulation 5210.48-R for the selection, training, and supervision of polygraph examiners. All examinations shall be conducted only in accordance with and under circumstances and procedures detailed in this Regulation.

2. Pretest. Before administering a polygraph examination, the polygraph examiner shall:

a. Obtain assurance from the person to be examined of his or her voluntary consent to the examination. The consent must be in writing and shall be included and maintained in the polygraph examination technical report.

b. Ensure that the person to be examined has not been subjected to prolonged interrogation immediately before the polygraph examination.

c. Interview the person to be examined. During this interview, at a minimum, the examinee shall be informed of the following:

State Department Regulations

(1) The characteristics and nature of the polygraph instrument and examination, including an explanation of the physical operation of the instrument, the procedures to be followed during the examination, and all questions to be asked during the examination.

(2) If the polygraph examination area contains a two-way mirror, camera, or other device through which the examinee can be observed and if other decides, such as those used in conversation monitoring or recording, will be used simultaneously with the polygraph.

(3) That he or she is privileged against self-incrimination under the Fifth Amendment to the Constitution.

(4) That he or she has the right to obtain and consult with legal counsel and that legal counsel may be available for consultation during the polygraph examination. The examinee also shall be advised that he or she may interrupt or terminate the examination at his or her own volition, or upon advice of counsel, during any phase of the examination.

3. Questions asked during Polygraph Examination

a. All questions asked concerning the matter at issue, except for technical questions necessary to the polygraph technique during a polygraph examination, must be of special relevance to the subject matter of the particular investigation. Questions probing a person's thoughts or beliefs or lifestyle that are not related directly to the investigation are prohibited. Subject matters that should not be probed include religious and racial beliefs and affiliations, political beliefs and affiliations of a lawful nature, and opinions regarding the constitutionality of legislative policies.

b. When use of the polygraph is authorized pursuant to Chapter 1 of this Regulation, technical questions utilized in such examinations shall be constructed to avoid embarrassing, degrading or unnecessarily intrusive questions. Additionally, all technical questions to be used during such examinations must be reviewed with the examinee before being posed to him or her for response.

c. No relevant question may be asked during the polygraph examination that has not been reviewed with the examinee before the examination.

d. Any modification or change to the standard question topics of Appendix A, must be approved by the Secretary before implementation. The requirement for prior approval does not apply when it is necessary to modify the phrasing of an approved question topic to clarify a response given by the examinee, provided that the substances of the question topic remains unchanged.

4. Examinee Fitness.

a. In all cases, the examiner shall decline to conduct an examination or discontinue testing when he or she doubts that the examinee is physically

State Department Regulations

or mentally fit to be tested. In these instances, the examination shall be discontinued or postponed until appropriate medical, psychological, or technical authorities have declared the individual fit for testing.

b. Persons who are not in sound physical or mental condition will not be subjected to a polygraph examination. Should the examiner or examinee have any doubt as to the physical or mental fitness of the examinee, the matter shall be referred to medical authorities. An examiner shall not attempt to make a psychological or physical diagnosis of an examinee.

c. Polygraph examinations shall not be conducted if in the opinion of the polygraph examiner, any of the following conditions inhibit the person's ability to respond. The provisions of paragraph A.4.a. of this Chapter shall be followed if any of the following are apparent:

- (1) The examinee is mentally or physically fatigued.
- (2) The examinee is unduly emotionally upset, intoxicated, or rendered unfit to undergo an examination because of excessive use of sedatives, stimulants, or tranquilizers.
- (3) The examinee is known to be addicted to narcotics.
- (4) The examinee is known to have a mental disorder.
- (5) The examinee is experiencing physical discomfort of significant magnitude or appears to possess physical disabilities or defects that in themselves might cause an abnormal response.

5. Under no circumstances shall polygraph examiners allow themselves to be identified as other than investigative personnel or take any measures that might create a clinical appearance. The polygraph instrument shall not be utilized as a psychological prop in conducting interrogations.

6. A certified polygraph supervisory official shall review the record of polygraph examination in conjunction with other pertinent investigative information to determine whether it is appropriate to request the examinee to undergo a second polygraph examination. Such a request may be made when considered appropriate, regardless of whether the person examined has made significant admissions in connection with the investigation and regardless of whether the results of the examination indicate unusual physiological responses.

7. Determinations with respect to further investigation of cases wherein a polygraph examination has been undertaken shall not be made solely by the polygraph examiner.

B. RECORDS ADMINISTRATION

1. Storage and Retention

State Department Regulations

a. Polygraph examination technical reports may be filed with other materials relating to the investigation in which the examination was authorized and shall be:

(1) Retained in accordance with records retention procedures established by the Archivist of the United States.

(2) Removed before granting persons outside the examining agency access to the related materials.

b. Polygraph examination results may be filed with other materials relating to the investigation in which the examination was authorized. Additionally the following apply:

(1) All nonrecord copies of polygraph examination results shall be destroyed within 3 months from the date of completion of the investigation in which the polygraph examination was authorized.

(2) Record copies shall be retained in accordance with records retention procedure established by the Archivist of the United States.

2. Dissemination

a. Except as required by law or otherwise authorized by these regulations, polygraph examination technical reports shall not be disseminated outside the Department. In accordance with the Privacy Act (5 USC 552(a)), these reports will not be communicated, without the examinee's consent, to any person, except as otherwise provided in these regulations. Because of the extremely sensitive privacy interests implicated by the creation of these reports, the reports will be exempt from disclosure under the Freedom of Information Act pursuant to exemptions 6 and 7 and others as appropriate.

b. Results of polygraph examinations may be made available to the following:

(1) Within the Department, officials responsible for personnel security, counterintelligence and law enforcement.

(2) Appropriate law enforcement officials outside the Department when the examination has been conducted in connection with the investigation of a criminal offense, or reveals criminal activity on the part of the individual examined.

3. The examinee or his or her legal counsel, upon request, subject to the provisions in 5 FAM 900 for safeguarding of classified information to the extent applicable.

4. The National Archives and Records Service, GSA upon retirement of the file.

State Department Regulations

CHAPTER III DEFINITIONS

1. Counterintelligence. Information gathered and activities conducted to protect against espionage and other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations, or persons, or international terrorist activities.

2. Polygraph Examination. Includes questioning and other processing of an examinee before the actual use of the polygraph instrument; the use of a polygraph instrument with respect to such examinee; and any questioning or other processing involving the examinee after the use of the polygraph. Specifically, examinations consist of three phases:

a. Pretest. The pretest phase includes:

(1) The examiner being introduced and obtaining assurance that the person to be examined has consented to take the examination.

(2) The examinee being informed of the nature and characteristics of the polygraph instrument and examination.

(3) The examinee being informed of his or her privilege against self-incrimination in accordance with the Fifth Amendment to the Constitution;

(4) The examinee being informed of his or her right to obtain and consult with legal counsel.

(5) The examiner reviewing with the examinee all questions to be asked during the test.

b. In-test. The actual administering of the examination and analysis of the charts.

c. Post-test. Interrogation of the examinee if the charts are analyzed as deceptive or inconclusive.

3. Polygraph Examination Results. A synopsis of the polygraph examination that normally includes a brief identification and background information, the relevant questions asked, the subject's answers, the examiner's opinions concerning the indication of truthfulness or deception, and any admissions made by the examinee during the examination.

4. Polygraph Examination Technical Report. The complete detailed technical report prepared by the polygraph examiner including pretest preparations, the examiner's notes, examination charts, and other technical details of the polygraph examination.

5. Polygraph Instrument. A diagnostic instrument capable of measuring and recording, as a minimum, respiration, electrodermal, blood volume, and heart rate responses to verbal and/or visual stimuli.

State Department Regulations

6. Relevant Question. A polygraph question pertaining directly to the matter under investigation for which the examinee is being tested.

7. Technical Questions. Refers to any of the following:

a. Control Question. A question used during polygraph examinations which, although not relevant to the matter under investigation, is designed to be used as a baseline against which responses relevant to the investigation may be evaluated.

b. Irrelevant or Neutral Question. A polygraph question about which the examinee normally would tell the truth. It does not pertain to the matter under investigation and should have no apparent emotional impact to the examinee.

c. Symptomatic Question. A polygraph question designed to indicate the possible influence of an outside issue that could be of concern to the examinee.

8. Unfavorable Administrative Action. Includes "Adverse Action" as defined in 3 FAM 1841.2(a) for Civil Service; "Disciplinary Action," as defined in 3 FAM 761.2(e) for Foreign Service; and denial, revocation or reduction of security clearance, but does not include actions taken pursuant to paragraphs A.6., A.7., B.2.a., and C of Chapter I.

APPENDIX A COUNTERINTELLIGENCE SCOPE

When the scope of a polygraph examination authorized under this Regulation is limited to counterintelligence areas, questions posed in the course of such examinations shall be limited to those necessary to determine:

WHETHER THE EXAMINEE HAS;

1. Ever engaged in espionage or sabotage against the United States.

2. Knowledge of anyone who is engaged in espionage or sabotage against the United States.

3. Ever been approached to give or sell any classified materials to unauthorized persons.

4. Ever given or sold any classified materials to unauthorized persons.

5. Knowledge of anyone who has given or sold classified materials to unauthorized persons.

6. Any unauthorized contact with representatives of a foreign government.

* * * * *

LAW NOTES - CASE DECISIONS ON ADMISSIBILITY

By

Norman Ansley

The following abstracts were written from cases appearing in the regional West's reporters, and the Supreme Court, Federal, and Federal Supplement reporters through April 15th. The New York case was contributed by APA member Nat Laurendi. These abstracts do not describe the whole case. They are limited to the role of polygraph evidence considered or proffered.

ARKANSAS

Golston v. State, 762 S.W.2d 398 (Ark.App. 1988)

Defendant was convicted of rape and he appealed.

Appellant said the trial court erred in refusing to admit testimony on the results of a polygraph test, but the record showed that the stipulation agreement was undated, and there was conflicting testimony as to whether it was signed before or after the examination. The defendant wanted the jury to decide the issue as to the date on which the stipulation was signed. In Arkansas, only stipulated test results are admissible.

The Court of Appeals of Arkansas, Division II, said the question was one for the trial court to decide, not the jury.

No error. Affirmed.

CALIFORNIA

People v. Harris, 255 Cal.Rptr. 352, 767 P.2d 619 (Cal. 1989)

Defendant was convicted of first degree murder, robbery, and kidnapping for robbery with personal use of a firearm, and he appealed.

The trial court denied the defense motion seeking to admit results of a polygraph examination administered by the Los Angeles County Sheriff's Department. The trial court ruled that presentation of that evidence would necessitate undue consumption of time and create a substantial danger of confusing the issue or misleading the jury. The appeal rested on section 28(d) and the Evidence Code sections 350 and 352.

The Supreme Court of California en banc agreed with the Witherspoon opinion, that on a proper showing defendant must from time to time, be permitted to demonstrate that advancement in scientific technique has enhanced its reliability and acceptance in the scientific community, and to establish that the advances warrant admissibility of previously excluded evidence. Defendant here made no such preliminary showing, as he only

Law Notes - Case Decisions on Admissibility

offered to call the examiner to establish the manner in which the test was conducted. Therefore, the trial court did not err in refusing to admit the evidence, nor did it deny the defendant due process by excluding relevant evidence.

Affirmed in part, reversed in part insofar as it imposes the sentence of death, remanded for a new trial on the issue of penalty.

INDIANA

Patterson v. State, 532 N.E.2d 604 (Ind. 1988)

Defendant was convicted of second degree murder. The state supreme court reversed and remanded. On remand she was again convicted of second degree murder, and she appealed.

The Supreme Court of Indiana held that polygraph results, which the trial court refused to admit, are inadmissible absent a waiver or stipulation by both parties, and it must be written and signed by both parties to be enforceable. Helton v. State (Ind. 1985) 479 N.E.2d 538. Although there was discussion of admissibility for or against the defendant when she took the polygraph test offered by the Indiana State Police, there was no written stipulation. No error said the court. Conviction affirmed.

KENTUCKY

Barnett v. Commonwealth, 763 S.W.2d 119 (Ky. 1988)

Defendant was convicted of intentional murder, and he appealed.

Defendant complained that the trial court improperly refused to allow evidence that he voluntarily submitted to a polygraph test. The Supreme Court of Kentucky cited Penn v. Commonwealth, 417 S.W.2d 258 (Ky. 1967) as saying such testimony is inadmissible.

Reversed and remanded for other reasons.

MISSOURI

Welty v. State Board of Chiropractic Examiners, 759 S.W.2d 295 (Mo.App. 1988)

The Chiropractor's Board revoked the license of appellant pursuant to recommendation of an administrative hearing commission, and the chiropractor petitioned for judicial review. The circuit court affirmed the Board's finding and he appealed. He was accused of forcing a nurse, who was his employee and also a patient, to engage in sexual intercourse with him in his office.

Law Notes - Case Decisions on Admissibility

Appellant contended that the admission into evidence of the result of a polygraph examination administered to him so fatally tainted the proceedings of the commission's hearing as to render them invalid. The Missouri Court of Appeals noted that the results of polygraph tests are not admissible in criminal proceedings under Missouri law. State v. Pollock, 735 S.W.2d 179 (Mo.App. 1987). The court said that although the polygraph results use here was questionable, and they viewed it with "grave displeasure," it did not invalidate the decision of the commission, as other evidence remained to support the decision. Also, the review of the Board's decision by the circuit court is limited to a determination of whether the decision was in excess of the agency jurisdiction, supported by competent evidence or a decision that is arbitrary and capricious. The contention that the polygraph results tainted the proceedings, said the court, was not supported by the record.

Affirmed.

NEW YORK

People v. Battle, New York Supreme Court, Brooklyn (April 1989). Reported in the New York Law Journal, 18 April 1989.

The defendant was charged with rape and robbery. The defense stated that Battle had passed two polygraph examinations administered by experts selected by the Legal Aid Society. The prosecution's case rested entirely on the eyewitness testimony of the victim. The defense proposed that their client be tested by an expert chosen by the District Attorney's Office, but the prosecution declined, arguing that polygraph results are inadmissible in New York. The defense moved for admissibility of their polygraph results as evidence.

Acting Justice Lewis L. Douglass of the Supreme Court, Brooklyn [a trial court] considered the defense motion. He noted that the prosecution's assumption of inadmissibility is based primarily on People v. Leone, 25 NY2d 511, 255 N.E.2d 696 (N.Y.App. 1969). Douglass said no appellate court during the 20-year period since Leone had reviewed the underlying assumption in Leone to determine whether the unreliability of the polygraph which was found to exist in 1969 is applicable today, after 20 years of scientific progress. Said Douglass, "The only rule that can be stated with certainty is that it is not error to refuse to admit the results of a polygraph, but the decision to admit is open, and thus, like all questions of whether to admit evidence lies within the sound discretion of the trial judge." The judge also cited a precedent, a similar case, People v. Daniels, 102 Misc.2d 540. The judge said he was particularly concerned, in this case, about the matter resting on a single eyewitness.

Justice Douglass decided that he would admit polygraph evidence providing: The defendant submit to a polygraph test administered by an expert selected by the District Attorney's office; and in the event that either party challenges the qualifications of any expert who may be called, the court will schedule a hearing as outlined in People v. Daniels (supra), to determine whether the expert is qualified.

Law Notes - Case Decisions on Admissibility

OREGON

State v. Luttrell, 764 P.2d 554 (Ore.App. 1988)

Defendant was convicted of sodomy and sexual abuse of a six-month-old child, and he appealed.

Defendant claimed that the trial court erred in admitting polygraph evidence which should have been prohibited in accordance with State v. Lyon, 304 Ore. 221, 744 P.2d 231 (1987), a case decided after the defendant was convicted. At trial the polygraph examiner testified about the results of a test, not favorable to the defendant, but in accordance with a stipulation. The evidence was received without objection pursuant to the stipulation. Unlike the defendant in Lyon, Luttrell failed to object, so the question was not preserved for appeal, and could not be considered by the appellate court. Lyon, noted the court of appeals, is a rule of evidence forbidding all admissibility of polygraph results, but it is not a rule of criminal procedure, and is thus not retrospective in effect. The conviction was affirmed.

TENNESSEE

State v. Irick, 762 S.W.2d 121 (Tenn. 1988), cert. denied 109 S.Ct. 1357 (1989).

Defendant was convicted of first degree murder during perpetration of a felony and two counts of aggravated rape.

Defendant was not allowed to introduce as evidence the results of a polygraph test of the victim's stepfather (or expert testimony regarding the reliability of polygraph examinations) which he claimed would show deception to a relevant question about doing anything physical to cause the death of the child. Defendant argued that the case law in Tennessee does not prohibit the introduction of polygraph evidence relating to a witness.

The Supreme Court of Tennessee said the cases discussing the inadmissibility of polygraph test results make no distinction in this regard, and said the argument was without merit. The death sentence was affirmed.

WEST VIRGINIA

State v. Moss, 376 S.E.2d 569 (W.Va. 1988)

Defendant was convicted of first degree murder and he appealed.

The deceased woman's husband became a suspect in triple murders soon after they were committed. He confessed and was indicted by the grand jury. While he was in jail awaiting trial, the judge who subsequently tried the

Law Notes - Case Decisions on Admissibility

appellant ruled that the husband's alleged confession was admissible as voluntarily given. However, the indictment against the husband was dismissed after he passed one of two polygraph tests administered by the police. The police officer who administered the polygraph test was a witness at appellant's trial, and the prosecutor elicited a statement that after administering the second polygraph test to the husband he believed the husband was "being truthful" and that the prosecution "got the wrong man." Over continuing objection the prosecutor elicited testimony from the attorney who represented the husband to the effect that, pursuant to an agreement between the prosecuting attorney's office and the husband, the husband voluntarily submitted to a polygraph examination and was thereafter released from jail and the indictment against him was dismissed. The appellant, who also confessed to the triple murders, claimed the trial court erred in allowing the polygraph testimony, despite the judge's warning.

The Supreme Court of Appeals of West Virginia held that the introduction of the husband's polygraph test results in this instance was so prejudicial that the trial court's instruction not to consider such evidence was insufficient to cure error. It had the effect of prejudicially vouching for the husband's innocence.

Reversed and remanded for a new trial.

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HISTORICAL NOTE

FEEL THE PULSE: DEFOE'S 1730 PROPOSAL

In 1730 Daniel Defoe wrote an essay in which he suggested a practical means for identifying a criminal. He suggested taking the pulse. The essay was entitled "An Effectual Scheme for the Immediate Preventing of Street Robberies and Suppressing All Other Disorders of the Night."

Guilt carries fear always about with it; there is a tremor in the blood of a thief, that, if attended to, would effectually discover him; and if charged as a suspicious fellow, on that suspicion only I would always feel his pulse, and I would recommend it to practice. The innocent man which knows himself clear and has no surprise upon him; when they cry "stop thief" he does not start; or strive to get out of the way; much less does he tremble and shake, change countenance or look pale, and less still does he run for it and endeavour to escape.

It is true some are so harden'd in crime that they will boldly hold their faces to it, carry it off with an air of contempt, and outface even a pursuer; but take hold of his wrist and feel his pulse, there you shall find his guilt; confess he is the man, in spite of a bold countenance or a false tongue: This they cannot conceal; 'tis in vain to counterfeit there; a conscious heart will discover itself by faltering pulse; the greatest stock of brass in the face cannot hide it, or the most firm resolution of a harden'd offender conceal and cover it. The experiment perhaps has not been try'd, and some may think it is not a fair way, even with a thief, because 'tis making the man an evidence against himself: As for that, I shall not enter into the enquiry farther than this: if it is agreeable to Justice to apprehend a man upon suspicion, if the particulars are probably and well grounded; it cannot then be unlawful by any stratagem that is not injurious in itself, to seek out collateral grounds of suspicion, and see how one thing concurs with another.

It may be true, that this discovery by the pulsation of the blood cannot be brought to a certainty, and therefore it is not to be brought into evidence; but I insist if it be duly and skillfully observed, it may be brought to be allowed for a just addition to other circumstances, especially if concurring with other just grounds of suspicion.

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ABSTRACTS

Eyewitness Testimony

D. Stephen Lindsay and Marcia K. Johnson (1989). The reversed eyewitness suggestibility effect. Bulletin of the Psychonomic Society, 27 (2), 111-113.

The standard temporal order of events used in studies of eyewitness suggestibility was reversed: Misled subjects were given verbal suggestions about a visual scene before witnessing it. As in the standard procedure, the subjects were later tested on memory of the visual scene. A suggestibility effect was obtained with this reversed procedure, even though the verbal information could not "update" the target memory because no memory of the visual scene existed when the misleading suggestions were given.

For reprints write to Stephen Lindsay at the Department of Psychology, Bronfman Science Center, Williams College, Williamstown, MA 01267 or to Marcia K. Johnson at the Department of Psychology, Green Hall, Princeton University, Princeton, N.J. 08544.

Legal Admissibility

Donald F. O'Connor, Jr. (1989). The Polygraph: Scientific evidence at Trial. Naval Law Review, 37, 97-122.

For sixty-four years, courts have excluded polygraph evidence from use at trial; statutes and regulations supported this exclusion. Recent decisions, however, have treated polygraph evidence as any other scientific evidence requiring the opportunity for the proponent to lay a foundation. This article analyzes a proponent's right to lay a foundation to support admissibility; determining admissibility under Military Rule of Evidence 702; and determining inadmissibility under Military Rule of Evidence 403. Mr. O'Connor then applies his analysis to the future handling of United States v. Gipson. He concludes that judges must keep their minds and courts open to future polygraph developments affecting reliability, and for review courts to fulfill their check-and-balance role against denial of constitutional rights. Although published in the prestigious Naval Law Review, the arguments are useful to anyone involved in federal trial, or in states that have adopted the federal rules of evidence.

For reprints write to Mr. O'Connor at the law firm of Finkelstein, Thompson & Lewis in Washington, D.C.

Employment Interviews

Willi H. Wiesner and Steven F. Cronshaw (1988). A meta-analytic investigation of the impact of interview format and degree of structure on the validity of the employment interview. Journal of Occupational Psychology, 61, 275-290.

Abstracts

A meta-analysis of the employment interview was carried out to investigate the impact of interview format, individual vs. board interviews, and interview structure, unstructured vs. structured, on the validity of interviews. A thorough review of the unpublished and published literature worldwide yielded 150 usable validity coefficients for the meta-analysis. Contrary to the predominantly pessimistic views of previous researchers, the interview was found to be a generally good selection instrument. These findings suggest that the "received doctrine" of interview invalidity is false. However, interview structure moderated predictive validity coefficients to a considerable extent. In fact, structured interviews produced mean validity coefficients twice as high as unstructured interviews. Although considerable variance in structured interviews remained unaccounted for after adjustment for statistical artifacts, all of the variation in observed validity coefficients for unstructured interviews was accounted for. It was concluded that a number of social psychological processes examined in previous interview research would have little effect in moderating the validity coefficients of the unstructured interview. The results also suggest that higher validity coefficients are associated with more reliable interviews and the use of formal job-analytic information in developing interview questions. Implications for research and practice in personnel psychology are explored.

Requests for reprints should be addressed to Willi H. Wiesner, Department of Management, Concordia University, Montreal, Quebec H4B 1R6, Canada.

Eyewitness Accuracy

Vicki L. Smith, Phoebe C. Ellsworth, and Saul M. Kassin (1989). Eyewitness accuracy and confidence: Within- versus between-subjects correlations. Journal of Applied Psychology, 74 (2), 356-359.

Previous researchers using between-subjects comparisons have found eyewitness confidence and accuracy to be only negligibly correlated. In this study, we examined the predictive power of confidence in within-subject terms. Ninety-six subjects answered, and made confidence ratings for a series of questions about a crime they witnessed. The average between-subjects and within-subject accuracy confidence correlations were comparably low: $r = .14(p < .001)$ and $r = .17(p < .001)$, respectively. Confidence is neither a useful predictor of the accuracy of a particular witness nor of the accuracy of particular statements made by the same witness. Another possible predictor of accuracy, response latency, correlated only negligibly with accuracy ($r = -.09$ within subjects), but more strongly with latency, confidence ($r = -.27$ within subjects). This pattern was obtained for both between-subjects and within-subject comparisons. The theoretical and practical implications of these results are discussed.

For reprints write to Vicki L. Smith, Department of Psychology, Northwestern University, Evanston, Illinois 60208.

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