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Introduction

Donnie W. Dutton

This edition of *Polygraph* is dedicated exclusively to the topic of post-conviction sex offender testing. Readers will be delighted, sometimes challenged, sometimes surprised, when reading the various invited papers in this collection contributed by writers who have worked in the field. The application of polygraphy to sex offender containment has emerged only in the last 30 years or so. Because of the undisputed success of polygraphy in that domain, an increasing proportion of all polygraph examinations conducted in the United States is done as part of a sexual offender containment program. The growth of that application has provided the polygraph profession with yet another opportunity to serve the communities in which we live.

Polygraphy has a long and proud history in helping protect the citizens in this country, and recent years, around the world. The discipline's humble beginnings can be traced to the trial-and-error efforts of a few individuals in their quest for a reliable method for verifying the statements of criminal suspects. It has since grown to much wider applications, firmly founded on demonstrations of effectiveness in such areas as national security, law enforcement, the judiciary, industry, and for the average citizen.

Sexual offender testing is a highly specialized practice that demands practitioners establish and abide by standards commensurate with that responsibility they have undertaken. Standards development is an arduous and complicated task, frequently encumbered with interwoven or conflicting interests harbored by the affected parties, and the undertaking of this self-policing process is evidence of the maturity and enlightened self interest of the polygraph profession. The final portion of these introductory remarks is set aside for a review of the product of that process: the standards of the American Polygraph Association for post-conviction sex offender testing (PCSOT).

First, it is instructive to begin with some definitions. Post-conviction sex offender testing takes place in the context of the treatment and monitoring of convicted sex offenders who have been released into the community, sometimes after incarceration, and sometimes as part of alternative sentencing. Polygraph examiners are part of a team of three professionals who manage the offender. The other two members of the triad are the treatment provider, and the parole or probation officer. Each member has unique responsibilities, but they work toward the common goal of reducing the threat that the sexual criminal will re-offend.

Periodic polygraph testing serves to uncover behaviors that are recognized antecedents to the commission of sexual crimes so that they can be preempted, or to break the denial of offenders to past crimes so that treatment can proceed. There are three types of examinations associated with sexual offender testing: sexual history, maintenance/monitoring, and instant offense/specific issue. In the sexual history examination the examiner is attempting to uncover additional information concerning the examinee's sexual history, as well verifying information that the examinee has already supplied to the other members of the containment team. In a maintenance/monitoring examination the principal responsibilities of the examiner are to ensure that the examinee has not re-offended. In the maintenance/monitoring examination, the examiner may conduct a test to ensure that the examinee is also in compliance with other

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requirements of his or her probation or parole, or to determine whether the offender is satisfying the conditions set by the treatment provider. The third type of examination is the instant offense/specific issue examination. This type of examination is often done when an examinee denies the offense for which he was convicted. Polygraphers are engaged to confirm that the examinee actually committed the offense, and if so, to force the examinee to confront his deception so that treatment can begin. It is commonly agreed among experts who treat sexual offenders that, for any type of meaningful treatment to begin, the offenders must first be willing to admit what they have done. Polygraph testing has been a very effective means to that end, increasing the amount of information offenders divulge.

As one can see, the responsibilities of the examiner are two-fold. The first is to determine truth or deception to specific relevant questions. Second, the examiner must perform thorough interviews to obtain information regarding all behaviors that would constitute a violation of probation, treatment, or the law. Moreover, the examiner is obligated to garner as much information as possible about precursors that signal the potential of re-offending.

Because convicted sex offenders differ from other offender populations in some important ways, specialized polygraph techniques and training programs have been developed so that polygraph practitioners are well equipped to work with this group. The current success of polygraphy in sex offender management is built on a foundation laid by a small number of dedicated polygraph practitioners, who had the vision and commitment to bring the rest of the profession forward into this new service to society. Among these pioneers and educators are contributors to this special edition. Listed below are the standards of the APA, for which they are largely responsible.

The Standards

Standard 1. A minimum of 40 hours of specialized instruction, beyond the basic polygraph examiner training course requirements, shall be requisite of those who practice sexual offender testing.

Standard 2. A final written examination will be given in which the student must pass in order to get a diploma.

Standard 3. The written examinations shall be controlled and protected. The instructors will be required to know the topic areas in which to provide instruction, but they will not be permitted to know the course examination questions.

Standard 4. All polygraph examinations of sexual offenders shall be recorded in their entirety. Though video recording is the preferred medium, audio recording is sufficient to meet this standard.

Standard 5. At a minimum, testing facilities will:

- a. Afford privacy and freedom from interruptions.
- b. Be free from visual distractions and noise problems.
- c. Have comfortable temperature and adequate ventilation.
- d. Have an area sufficient for testing (generally ranging from 8x8 to 10x10).
- e. Support recording equipment (audio/video).

- f. Have comfortable seating for two (examinee and examiner) and a surface adequate to support the polygraph equipment.

Standard 6. The minimum pretest interview specifications are:

- a. Examinees must be advised of the purpose of the examination.
- b. Examinees must be advised that the examination is voluntary.
- c. Examinees must be advised that the examination can be terminated upon request.
- d. The examination must be conducted in a professional manner, and the examinee treated with respect and dignity.
- e. The pretest interview must be conducted in a non-accusatory manner.
- f. The examination must be conducted in compliance with governing local, state and federal regulations and laws, as well as APA standards.
- g. Examiner must properly prepare for the pretest interview. Preparation should include, at a minimum, a thorough review of the case facts and the information known about the examinee, and the goal of the examination.
- h. The examinee must agree upon the relevant test issues in advance of testing.
- i. Examiners must not display any type of bias, preconceptions or prejudgment of any examinee's innocence or guilt.
- j. Examiners must convey to examinees that test results will be based solely on the polygraph charts, and that a thorough analysis will not be conducted until all data have been collected .
- k. Examiners must provide examinees with a sufficient explanation of the polygraph, including the physiological activity to be recorded.
- l. Examiners must provide examinees with a complete review of the testing procedures.
- m. Examiners must allow sufficient time for a thorough discussion of the test issues, and for the examinee to fully explain his or her position.
- n. Examiners must review all test questions with examinees prior to testing.
- o. Examiners must verify that examinees understand each question.
- p. Examiners must inform examinees of the need to cooperate during the examination.
- q. Examiners must satisfy the following administrative requirements:
 - 1. Securing the examinee's signed consent prior to testing.
 - 2. Verifying the identity of the examinee.

3. Obtaining information from examinees about existing medical and physical conditions in order to assess fitness for testing.

Standard 7. The minimum in-test specifications are:

- a. Collection of test data must include a permanent recording of the examinee's respiratory, electrodermal, and cardiovascular activity.
- b. Physiological data will be continuously collected during each chart.
- c. All physiological data collected will be preserved as a part of the examination file as long as is required by regulation or law, but for a minimum of one year.
- d. Each single issue examination shall employ a technique and format that has been validated through research. Utility based examinations may be used to identify issues for single issue testing.
- e. Reasonable deviations from formats validated by research will be permitted, to the extent that an independent examiner/reviewer would concur that the research and field formats were not significantly dissimilar. Any deviations shall be fully explained and justified by the examiner in writing where this test is subjected to an independent quality control.
- f. Test question pacing shall allow reasonable time for physiological recovery following response or distortion.
- g. Examiners shall record a sufficient number of charts, appropriate for the testing technique. Examiners shall ensure that the physiological data collected are suitable for evaluation, with a minimum of two presentations of each relevant questions on two or more charts.

Standard 8. If an examination is being conducted as a utility examination and the examinee appears deceptive to a relevant question, prior to rendering a final decision of deception indicated (DI), a single-issue examination must be conducted on the specific test issue, i.e., ZCT or MGQT.

Standard 9. All polygraph files will be maintained for a minimum period of one year. Every file must include at a minimum the following information: name, date, location of examination, copy of consent forms and pretest work sheet, copy of test questions, copy of charts or disk which contains charts, an examiner score sheet, and the examiner's decision.

Standard 10. All examination documentation shall list the amount of time that it took to conduct that examination. At a minimum, a sexual history examination shall take no fewer than 90 minutes. Maintenance/monitoring examination and instant offense examinations shall take no fewer than 90 minutes to conduct.

APA Board of Directors adopted the above standards in 1997 with the understanding that these standards are viewed as a living document. As science continues to uncover ways in which the validity and reliability of the polygraph technique can be further increased, these standards must also change.

Finally, as instrumental detection of deception enters its second century, many methods for detecting deception have come and gone. Each has had its day, and each has faded away while polygraphy has remained. Its preeminence in the field speaks for itself. The polygraph is a potent tool for justice, when conducted by the competent and the ethical. The standards of the American Polygraph Association were conceived with that in mind. It is my sincere hope that as you read the articles in this special edition of *Polygraph*, you will come to appreciate the complexity of the task, and the importance of the mission. You will also see that the APA is striving to educate and police its own, for the betterment of the profession, and for the benefit of those whom the profession serves.

The Value of the Post-Conviction Polygraph: The Importance of Sanctions¹

Sydney Cooley-Towell, Diane Pasini-Hill & Diane Patrick

Abstract

The use of the post-conviction polygraph is becoming a valuable tool in the management and treatment of convicted sex offenders. An accurate polygraph examination and an effective supervision strategy are contingent on whether sanctions are imposed against the offender when new information is revealed, or when the offender scores deceptive on the examination. Close collaboration and information sharing between the probation or parole officer, treatment provider and polygraph examiner is vital to ensure that sanctions are invoked. Consequences should be consistent, immediate and flexible. The type of action taken relates to the severity of the violation. Data are presented that examine the types and frequency of sanctions given to sex offenders as the result of new information learned about offenses that occurred before and after the index crime, for violations of supervision conditions, and for deceptive exams with no information admitted.

Key words: post-conviction sex offender testing, sanctions, survey, utility

Polygraph examiners in many areas of the country are testing more convicted sex offenders than ever. The same perpetrator is likely to be tested several times over a period of years. This is a burgeoning area of specialization: the sex offender post-conviction polygraph examination.

The use of post-conviction polygraphs to support the treatment and management of convicted sex offenders is relatively new to many criminal justice jurisdictions, but some probation and parole agencies, notably in Washington and Oregon, have been consistently using this tool since the early

1980s. Combined with criminal justice supervision and sex offense-specific treatment, post-conviction polygraph exams are making a substantial contribution to managing the significant risk that sex offenders present to the public.

During the last six years, the Division of Criminal Justice in Colorado² has conducted two national studies on the ways in which adult sex offenders are managed in probation and parole offices across the country³. The second of the two studies focuses almost exclusively on the role of post-conviction polygraph examinations in the

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² The Division of Criminal Justice is part of the Colorado Department of Public Safety.

³ The research included two national telephone surveys of a representative sample of over 700 probation and parole supervisors (interviewed in 1994 and 1998), an extensive literature review on victim trauma and sex offender treatment, a systematic review of scores of agency documents, field research interviewing hundreds of professionals working in 27 jurisdictions in eleven states, and detailed data collection on sexual assault incidents from 232 convicted sex offender case files from five jurisdictions in four states.

management and treatment of adult sex offenders. Funded by the National Institute of Justice, the research arm of the U.S. Department of Justice, these studies confirm the complexity of issues involved in the management and supervision of adult sex offenders serving sentences in community settings.

In a growing number of jurisdictions nationwide, criminal justice professionals are working hard to incorporate innovative methods for managing adult sex offenders in community settings. Thanks to the cooperation of hundreds of criminal justice practitioners nationwide, we were able to identify a collection of best policies and practices used by local jurisdictions to manage this difficult population. These methods, labeled a containment approach, encompass five key elements: 1) a philosophy guided by community and victim safety, 2) collaboration across agencies and disciplines, 3) containment-focused risk management teams, 4) consistent policies and procedures, and 5) methods for ensuring program quality control (English, Pullen and Jones, 1996).

Many polygraph examiners are not accustomed to thinking of themselves as part of a case management team (#3 key elements), and may feel uncomfortable or uncertain about this role (Wygant, 1999). According to Matte (1996: 622),

The success of the [polygraph] examination program depends to a large extent on the enforcement of the conditions of parole or probation. The offender must know with certainty that violation of any of the conditions of his or her parole will result in some form of discipline with the possibility of parole/probation revocation. The enforcement of parole/probation conditions provides the offender with the "fear of detection" deterrent which is useful in the treatment process, and the underlying basis of the [polygraph] examination.

Teamwork and close collaboration are key, particularly since the sanctions necessary to maintain the offender's fear of being found deceptive come from the other team members. Consequences or sanctions for deceptive polygraphs, then, are vital to the validity of the polygraph technique, and teamwork is essential to assure that these consequences are invoked (Matte 1996; Abrams 1991). In this article, we describe the value of the treatment/polygraph process for sex offender risk management. We emphasize the need for consequences following an offender's deceptive polygraph results and the need for official actions or sanctions when assaultive or potentially pre-assaultive information is disclosed.

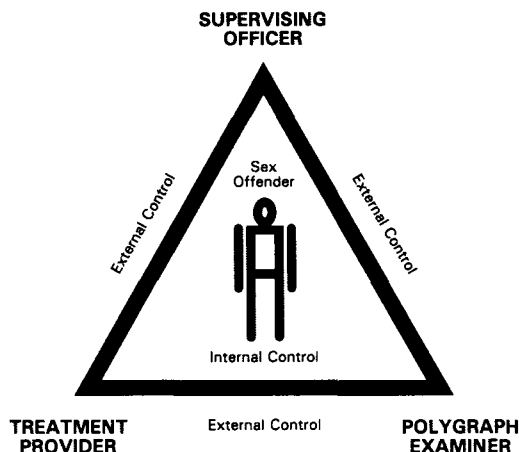
Overview of the Containment Triangle

Contrary to public perception, most convicted sex offenders will be sentenced to probation, and most of those who receive prison sentences will return to the community on parole. Probation and parole officers nationwide are grappling with growing caseloads. The containment strategy, an innovative and promising approach to managing sex offenders in the community, relies on regular and effective communication between the members of the containment team: the criminal justice case manager (probation or parole officer), the sex offender treatment provider and the post-conviction polygraph examiner.⁴ These individuals cooperate with each other to collect and use important risk management information. The team works together to provide external controls on a sex offender's behavior, to assist the offender in becoming accountable for his or her behavior and to teach the offender to develop internal controls over his or her conduct. Conceptually, these three individuals make up a triangle within which the offender is contained during probation or parole supervision. (English, Pullen, and Jones, 1996).

All three components of the team are essential to the provision of strong external controls. Monitoring, supervision and

⁴ The case management team may be expanded to include others, such as child protection workers, or the victim's therapist, as appropriate.

Figure 1. The Containment Triangle



treatment of the offender must occur by team members in conjunction with each other. For example, the criminal justice system provides external controls via specialized sex offender conditions of probation or parole. These conditions are likely to include sex offense-specific treatment and regular polygraph examinations. Within a group treatment setting (Knapp, 1996) the sex offender therapist promotes internal controls and personal accountability by confronting the offender's denial, minimization and secrecy, and by expecting active and honest participation in treatment, including the development of a viable relapse prevention plan (Laws, 1989).

Getting the information needed to manage an individual's risk is not easy. Sex offenders generally are not motivated to enter treatment or to reveal the depth of their deviant offending patterns (Salter, 1988). These behaviors, generally well entrenched over a lifetime, are often illegal, exciting and self-gratifying for the offender. Furthermore, the offender risks public humiliation and feelings of shame for disclosure of deviant behaviors (Carnes, 1983). Secrecy, manipulation, and denial have been integral to his or her ability to abuse others. Often an offender's life revolves around gaining access to potential victims. Deviant fantasies and behaviors are also central aspects of the offender's life, and he or she is not likely to admit to or readily change them. Nonetheless,

to effectively manage risk, the professionals need this information.

Risk management activities are intended to reduce or eliminate secrecy, privacy, opportunity, and access to potential or past victims by convicted sex offenders. Team members must commit to provide the preparation and follow-through necessary to maintain the integrity of the risk-management plan. The polygraph examiner is a critical component to the supervision team, exposing deceptions and verifying the information the offender provides to the treatment provider and the probation/parole officer. This process, in turn, can help reduce the offender's denial and increase his or her level of accountability and responsibility.

Because consistent and complete communication is the foundation of sex offender risk management, waivers of confidentiality are required across members of the containment team. If gaps in communication exist in the supervision of the offender, he or she will often use them to manipulate his or her situation and possibly harm more victims. Therefore, collaboration among team members must include the identification, documentation and continual refinement of policies and practices regarding the supervision/treatment/polygraph process. Policies specifying the type and severity of sanctions to be invoked will strengthen our ability to effectively manage this dangerous population.

The Post-Conviction Polygraph Examination

The post-conviction polygraph examination applies polygraph technology and practice to the risk-management issues that are raised when a convicted sex offender is in treatment and under community supervision. The types of post-conviction polygraph exams administered to convicted sex offenders generally fall into three categories: specific issue exams, disclosure (or sex history) exams, and periodic maintenance exams (Abrams, 1991).

A specific issue exam is used to address concerns regarding a specific incident or victim. For example, it is used with convicted offenders who are still in denial of the crime of conviction. By concentrating only on the "specific issue" of the conviction crime, the containment team compels the offender to admit his or her behavior regarding the index crime. The offender cannot start effective treatment without this admission. Specific issue exams may be designed and used for other purposes as well, such as a specific allegation of victim contact or other high-risk behavior.

The disclosure or sexual history exam is usually administered within three to twelve months after the offender has started treatment. It tests for the accuracy and completeness of the sexual history information the offender has prepared in treatment. Important for both treatment and case management reasons, this exam can pressure offenders into revealing previously unreported paraphilias that then can be addressed in treatment and supervision. The sexual history exam, in conjunction with treatment, may also clue the treatment provider and case manager into additional victims or interests otherwise unknown to the criminal justice system. Additional information revealed in the sexual

history treatment and polygraph process also aids the supervising officer in tailoring probation conditions to the offender's risk areas, thereby minimizing the potential for future victimizations. For these reasons, it is recommended that sexual history preparation and examination occur in the early stages of treatment.

The periodic maintenance exam confirms or denies the offender's self-report about his or her current behavior while under supervision. Most frequently given every six months, it may be given more often if the offender is considered to be at especially high risk to re-offend. This type of exam monitors compliance with supervision and treatment conditions and may indicate whether the perpetrator is re-offending, engaging in high-risk behavior, or breaking rules of supervision. These exams are particularly useful to inquire about modus operandi behaviors, such as stalking, using public transportation, visiting public swimming pools, or other activities used by the offender in the past to access victims.

Adding these polygraph examinations to the treatment and supervision process helps the supervising officer determine if the probation or parole conditions are being followed or if the offender is re-offending or preparing to re-offend. Likewise, these exams can pinpoint treatment and supervision issues, and help break through an offender's denial of the crime or crimes.

Value of the Post-Conviction Polygraph: Information

If knowledge is power, then the value of the post-conviction polygraph lies in the staggering amount of information it can generate for sex offender risk management. This was confirmed through our 1998 national telephone survey⁵ of a sample of 679 probation

⁵ The 1998 national telephone survey replicated the sample used from a similar survey conducted by the researchers in 1994. The national sample was stratified by geography and population density. Actual interviews were conducted with 679 probation and parole supervisors, yielding a response rate of over 90%. Respondents were divided into two groups: those whose agencies never or rarely used the post-conviction polygraph for treatment or management purposes (n=533), and those whose agencies sometimes, often, or always use the post-conviction polygraph with convicted adult sex offenders (n=146). Some of the offices had consolidated with others since 1994, so the numbers of interviews were appropriately weighted. For those using the polygraph, weighted n=544, and for those never or rarely using the polygraph, weighted n=155. The full report may be requested from the Colorado Division of Criminal Justice, 700 Kipling St., Suite 3000, Denver, CO 80215.

and parole supervisors.⁶ The most commonly reported benefits by those respondents using the polygraph most often were "enhanced disclosure and knowledge of the offender's activities/behavior" (76.1%) and "leads to better management and supervision of the offender" (66.5%). One respondent stated that the knowledge regarding "cycles and stimuli" leads to a more comprehensive picture of the offender that would be difficult, if not impossible, to obtain otherwise. Other respondents reported that the polygraph has the ability to "keep the offender honest" and "forces a level of honesty" beyond what other tools are able to provide. The value of the post-conviction polygraph was corroborated during field interviews in five states, where criminal justice supervisors and treatment providers using the polygraph told us that they could no longer imagine supervising or treating sex offenders without the information provided by the treatment/polygraph process.

To quantify its value, we conducted an in-depth review of 232 criminal justice/treatment files in five jurisdictions in four states.⁷ In one of the five jurisdictions, the polygraph was not used in sex offender management; in the other four jurisdictions, use of the post-conviction polygraph was at various stages of implementation.⁸ During the extensive data collection, we identified new

information that resulted from a combination of treatment, sexual history information and polygraph exams, information that would have otherwise been unknown to criminal justice professionals.⁹ We collected victim information such as age, gender, and relationship to the offender. To quantify the amount of information gained, we recorded the offender's disclosures regarding the number of individuals victimized by the offender over his or her lifetime, the types of offenses committed against these victims and the frequency of the crimes.

We collected the following pieces of information:

1. Hands-on crimes such as vaginal, oral, or anal penetration, and fondling/frottage.
2. Hands-off crimes such as voyeurism, exhibitionism, and stalking.
3. Paraphilias such as bestiality, theft of undergarments, excessive masturbation, group sex, coprophilia and urolagnia.
4. High-risk behavior such as the offender's use of drugs or alcohol during the assault and substance use while under supervision, specific victim preparation or grooming behaviors, engaging in prostitution, excessive fantasizing (especially regarding

⁶ For a more detailed discussion of this survey, see English, Jones, Patrick, Pasini-Hill & Gonzalez, this issue.

⁷ We collected data on approximately 60 offenders from each site: Oregon n=57, Texas n=62, Wisconsin n=61, California n=52. The criteria for sample selection was having participated in sex offender treatment for at least 3 months and having completed a sexual history disclosure form. All but 30 offenders among the sites that use the polygraph had received at least one polygraph examination. The remaining 30 had not yet received a polygraph but were "under the threat of the polygraph". This means that they were aware that post-conviction polygraphs were a condition of their supervision and treatment program and that they also would be required to take these examinations in the future. The sample consisted of probationers and parolees who had both misdemeanor and felony convictions. The offender files were selected randomly from each supervising officer's caseload, except for California where the population was used.

⁸ California did not use the post-conviction polygraph as an integrated part of criminal justice management at the time of our collection. Therefore, while valuable data were collected that quantified the sex offender treatment process, this site was not included in the analysis presented in this document.

⁹ The information on the data collection form was organized into two major sections. The first section consisted of all information regarding the offender's current crime and sexual offending history that was known to the criminal justice officials apart from the combined sexual history/ polygraph process. The data sources for this section were the pre-sentence investigation reports, the police reports of the instant offense and case notes made by the supervising officer pertaining to information learned independent of the polygraph process. This is called "pre-polygraph/sexual history information". The second half of the data collection instrument consisted of all information that was learned about the offender as a result of treatment and preparation for the polygraph, and admissions revealed during the exam. Data sources included the sexual history document, homework assignments, polygraph reports, and case management notes pertaining to the sexual history/polygraph process.

victims), use of pornography, engaging in juvenile firesetting, and torture of animals.

We recorded the dates polygraph exams were administered, the point during the exam when the offender made admissions (pretest, test, or posttest), the results of the exam (deception indicated, no deception indicated or inconclusive), and any official response to polygraph examination information (consequences or sanctions). We also noted when no additional information was disclosed.

The case file analysis provided a wealth of information about the value of the treatment/polygraph process. The differences in the amount of information obtained "before treatment/polygraph process" and "after treatment/polygraph process" were analyzed in terms of numbers of victims, numbers of victim types abused (commonly referred to as offender crossover behavior,¹⁰) types of paraphilias and high-risk behaviors. Table 1 depicts crossover information learned through this analysis.

Table 1
Crossover and Additional Behaviors Before and After
The Treatment/Polygraph Process

PROFILE OF BEHAVIORS of Offenders in Texas, Oregon, Wisconsin with Polygraph, and Wisconsin Under the Threat of Polygraph but None Given (N=180)	BEFORE (a)	AFTER
Have male victims	20%	36%
Have female victims	90%	94%
Have both male and female victims	10%	29%
Have child victims	91%	95%
Have adult victims (b)	19%	44%
Have both child and adult victims	10%	33%
Commit hands on offense (c)	93%	98%
Commit more than one type of hands on offense	64%	82%
Commit hands off offenses (d)	22%	67%
Commit more than one type of hands off offense	3%	35%
Have high risk behaviors (e)	58%	93%
Commit more than one type of high risk behavior	27%	80%
Are incest perpetrators	38% (f)	58% (g)

a) Information defined as "before" comes from the offender file and includes victims that would be known to the criminal justice system without the polygraph process. "After" includes all information known in the file plus that obtained via the sexual history/polygraph process.

b) Includes individuals 18 years or older and elderly/at risk individuals

c) *Hands on* offenses include vaginal and anal penetration, fondling/frottage, and oral sex

d) *Hands off* offenses include exhibitionism, voyeurism, stalking.

e) *Risk behaviors* include urination with sexual act, bestiality, giving alcohol or drugs to victim, offender under the influence at the time of offense, abuse of alcohol and drugs during time periods when offenses occur, more than one unwilling participant, pornography, obscene internet or phone, masturbation to deviant fantasy, excessive masturbation, specific victim preparation, and other.

f) The "before" column includes only those individuals convicted of incest as the current offense.

g) Includes all offenders noted as an incest perpetrator anywhere in their history or polygraph information.

Crossover

As shown in Table 1, information known about the sex offenders in our sample before the treatment/polygraph process is incomplete to evaluate risk. Compared to

information known before the treatment/polygraph process, almost twice as many offenders admitted to having male victims and three times as many admitted to perpetrating against both sexes. Offenders in this sample have not only perpetrated against both

¹⁰ Crossover is the term is used to describe multiple paraphilic behaviors, i.e. the behaviors of a sex offender who victimizes both males and females, more than one developmental age group (for example, pre-school children and adults), who engages in both incest and out-of-family sexual assault, and/or who practices other forms of paraphilias.

genders, but against multiple age groups. The proportion of offenders who admit to abusing both child and adult victims increases three-fold after the treatment/polygraph process. The proportion of perpetrators who admitted to sexually abusing someone in their family at some point in their lives increased by one-third after the treatment/polygraph process. The proportion of offenders who admitted to engaging in more than one hands-off offense increased ten-fold (hands-off offenses are frequently part of the assault pattern).

The large increase in admissions to crimes such as voyeurism and exposing suggest that this type of deviant activity is widespread. We believe these findings underrepresent the extent of sexual abuse committed by this sample because a portion of the sample was "under the threat of the polygraph" and they were probably less likely to disclose deviant behavior.

These data indicate an alarmingly high rate of crossover behavior among the convicted sex offenders in our sample. Despite the fairly persistent public perception that sex offenders are interested in only one gender or age group, or offend only within or outside the family, many clinicians and criminal justice practitioners have known for over a decade that most sex offenders have many more paraphilias and victims than are generally disclosed early in treatment (Abel, et. al., 1987; Abel and Rouleau, 1990; Ahlmeyer et. al., in press; Freund, 1990; Becker and Coleman, 1988; Faller, 1990; Weinrott and Saylor, 1991). Without knowing the who or how of an offender's assault pattern, officials cannot make good decisions: A parole board may allow a rapist to live with small children; a judge may allow a male-oriented pedophile to live with a family that has teenage daughters. It is, therefore, imperative to public safety that containment members gain knowledge about offender's crossover behaviors. The data presented above reflect the significant value the treatment/polygraph process provides in attaining that knowledge.

Why Consequences Are So Critical

The need for consequences lies in the nature of polygraph technology and theory: Detecting and evaluating physiological responses requires the emotional arousal of an individual's autonomic nervous system. The polygraph process must induce a fear of detection of deception, that is, the fear of being caught in a lie. This fear must occur in both truthful and deceptive clients. Abrams (1991) observes that, if the offender has nothing to gain by telling the truth, and nothing to lose by lying or failing to disclose required information, he or she will become an increasingly difficult subject for a polygraph exam. Over time, the offender's fear of detection will decrease, diminishing the ability of the polygraph examiner to accurately measure and interpret the physiological responses of the client. Ultimately, the utility of the exam will be undermined.

Sanctions for lying or failing to disclose required information also have important implications for treatment when the denial regards the index crime. Matte (1996) asserts that a lack of consequences surrounding denial of something as important as the instant offense sends a strong message to other treatment group members they need not tell the truth. This could ultimately lead to deterioration of the group treatment process.

The consequence may depend on a number of factors: how long the person has been in treatment, if he or she has had opportunities to harm others, or if a particular victim is at risk. The type of consequence given usually depends on the nature of the information learned during the exam (or lack of information learned!). The sanction may be as minor as increased supervision or as severe as revocation, but it must be meaningful to the offender and it must occur quickly. In some jurisdictions, probation and parole officers are able to quickly jail the offender for a limited period of time, without first returning to court. In another location, probation officers have the discretion to expeditiously move the offender to an intensive supervision caseload. And, of

course, the more high-risk the behavior, the more critical the timeliness of the consequence. As one Colorado polygraph examiner noted after an offender revealed high-risk behaviors in a maintenance exam, "This guy will take a message from what happens to him in the next week. If nothing happens, he will escalate his cycle of abuse and probably target a specific victim" (David Amich, personal communication, 1998).

While the results of the polygraph alone are not usually sufficient to revoke an offender's probation or parole, offenders who are deceptive on polygraph exams shine a spotlight on themselves, inviting further investigation or sanctions the therapist or supervisor deems appropriate. Consequences need to be concrete and felt by the offender to be the most effective. It is important for the supervising officer and the treatment provider to agree on consequences that are specific and meaningful to the offender. One probation/parole officer stated it succinctly during an interview with us, "We're dealing with individuals here; they're not made from cookie cutters."

Although the polygraph examiner does not apply the sanctions, he or she may recommend consequences such as a suggestion for a retest, by the same examiner or another one. The examiner can also recommend revocation or removal of the offender from the home if potential victims reside there. The containment team is empowered to apply sanctions by the legal authority of the criminal justice system. It is a key responsibility of the supervising officer to collaborate with the containment team and apply the agreed-upon sanctions. Often the treatment provider can effectively apply sanctions such as requiring the offender to participate more frequently in group therapy sessions (and assume the subsequent cost). The criminal justice professional must support and empower the treatment provider's use of therapy-related sanctions.

Some consequences are relatively easy to invoke while the implementation of others may depend on the availability of resources. Effective and immediate consequences do not necessarily have to negatively impact supervisors and budgets. Employing consequences that are creative and flexible to the offender's circumstances can be just as beneficial to deterring dangerous behavior as expensive sanctions are. In one site we visited, offenders received sanctions requiring community service: They were washing police cars! Obviously such a sanction would be in response to a minor probation violation rather than a new sexual crime.

The sex offender treatment program at the Colorado Department of Corrections has developed a sanctions grid. The grid links sanctions to when the new information was disclosed. An offender who reveals information during group therapy, in his or her sex history log (a requirement of the treatment program), or even during the polygraph pretest, may receive lesser consequences than one who continues to deny until the posttest, or later.¹¹ As a result, an offender is encouraged to be truthful and fully disclose to the treatment provider and the examiner before the exam. The severity of the consequence, then, is linked to when the information is disclosed, and the type of information or violation revealed.

Meaningful and appropriate consequences must be applied for every deceptive polygraph result. Consequences must also occur when high risk or new assaultive behaviors are disclosed. If this does not occur, the validity of the polygraph test may be compromised (Matte, 1996) and treatment providers or criminal justice professionals could inadvertently weaken its utility in the risk management process. Policies specifying the type and severity of sanctions to be invoked will strengthen our ability to effectively manage this dangerous population.

¹¹ For a more detailed discussion of the sanctions grid, see "Integration of Polygraph Testing with Sex Offenders and the Colorado Department of Corrections", this issue.

Table 2
National Telephone Survey: Typical Consequences Reported by Probation and Parole Supervisors (n=146)

CONSEQUENCES	POLYGRAPH RESULTS OR INFORMATION LEARNED (% Indicating Response) *				
	Deception	Offenses Before Current Conviction	Offenses After Current Conviction	Violation of Supervision	Inconclusive
Summary of Respondents' Comments					
NONE	7.7%	44.5%	3.9%	1.3%	27.7%
INCREASE SUPERVISION, e.g., "tighten up," more surveillance, electronic monitoring, increase contacts, [offender] reports more often, ISP, more in home visits, and longer probation term, house arrest, and period of increased observation. Also, urinalysis, antabuse, drug testing.	46.5%	5.2%	9.0%	56.1%	25.8%
INVESTIGATION--own, District Attorney's, or law enforcement. Contact authority. Contact DA who decides on investigation.	9.0%	38.1%	52.9%	2.6%	7.7%
CHANGE OR ADDRESS IN TREATMENT, e.g., increase or longer treatment, talk about in treatment, more homework, start treatment over or suspend from group. Notify provider to re-evaluate.	37.4%	4.5%	5.2%	36.1%	14.2%
REVOCAION, TERMINATE TREATMENT OR PROGRAM OR UNSUCCESSFUL DISCHARGE.	25.8%	1.3%	34.2%	28.4%	2.6%
RETEST OR INCREASE TESTS. Do test on a specific issue.	16.1%	.06%	.06%	1.3%	36.1%
GO BACK TO COURT, including preliminary case hearing, administrative hearing, contempt of court, prosecute, new charges, and return to legal system.	15.5%	6.5%	25.8%	21.3%	.06%
JAIL OR ARREST, including 15 day temporary custody.	10.3%	.06%	17.4%	18.7%	1.9%
IMPOSE CURFEWS, home confinement for longer hours, impose as intermediate sanctions.	14.2%	.06%	.06%	17.4%	0%
CHANGE IN CONDITIONS OR PRIVILEGES, APPEARANCE BEFORE PAROLE BOARD OR RETURN TO PRISON. Also, loss of earned time, or change conditions, e.g., change in employment. Apply grid system.	3.9%	1.3%	8.4%	9.0%	0%
DISCUSS WITH OFFENDER AND OR OTHERS. Talk, question, interrogate, verbal admonishment or letter of warning to offender. Case conference, staffing or talk to provider.	9.0%	0%	.06%	7.1%	5.8%
VIOLATION REPORT.	1.9%	0%	5.2%	6.5%	.06%
REDUCE CONTACT WITH FAMILY, REMOVE FROM HOME OR LIVING SITUATION. Also, unable to move back with family.	1.3%	2.6%	0%	1.9%	.06%
REPORT TO HUMAN SERVICES, report to social services if child is the victim.	0%	2.6%	2.6%	0%	0%
AA, EDUCATION PROGRAM.	0%	0%	0%	6.5%	0%
MORE PUBLIC SERVICE HOURS, community service, fines.	0%	0%	.06%	4.5%	0%
NOTIFICATION OF NEIGHBORS, COMMUNITY, VICTIMS, including public notification.	1.3%	1.2%	0%	.06%	0%
LOOK FOR ANOTHER POLYGRAPH EXAMINER.	0%	0%	0%	0%	1.3%
PLETHYSMOGRAPH.	0%	.06%	0%	0%	0%
TOO NEW TO KNOW.	.06%	.06%	2.6%	.06%	4.5%

* Percentages do not equal 100% because respondents could give more than one answer.

The Truth About Consequences: Selected Findings from the Research

Telephone Survey

Our 1998 national telephone survey¹² investigated the types of consequences that are levied against offenders in criminal justice jurisdictions using post-conviction polygraphs. Table 2 describes the types and frequencies of the various consequences used by these probation and parole offices.

The data indicate a difference in the types of sanctions used, depending on the information revealed. The severity of a sanction increases with the level of the infraction. The most commonly reported response to a "violation of supervision", for instance, was an increase in supervision (56.1%), followed by addressing the issue in or changing of treatment (36.1%). The most common response to offenses occurring after the crime of conviction was to contact authorities/initiating an investigation (52.9%), followed by revocation, termination or unsuccessful discharge from supervision or

treatment (34.2%). Similarly, the most frequently reported consequence for a deceptive polygraph was an increase in supervision (46.5%). An increase in supervision can include intensive supervision probation, electronic monitoring, house arrest, more frequent reports to the supervising officer, a longer probation term, more home visits, urinalysis, Antabuse, and drug testing.

As mentioned above, the successful implementation of consequences requires that they be administered expeditiously. The telephone survey results revealed that nearly two thirds (61.9%) of the responding agencies who use the polygraph have the authority to arrest and temporarily jail offenders without first going to court.

Case File Data

Findings from the review and analysis of 232 case files¹³ also yielded valuable information on the extent to which consequences are being used in response to polygraph results. Table 3 describes the number of polygraphs by type of polygraph result that received at least one action or sanction¹⁴.

Table 3
Polygraphs from Three Sites Resulting in Actions or Sanctions

POLYGRAPH RESULT (N=125)	POLYGRAPHS RESULTING IN SANCTIONS OR ACTIONS	
	#	%
Deception	84	67.2%
No Deception Indicated	25	20.0%
Inconclusive/No Opinion	16	12.8%
Total	125	100.0%

¹² Please see footnote 4 for a more complete description of the telephone survey.

¹³ Please refer to footnote 5 for a description of the data collection.

¹⁴ These results reflect sanctions documented in the offender's case file. It is possible that some offenders faced treatment or criminal justice consequences that were not recorded in the files.

As expected, the majority of the sanctions were imposed on those cases that scored deceptive on the exam. We analyzed 125 polygraph examinations that resulted in documented sanctions. Deceptive polygraphs were those most likely to result in at least one sanction or action (67.2%). Polygraphs with no deception indicate (NDI), account for 20% of those that resulted in at least one action or sanction suggesting that, for these cases, concerning information was admitted in the pretest that was severe enough to warrant a response. Even though no deception was indicated on these exams, it is still appropriate for offenders with admissions of probation/parole violations, high-risk behavior or sexual offenses to receive consequences.

It is important to remember that an inconclusive result means that the examiner

does not have enough information to make a decision. An inconclusive polygraph finding is not an indication of guilt. Re-tests are recommended. The exception to this is when purposeful countermeasures are employed by the offender to cause an inconclusive reading. "An accurate test cannot be obtained unless the offender cooperates." (Abrams, 1989). If an individual tries to interfere with the polygraph intentionally, he or she should be confronted and the exam should be discontinued if the countermeasures do not stop. The record in the file should read "exam terminated because the client would not cooperate." Appropriate sanctions should result in these cases.

Table 4 describes the frequencies and conditions under which various sanctions are administered.

**Table 4
Sanction by Type of Polygraph Result**

SANCTIONS/ACTIONS TAKEN Number of Cases Receiving a Sanction or Action (N=75)	DECEPTION		NO DECEPTION INDICATED		INCONCLUSIVE		TOTAL ACROSS ROWS	TOTAL ACTIONS TAKEN
	*n	%	n	%	n	%	n	%
Antabuse	0	0	1	3.8	0	0	1	.6
Re-Test	17	13.8	2	7.7	6	22.2	25	14.1
Increased Supervision/Including Electronic Monitoring	5	4.0	2	7.6	4	14.8	11	6.2
Short Term Jail	13	10.6	7	26.9	3	11.1	23	13.0
Residential Adjustment	1	.8	1	3.8	2	7.4	4	2.3
Revoked to DOC/Court	1	.8	0	0	0	0	1	**1.1
Confrontation in Group	11	8.9	1	3.8	2	7.4	14	7.9
Addition to Relapse Plan	3	2.4	0	0	1	3.7	4	2.3
Modification of Management Plan	4	3.3	2	7.7	0	0	6	3.4
Expelled from Treatment	9	7.3	0	0	2	7.4	11	6.2
Behavior Restricted	1	.8	0	0	1	3.7	2	1.1
Other	58	47.2	10	38.5	6	22.2	74	41.8
Total	123	100%	26	100%	27	100%	176	100%

* Note that (n) does not refer to the number of deceptive polygraphs. For example, there were not 17 polygraphs with deceptive results indicating a re-test. Rather, there were 17 re-tests resulting from deceptive polygraphs. This is because a polygraph result could indicate more than one action. Data collectors could note up to three sanctions or actions for each polygraph result.

** So much information was revealed during the pre-test portion of the polygraph that the polygraph was not actually administered; therefore, there is no result. Person was revoked to DOC.

Analysis of the criminal justice files concurred with what we heard from the phone survey respondents: Professionals are using a variety of actions or sanctions to respond to the results of polygraph examinations. Actions or sanctions were imposed on approximately half (75) of the 147¹⁵ offenders who received polygraph exams for deceptive, nondeceptive, and inconclusive findings. A total of 176 sanctions or actions were taken with these offenders.

Most of the actions or sanctions imposed were the result of deceptive polygraphs. Re-tests accounted for the most commonly used sanction (13.8%) for this group. One in ten (10.6%) of the sanctions imposed were short-term jail sentences. In some instances (8.9%), actions or sanctions consisted of confrontations of the offender by members of his or her treatment group.

A small proportion of the number of sanctions imposed (14.7%) were the result of polygraphs where no deception was indicated (NDI). More than one in four (26.9%) of the NDI exams revealed information that warranted a short-term jail sentence. A small proportion (7.6%) of the NDI exams resulted in increased supervision. We suspect this response occurs more frequently than is recorded in the file since over half of our telephone survey respondents reported that increased supervision was a common response to information obtained in the polygraph process. A small proportion of NDI exams (7.7%) resulted in a re-test. In these cases, a containment member may have had knowledge or suspicions of questionable behavior, even though the polygraph exam did not yield the information. If so, a retest is an appropriate response.

Of the 27 sanctions (15.2% of all sanctions) resulting from inconclusive polygraphs, approximately one in five (22.2%) resulted in a re-test. Other types of sanctions or actions were also administered including increased supervision (14.8%), short-term jail sentences (11.1%) and residential adjustments (7.4%). The latter two sanctions suggest that

the offender posed a significant threat and the supervising officer responded accordingly.

The "other" category included a wide variety of sanctions. It consisted of community services hours, discussions with the criminal justice officer or therapist, writing a clarification statement explaining the polygraph results, or writing an addendum to the sexual history document that explains the new admissions.

Recommendations and Conclusions

Data describing crossover behavior indicate that we have much to learn from each offender about the scope of their sexual offending behavior. Valuable information on the frequency of sexual crimes, the extent to which offenders abuse both males and females, within and outside of their families, and against different age groups, increases the ability of professionals to effectively manage the risk of offenders in the community. Case management and treatment plans can be tailored directly to the needs and risks of the individual. This is the essence of the containment approach.

From interview data, we learned that maintaining and preserving the usefulness of polygraph information requires written policies and practices that support its use in the risk management of convicted sex offenders. Foremost among these policies are those that identify sanctions (positive and negative) to be invoked based on the results of the polygraph exam and when pertinent information is disclosed. Positive sanctions for nondeceptive polygraph results may be desirable, but the lack of these will not affect polygraph test findings. On the other hand, a lack of negative sanctions for the use of countermeasures or deceptive polygraphs will, over time, adversely affect the efficacy of the treatment/polygraph process.

Results from both the 1998 telephone survey and case file data collection indicate that sanctions are in place in many areas, but that few areas have completely implemented a

¹⁵ Three offenders were included in the sample that were reported to have had polygraph exams, but the reports were not found in the files.

thorough and complete sanctions policy covering all situations. Some sex offenders, no doubt, are escaping the consequences of their behaviors, or facing mild consequences (e.g. talking about it in group, with no other consequence) that likely provide insufficient incentives for full disclosure of deviant behavior. This can ultimately compromise public safety.

Given the analysis of the interview and case file data pertaining to sanctions, we make the following recommendations:

- Polygraph examiners, treatment providers and criminal justice personnel must work together to develop and refine a range of sanctions for sex offenders who disclose new information, have deceptive results, or practice deliberate countermeasures.
- Waivers of confidentiality must be obtained to promote the necessary flow of communication among containment team members. This prevents the offender from using communication gaps to his advantage and harming more victims.
- Treatment providers and supervising officers require discretion in applying sanctions.
- The application of sanctions must be well documented.
- Sanctions should be certain, prompt, consistent, and linked to the severity of the behavior detected or disclosed.

- Sanctions must be individualized to each offender's needs and risks, and significant enough to assure that the offender will not prefer the consequence to disclosing the necessary information.

- Written policies and procedures for post-conviction polygraph examinations and sanctions are key to assuring consistency. These policies then become integrated into instruction manuals to be used for frequent reference by staff.

- Quality control measures should be implemented for polygraph examiners, criminal justice and treatment professionals to ensure appropriate use of the post-conviction polygraph and the administration of sanctions.

- Further research should be conducted specifically evaluating the link between the implementation of sanctions and recidivism.

In sum, the highest priority of the containment team lies in protecting victims and potential victims from future harm. Marshall, et al (1990) states "Sexual assaults have devastating effects on innocent victims, so that any reduction in the rate of offending should be viewed as beneficial...The real reduction in suffering occurs when even a few of these men are prevented from reoffending." Use of the post-conviction polygraph exam, when used with properly administered sanctions, plays a major role in reducing this suffering.

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Polygraph Testing and Behavioral Change With Sex Offenders in an Outpatient Setting: An Exploratory Study

J. Stephen Harrison & Bonnie Kirkpatrick

Abstract

The aim of this study was to investigate the attitudes of sex offenders regarding the utilization of polygraph testing in their treatment. Twenty-eight offenders, currently in sex offender treatment, completed an attitude survey at Broad Ripple Counseling in Indianapolis, Indiana. Their anonymous responses were tabulated and a significant number of the offenders reported that the use of the polygraph testing affected both their progress in treatment and behavior while on probation. Furthermore, they indicated that polygraph testing helped clarify their personal boundaries and values. It appears that polygraph testing of sex offenders may be efficacious when used within a well-defined treatment program.

Key words: post-conviction sex offender testing, sex offender treatment, survey

Throughout the United States treatment providers are beginning to utilize the polygraph with their sex offender population. Research has established that the use of the polygraph provides positive effects in the treatment of sex offenders (Abrams, 1993; "Outcome Evaluation of the Jackson County Sex Offender Supervision and Treatment Program, 1997; Matte, 1996). Abrams (1993) believes that sex offender behaviors change as a result of polygraph. Furthermore, he stated, "The value of periodic testing of sexual abusers was seen as [a means to]:

- Reducing the prison population

- Reducing the costs of housing these people
- Assisting in their supervision, thereby, allowing probation officers more time to supervise their charges
- Apprehending those who have reoffended
- Protecting society
- Deterring abusers from reoffending
- Helping in the aversive treatment process in that it deters the offender from gratifying his sexual needs in an aberrant manner so that the conditioning process is strengthened" (Abrams, 1993, p. 12).

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Also, Abrams emphasized the importance of sexual history disclosure testing. He stated, "The value of this approach rests on the premises that sexual offenders deny many of the aberrant acts that they have committed and that therapists generally believe that they cannot successfully treat an abuser who is in denial." Abrams also reported that admissions occur in three phases.

"Upon learning that they are scheduled to take a polygraph examination, many offenders begin to inform their therapists of acts that they have committed in the past. This is followed by a large number of admissions during the pre-test interview. Finally, the individuals who are found to be deceptive make additional confessions at the end of the test." (Abrams, 1993, p. 69).

However, while research findings support the use of polygraph to change the behavior of sex offenders, there exists an important need for theoretical and empirical research of relationships between sex offender attitude toward polygraph examinations and behavior. Andrews and Wormith stated, "The nature of the association between attitudes and behavior has been an enduring issue in social science" (Andrews and Wormith, 1984, p. 3).

Attitudes predispose an individual toward specific actions and serve as the basis for many cognitive-behavioral approaches to sex offender therapy. This is in part because of a "tendency to strive for consistency among the three aspects of attitude—the belief (or cognitive) component, the feeling component, and the behavior tendency" (Morris, 1973, p. 556). The Colorado Department of Corrections made the following observation about sex offender behavior and attitude. "Even if his behavior is externally controlled, (i.e. through lockdown), he has total control over his thoughts and, depending on those thoughts, there are positive or negative consequences" ("SOTP Therapeutic Approach," 1997; p.1).

This study, therefore, performs an initial step in the investigation of the relationship between sex offender behavior and attitude toward polygraph.

Methodology

Data Collection Procedures

Twenty-eight male sexual offenders completed an anonymous survey that was created for this study to measure their attitudes toward polygraph testing as a treatment modality. At the Center the respondents were receiving treatment for sexual addiction, which included both full sexual disclosure polygraph and periodic polygraph examinations. During a regular weekly group meeting, participants were asked to fill out the attitude survey. The survey was administered during the group meeting in order to prevent possible discussion of the survey among the participants. Staff members monitored their discussions during the taking of the survey, and remained available to answer questions. Each participant placed his own completed survey into a container to better ensure anonymity, and staff members later collected them.

Subject Characteristics

Of the twenty-eight respondents, twenty-six had previously been convicted and two were non-adjudicated offenders. Twenty-six of the respondents were court-ordered to receive treatment at Broad Ripple Counseling Center in Indianapolis, Indiana. The average amount of time the respondents had received treatment at the Center was twenty-four months. The mean number of months the respondents had been incarcerated for their sexual offenses was 25.44 months, with an average 56.68 months of corresponding probation. The mean amount of time since the participants' most recent release from prison was 24.44 months. The most often reported conviction was child molestation (N=14).

The respondent age range was 19 to 63 years of age with an average age of 38.9 years. Five of the twenty-eight participants indicated that they were not married, and did not have a significant other in their lives. Nine of the twenty-seven respondents were childless, while eighteen reported having children. One individual failed to respond to this question. The average number of children per respondent was 1.78.

Survey Instrument

Eighteen questions allowed a range of responses between "strongly agree" to "strongly disagree," and each response was afforded a numerical score from 5 (strongly agree) to 1 (strongly disagree). Some of those survey queries are listed below.

The polygraph helped me to:

- Give information to the staff that I had previously kept to myself.
- Comply with my treatment rules.
- Follow my probation conditions.
- Recall the number of times I sexually offended.
- Admit the facts about the sexual offenses(s) for which I was convicted.
- Speak more freely in my treatment group.
- Become closer to my treatment group.
- Give information to the treatment group that I had previously kept to myself.
- Become closer to my spouse (or significant other).
- Become closer to my children.
- Avoid breaking treatment boundaries.
- Avoid contact with my victim.
- Stay away from committing new crimes.
- Not leaving the state
- Give information to my probation officer that I would have kept to myself.
- Choose this treatment center.

Two of the questions additionally asked the following:

- Before taking the polygraph, I thought I could "beat" it.
- I think I can "beat" the polygraph now.

Lastly, respondents were asked to check all the responses that applied from each of two separate lists. The first list asked the following:

- In what ways did you learn about polygraph
 - __Talking to peers

- __Internet
- __Books
- __Articles
- __Other polygraph examiners
- __Other

The second list asked participants to identify which, if any, of the following acting out behaviors decreased due to the use of polygraph:

- __Sexually touching a child
- __Drug/alcohol use
- __Making excuses for missing group meetings
- __Probation violations
- __Pornography
- __Adult bookstores
- __Affairs
- __Cruising pornographic Internet sites.
- __Adult toys
- __Masturbation
- __Self penetration
- __Voyeurism
- __Indecent exposure
- __Mooning/flashing
- __Soliciting/using prostitutes
- __Bestiality
- __Cross-dressing
- __Swinging
- __Bondage
- __Telephone sex
- __Homosexual activity
- __Fetishistic behavior
- __Grooming behaviors

Analysis Procedures

To answer the research question, a variety of statistical procedures were utilized including descriptive statistics, an internal reliability analysis, independent sample t-tests, chi-square analysis, and Spearman correlations.

An Alpha analysis was accomplished to assess internal reliability of items in the scale. Utilizing all eighteen of the "scaled" questions on the survey and nineteen cases, an Alpha reliability coefficient of .946 was obtained.

Descriptive statistics were used to determine central tendencies, measures of variability, and correlation coefficients. More specifically, means, frequencies, standard

deviations, and positive and negative correlation relationships were examined. The whole number 1 represented a perfect positive correlation, and -1 represented a perfect negative correlation. Moderate correlations ranged from .4 to .5, while strong correlations were greater than .5.

Independent sample t-tests were used to obtain probability statements about difference in the means of two groups. In addition, a series of independent measures including total survey score, previous felony convictions, and occurrences of previous sexual abuse were utilized.

Chi-square analysis summarized the difference between what occurred and what was expected to occur if no relationship existed between two variables. A confidence level of .05 was established as the level of significance for determining whether an occurrence happened by chance alone.

Spearman correlation explored relationships between variables, although it did not conclusively determine causality. These correlations contributed to determining how percentages of differences in outcome of one variable can be predicted from a correlation to another variable.

Results

The sex offenders' most often used method to learn about polygraph prior to undergoing the first test was by talking to peers. In fact, twenty-two of the twenty-eight respondents indicated that they disagreed that they could beat the polygraph prior to taking it. However, after their first polygraph, more of them, or twenty-five of twenty-eight, disagreed that they could beat it. A chi-square test determined that these differences were statistically significant at the .05 level. If no relationship existed between the two variables (attitude about "beating it" before the first exam and attitude about beating it after the first polygraph), the probability of obtaining as large of a difference as was observed would be about 2.9%. It is, therefore, assumed that the differences were not chance happenings.

Age and Attitude Relationship

Attitudes about the polygraph correlated with age. Using a Spearman correlation, it was determined that statistically significant and moderately strong positive relationships existed between the age of the offenders and their beliefs that polygraph helped them to regulate their behavior. Older age correlated with offender agreement in regards to the following questions:

1. Recalling the number of times they offended
2. Sharing information about themselves in other treatment groups
3. Sharing information with their probation officers
4. Avoiding contact with their victim
5. Admitting facts about their conviction for sexual offenses
6. Speaking more freely in their treatment group

Total Score and Question Means

With a range of total survey scores from 22 to 78, the average total score for the participants in this sample was 53.84 (SD=16.34). The three questions with the largest means nearest to strong agreement included the following:

1. The polygraph helped me give information to the treatment staff that I had previously kept to myself (mean=3.89).
2. The polygraph helped me comply with treatment rules (mean=3.71).
3. The polygraph helped me to follow my probation conditions (mean=3.58).

The questions with the smallest means nearest to strong disagreement included the following:

1. I think I can "beat" the polygraph now (mean =1.64).
2. Before I took my first polygraph, I thought I could "beat" the polygraph (mean=1.96).
3. The use of the polygraph helped me to choose Broad Ripple Counseling (mean=2.12).

Total Score and Previous Felony Conviction and Previous Sexual Abuse

Two independent sample t-tests were performed to evaluate possible differences in scores when a previous felony conviction existed and when previous sexual abuse was reported. Using 15 cases, the mean difference between persons convicted of other felonies and persons who had no other felony convictions was 7.12. The probability of obtaining mean differences this large was beyond the .05 cut off, so significant differences could not be concluded.

Using 19 cases, the second independent samples t-test indicated a mean difference of 4.32 between total scores of persons who were sexually abused and those who were not. Again, the significant differences could not be concluded because of the larger than .05 cutoff.

Acting Out Behaviors

A variety of acting out behaviors reportedly decreased as a result of polygraph. The following frequencies were reported:

- 57.1% reported decreased grooming behaviors
- 57.1% reported decreased masturbation
- 42.9% reported decreased probation violations
- 35.7% reported decreased frequenting of adult bookstores
- 35.7% reported reduced substance usage
- 28.6% reported decreased extra-marital affairs
- 27.3% reported decreased sexual touching of children.

Discussion

The cost to society by the actions of perpetrators of sex offense is massive. Incarceration costs are easy to assess. Prentky and Burgess (1990) estimated that trial incarceration and parole costs were in excess of \$65,000 per offender. In addition, the psychological toll on the victims and their families is incalculable.

We postulate that the regular use of polygraph in sex offender outpatient programs will allow offenders to be more efficiently treated. This paper confirms our belief that offenders' attitudes toward polygraph monitoring affects their behavior in a positive direction.

In this study, the respondents reported that they were able to recall the number of victims they offended as well as more facts about each offense in anticipation of polygraph testing. In addition, many of the respondents remembered prior offenses for which they had not been arrested or charged. This type of information is extremely important for clinicians. Other respondents reported that the use of polygraph helped them to share personal information about themselves more freely in treatment groups, with therapists, and with their probation officers. This allows for better treatment planning and legal supervision of the offender.

Most significantly, some survey respondents indicated that they avoided having contact with their victims and reduced their grooming behaviors with potential victims due to the polygraph. As a result, this behavior change helped them to avoid obtaining potential treatment and probation violations. In addition, the use of the polygraph seemed to be helpful in teaching sex offenders new attitudes about engaging in appropriate sexual behavior considering that the respondents reported a decrease in extra-relational affairs, frequenting adult bookstores, and compulsive masturbation.

Limitations

Limitations of this study include the use of self-report survey, small sample size, lack of control of outside influences, and length of time under study. While self-report has the advantage of allowing participants to observe themselves full time, it is plagued by a variety of distortions including social desirability bias. Although participants were not required to include their name on the survey, they may have been influenced to respond in a contrived, edited way to create a favorable impression if they believed that their responses could be traced back to themselves due to demographic information requested.

Also, the sample size inhibited the ability to generalize these results to larger populations. Observing a sample as small as this study provides does not assume that it is reasonably representative of the total population of sex offenders who are polygraphed as a part of treatment. If the sample is not representative, then generalizations cannot be assumed and reasoning processes collapse.

Additionally, because some offenders were also involved with other service agencies, the degree to which the offenders' behaviors were solely affected by the use of polygraph cannot be measured in this study. This lack of control of outside extemporaneous influences places in suspect any conclusions that may be drawn.

Lastly, time in which offenders were under study further limits the study. Because this research did not monitor long-term behavioral change, it cannot be assumed that noted changes would become permanent ones. Short-term behavior change may not translate into long-term prosocial activity and may only represent transient influences while in treatment.

Recommendations

A study of probation and parole departments by the National Institute of Justice revealed that only 11% of these professionals require sex offenders under their supervision to take a polygraph examination. (English, Colling-Chadwick, Pullen & Jones, 1996). It is recommended that more probation and parole officers and treatment providers begin to utilize polygraph testing for sex offenders considering that it has a positive effect on their willingness to be honest and comply with treatment and probation rules. These authors hope to witness a movement that supports the implementation of polygraph testing in order to improve the monitoring and clinical treatment of sex offenders.

Further research of sex offender attitudes toward polygraph and behavior is warranted in order to increase the effectiveness of polygraph testing to effect behavior change of sex offenders in outpatient settings.

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Integration of Polygraph Testing with Sexual Offenders in the Colorado Department of Corrections

Peggy Heil, Sean Ahlmeyer¹, Burl McCullar & Bonita McKee

Most sex offenders engage in deviant sexual behavior multiple times over the course of many years prior to coming to the attention of authorities and treatment providers. By the time the criminal justice system intervenes, the behaviors and thoughts associated with sex offending are usually well ingrained. Abel et al. (1987) reported an average of ten years between a perpetrator's first self reported sex offense and actual arrest for a sex offense. When guaranteed confidentiality, each offender admitted having, on average, 336 victims and committing 533 sex offenses. These crimes included hands-on and hands-off offenses. Research on incarcerated sex offenders who were polygraphed revealed that, on average, perpetrators had committed sex offenses for 16 years prior to being identified as a sex offender (Ahlmeyer et al., in press). Only 1% of these offenders' self reported victims were identified in their official records. When studying juvenile sex offenders, Elliot (1994) found only 1.1% of an offender's self reported rapes resulted in an arrest. Victim studies also support a low rate of identification of sex offenders. The National Women's Study (1992) determined that only 16% of rapes were reported to law enforcement and only 5% of reported rapes resulted in imprisonment of the perpetrator for one or more years. These findings indicate that less than one percent (.8%) of all rapes result in the imprisonment of an offender for one or more years.

Research indicates these offenders continue to present a high risk to reoffend. Given the low rates of reporting, arrest, and conviction, traditional recidivism studies probably seriously underestimate the rate of recidivism for this population. A meta-analysis of recent treatment studies found the

sexual recidivism rate ranged from .06 to .75 in non-treated offenders and .03 to .44 in treated offenders (Hall, 1995). Prentky et al., (1997) found sex offenders discharged from the Massachusetts Treatment Center continued to reoffend over a 25-year time period. When reviewing literature on long-term follow-up data, Hall (1995) found sex offenders remain at risk to reoffend for over 20 years.

To address the danger these offenders present to the public, the Colorado Department of Corrections (CDOC) developed a comprehensive sex offender treatment program for incarcerated sex offenders and a specialized supervision program for offenders in community corrections or on parole. In 1995, the CDOC was awarded Edward G. Byrne Memorial Block Grant Program funds to implement polygraph testing as a component of sex offender treatment and supervision. As a part of the grant proposal, the CDOC made a commitment to study the impact of polygraph evaluation with sex offenders. The findings clearly demonstrated the polygraph was an invaluable tool for eliciting disclosures of undetected sexual offense behaviors, assessing treatment motivation, and monitoring compliance with community supervision conditions. As a result, the CDOC received permanent general assembly funding from the legislature to continue polygraph testing sexual offenders. By the final year of the grant, research was initiated to assess the impact of sanctions for deceptive responses as a means to improve the effectiveness of testing this population. The following paper briefly discusses polygraph testing components, implementation procedures, and research in the CDOC.

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Polygraph Testing Component

Institutional Use

The polygraph is utilized to increase the efficacy of treatment delivered in the second phase of the Sex Offender Treatment and Monitoring Program (SOTMP). Polygraphy is used to verify the offender's self-reported history of sex offense behaviors. This information is then used to develop a more comprehensive treatment and relapse prevention plan, which identifies victim characteristics and offending precursors. Polygraph testing is also used to help the therapist determine whether the offender is progressing in treatment by monitoring his current high-risk behavioral lapses. Ideally, polygraph testing will deter the offender from engaging in or attempting to deceive his therapist about ongoing deviancy and help him develop patterns of honesty in treatment.

The treatment contract and polygraph testing informed consent address the following areas with the offender:

1. Participation in polygraph testing is a required component of treatment.
2. The polygrapher is a member of the treatment team. He will have access to all records and the therapist's clinical impressions about the offender.
3. The offender's criminal patterns identified through polygraphy will be shared with law enforcement in the form of a modus operandi.
4. The therapist is legally required to report to social services any child abuse committed by the offender within the past ten years.
5. Any new crimes or institutional infractions committed by the offender will be reported to authorities.
6. All information obtained during polygraph testing will be forwarded to the offender's supervising officer upon placement in the community.

The SOTMP administers a range of sanctions for deceptive tests. The deception is discussed in treatment and the offender modifies his relapse prevention plan to include any new information disclosed during this process. The offender is re-tested on the area of deception in 30 to 60 days. If the offender is a parole candidate, the parole board is briefed on recent polygraph test results.

Community Use

The polygraph is employed as a supervision tool utilized by community corrections and parole officers. Regularly administered monitoring tests determine if the offender has been engaging in high-risk behaviors or offending in the community. Disclosure polygraphs are also used to verify the offender's self-reported history of sex offense behaviors. This information is then used to develop community supervision conditions that restrict the offender from high-risk situations and potential victims. Offenders who are high risk due to denial or poor treatment participation are tested more frequently.

Participation in polygraph tests is a required condition for placement in community corrections or on parole. A deceptive test results in the offender being subjected to increased supervision conditions (e.g., surveillance or electronic monitoring), attendance in additional treatment sessions, repeat testing, and law enforcement notification. The offender is not returned to prison solely on the basis of a deceptive test. However, upon confirmation of a re-offense from collateral sources, institutional or criminal charges are filed and the offender is returned to prison. The offender can also be returned to prison if the offender refuses to take a polygraph test.

Implementation Procedures

Policy Development

1. Develop and document policies and procedures for polygraph testing prior to implementation of the program. All policies and procedures should be reviewed to determine if they are legal.

2. Determine what situations (child abuse, "duty to warn") require mandatory reporting. Programs also need to determine if they will report disclosure of past sex offenses and notify victims. Consultation with the district attorney's office can be helpful in making these decisions. See the options for processing information of past crimes at the end of this paper.

3. Review agency policies to determine if they conflict with polygraph testing offenders.

4. The Parole Board and judges will need to be educated on the polygraph process and intent. Most offenders have multiple victims and offenses. Offenders who disclose these victims and offenses should not be viewed as more dangerous than those who are unwilling to disclose additional victims. Public safety can be significantly increased when the offender's high-risk areas and methods of offending are revealed.

Quality Assurance

1. Require all polygraphers to receive adequate training on sex offender dynamics and comply with American Polygraph Association (APA) post-conviction sex offender testing requirements.

2. All polygraphers must be willing to maintain data for regular and blind quality assurance evaluations. The program must comply with all necessary quality assurance procedures to protect the evaluation from being subpoenaed.

3. Require polygraphers to videotape all sessions. The tapes can be used in treatment to confront an offender who is denying that he made a specific statement and to conduct quality assurance evaluations.

4. Educate therapists and officers on the strengths and limitations of polygraph testing. A knowledgeable staff will be less vulnerable to

rationalizations and excuses for deceptive results. Staff will be able to better assess treatment progress and compliance with community supervision conditions.

5. Supervisors need to be aware that the exposure to additional sex offense information may increase the level of secondary trauma in staff. Polygraph results frequently contradict the therapist's clinical experience with the offender. This may cause staff to question their own clinical skills, the value of treatment, or the validity of the polygraph.

Practices

1. Construct concrete definitions of behavior (e.g., sexual contact, physical force) that are consistent with the terminology being used in treatment. This will prevent offenders from rationalizing deception based on a misunderstanding of the definition.

2. Apply immediate and consistent sanctions for deceptive tests. This establishes the expectation that lying will not be tolerated and enhances the validity of the polygraph.

3. Develop specific questions to construct an accurate sexual history of the offender. Offenders may have committed sex offenses different from those reflected in official records. For example, the following questions are used in the CDOC to cover all sexual assault victim age groups according to Colorado law:

Since the age of 18, have you had physical sexual contact with anyone under the age of 15?

Before the age of 18, have you had sexual contact with anyone 4 years or more younger than you were?

Have you physically forced or threatened anyone 15 or older into having sexual contact with you?

Since typically only 3 to 4 questions are tested, standardized questions will make more efficient use of an already impacted process. Standardized questions also make better use of the limited time a program has to construct sexual histories on offenders.

Research Findings

In a sample of 35 inmates, Ahlmeyer, Heil, McKee, and English (in press) found on average official records identified 2 sexual assault victims and 7 offenses per offender. By the second polygraph test, each inmate self reported, on average, 184 victims and 528 offenses. Twenty-five parolees admitted only 7 victims and 23 offenses on average by the second polygraph. These reported frequencies are more likely an underestimation since the deception rate was 80% for inmates and 74% for parolees. None of the parolees had participated in the prison sex offender treatment program. The parolees may have disclosed fewer offenses because of the perception that additional restrictions might be placed on their current lifestyle. Compared to parolees, inmates had participated in more intense and advanced treatment. These findings will be published in the official journal for The Association for the Treatment of Sexual Abusers (ATSA), *Sexual Abuse: A Journal of Research and Treatment*.

The rate of crossover in sex offending behavior was also found to be considerably higher with the use of the polygraph. When polygraphed, 82% (67) of known child molesters identified in official records admitted to sexually assaulting adults; 50% (26) of known rapists admitted to sexually assaulting children; and 62% (54) of known non-relative sexual offenders admitted to sexually assaulting relatives. The rate of deception continued to remain high at about 80% (Ahlmeyer, English, & Simons, 1999).

Sanctioning Deception

The CDOC is currently sanctioning deception as a means of improving the efficacy of the polygraph. It is common knowledge among polygraphers that the reliability and validity of polygraphy is greatly increased when the offender expects a consequence for lying (Abrams, 1991; Matte, 1996).

Approximately 80% of CDOC sexual offenders tested without standardized sanctions continued to be deceptive on subsequent polygraphs. As a result, the CDOC developed the Colorado Department of Corrections Polygraph Sanctions Grid (CPSG) to improve the effectiveness of polygraph as a deterrent to reoffense and encourage admissions to deviant behavior. See "The Value of the Post-Conviction Polygraph: The Importance of Sanctions" paper in this issue for an in-depth analysis of sanctions being used across the nation.

The original idea for the grid design was presented by Walt Simon and John Murphy, community treatment providers, at a meeting to discuss these issues in March 1998. The SOTMP and Division of Adult Parole met numerous times to identify appropriate standardized sanctions for sexual offenders who were deceptive on polygraph exams. The basic concept of the grid is an offender would earn progressively severe sanctions based on the severity of the behavior and whether he admitted to engaging in the behavior. The CPSG provides a comprehensive summary of disclosures, rationalizations made to explain deception, and question results. This system encourages honesty and applies an early intervention before the deviant behavior can progress to a sexual assault. The CPSG is available at the end of this paper.

Pilot data was analyzed on 13 parolees and 14 inmates. For parolees tested three times, the rate of deception for disclosure and monitoring tests decreased from 61.5% to 38.5%. For inmates tested twice, the rate of deception decreased from 78.6% to 42.9%. Only 2 inmates had received a third polygraph. Parolees and inmates typically had received a combination of therapeutic (e.g., homework assignment on the area of deception) and increased monitoring (e.g., polygraph re-test) sanctions. The test was coded as deceptive if any of the questions were scored deceptive. These preliminary findings suggest the CPSG may be an effective tool for decreasing the rate of deception by deterring inappropriate behavior for sexual offenders.

Conclusions

Polygraphy is an invaluable intervention tool for enhancing the treatment and management of sexual offenders in diverse criminal justice settings. Research and policy development need to continue to maximize the

effectiveness of this tool. Public safety is dependent on breaking the secrecy sexual offenders need in order to prey on their victims. When combined with specialized treatment and supervision, polygraph testing can be a powerful tool to break this secrecy.

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COLORADO DEPT. OF CORRECTIONS POLYGRAPH SANCTIONS GRID FORM

Use a new form for every polygraph exam

DOC# _____ Name _____ Polygraph Exam Date _____ Number of Polygraph Exam(s) (Circle) _____
 Sex Offender Treatment Date Placed _____ 1 2 3 4 5 6 7 8 9 10
 Number of Treatment Sessions Per Week _____

ADMISSIONS DURING EXAM

ADMISSIONS DURING POSTTEST

NO ADMISSIONS

		Admissions Prior to Pretest 1 Admissions in sexual history and/or other addendums prior to the pretest	Admissions During Pretest 2 Admissions to the polygraphist during the pretest interview	Admissions to Non-deception/Posttest 3 Admissions during posttest with all responses non-deceptive or inconclusive	Admissions to Deception/Posttest 4 Admissions of related behavior during posttest with at least 1 deceptive response	No Admissions to Deception/Posttest 5 No admissions/explanations not related to the behavior during posttest
P A S T	Past Behavior: Offenses/High Risk A Behaviors that occurred before being placed under community supervision and/or treatment	Behavior(s) None	Behavior(s) None	Behavior(s) Low	Behavior(s) Moderate	Behavior(s) Moderate
	New High Risk Behaviors & Behavior Lapses B New off. cycle beh. that occur after placed comm. superv. and/or treatment	Behavior(s) Low	Behavior(s) Low	Behavior(s) Low	Behavior(s) Moderate	Behavior(s) High
P R E S E N T	New Major Violations C New beh. that violate the rules after being placed under comm. superv. and/or treatment	Behavior(s) Moderate	Behavior(s) Moderate	Behavior(s) High	Behavior(s) High	Behavior(s) Severe
	New Offenses (or refused exam) D Felony or misdem. offenses after being placed under comm. supervision and/or treatment	Behavior(s) Severe	Behavior(s) Severe	Behavior(s) Severe	Behavior(s) Severe	Behavior(s) Severe

****IF SANCTIONING AT A DIFFERENT LEVEL THAN INDICATED ON GRID. PLEASE FILL OUT THE SANCTIONS OVERRIDE SECTION**

SANCTIONS OVERRIDE: _____ Multiple similar violations and/or deceptions to high risk behaviors or offenses. (OVERRIDE TO NEXT HIGHEST SANCTIONS)
Please mark only one result _____ History of sadistic or lethal behavior/offenses. (OVERRIDE TO NEXT HIGHEST SANCTIONS)
_____ Sabotage (OVERRIDE TO NEXT HIGHEST SANCTIONS)
_____ No probable cause for re-mediation or arrest. (OVERRIDE TO NEXT LOWEST SANCTIONS)
_____ Other (OVERRIDE TO NEXT HIGHEST/LOWEST SANCTIONS) Explain: _____

EXAM QUESTIONS: Question 1: _____ Nondeceptive \ Deceptive \ Inconclusive \ Sabotage
Please circle only one result _____

Question 2: _____ Nondeceptive \ Deceptive \ Inconclusive \ Sabotage

Question 3: _____ Nondeceptive \ Deceptive \ Inconclusive \ Sabotage

Question 4: _____ Nondeceptive \ Deceptive \ Inconclusive \ Sabotage

Question 5: _____ Nondeceptive \ Deceptive \ Inconclusive \ Sabotage

**FOLLOW-UP
QUESTIONS:**

Question 1: _____

Question 2: _____

Question 3: _____

Question 4: _____

Question 5: _____

SANCTIONS UTILIZED: Please circle each of the sanction(s) employed "and" the sanctions that would have been employed, if available in the jurisdiction.

LOW

Yes	Unavail.	<i>Additional homework...</i>
Yes	Unavail.	No earned time...
Yes	Unavail.	Increased treatment contacts...
Yes	Unavail.	Curfew or geographical restrictions...
Yes	Unavail.	Additional collateral contacts...
Yes	Unavail.	Contact with the offender's support network to discuss exam...
Yes	Unavail.	<i>Increase frequency of U.A.'s...</i>
Yes	Unavail.	<i>Sexual history/TC addendum</i>
Yes	Unavail.	<i>\$3.00 co-pay for polygraph examination</i>
Yes	Unavail.	<i>One day loss of earned time</i>
Yes	Unavail.	Other: _____ (staff approved)

MODERATE

Yes	Unavail.	Increase parole office visits...
Yes	Unavail.	<i>Specific issue polygraph (30-60 days)...</i>
Yes	Unavail.	Parolee pays for specific issue exam within 90 days...
Yes	Unavail.	<i>Attend Sexaholics Anonymous/NA/AA groups...</i>
Yes	Unavail.	<i>TC community service...</i>
Yes	Unavail.	Additional parole directives...
Yes	Unavail.	Staffing with treatment team paid by offender...
Yes	Unavail.	<i>Offender regressed one treatment level</i>
Yes	Unavail.	No earned time...
Yes	Unavail.	Additional homework...
Yes	Unavail.	<i>Offender will not be recommended for community corrections or parole...</i>
Yes	Unavail.	<i>Rational Recovery Support Group</i>
Yes	Unavail.	<i>Initiate search of residence or cell...</i>
Yes	Unavail.	<i>Contact support network...</i>
Yes	Unavail.	<i>Attend L.O.P. group...</i>
Yes	Unavail.	<i>Probation (orange vest)...</i>
Yes	Unavail.	<i>Loss of program privileges...</i>
Yes	Unavail.	<i>Offender placed with TC support team...</i>
Yes	Unavail.	<i>Two days loss of earned time</i>
Yes	Unavail.	Re-mediation for community corrections inmate...
Yes	Unavail.	Regression for community corrections inmate...
Yes	Unavail.	Other: _____ (staff approved)

HIGH

- Yes Unavail. Increase supervision to ISP...
- Yes Unavail. Contact law enforcement for surveillance...
- Yes Unavail. Increase classification of supervision level...
- Yes Unavail. Summons to parole board if probable cause of parole violation...
- Yes Unavail. Polygraph retest frequency increased and paid by offender...
- Yes Unavail. Offender placed on treatment probation...
- Yes Unavail. *Offender placed on "on notice"...*
- Yes Unavail. *Offender regressed one treatment level...*
- Yes Unavail. Re-mediation for community corrections inmate...
- Yes Unavail. Regression for community corrections inmate...
- Yes Unavail. *Three days loss of earned time*
- Yes Unavail. Other: _____ (staff approved)

SEVERE

- Yes Unavail. *Termination from treatment – noncompliant...*
- Yes Unavail. *Loss of facility privileges*
- Yes Unavail. Arrest, if probable cause of parole violation...
- Yes Unavail. File complaint or notice of charges...#: _____
- Yes Unavail. Regression for community corrections inmate...
- Yes Unavail. Other: _____ (staff approved)

COMPLETE THE APPLICABLE PARTS:

Name of therapist/officer: _____

Name of polygraphist: _____

Date form completed: _____

The consequences for my performance on this polygraph examination have been reviewed with me to my satisfaction and I understand what is expected of me.

Signature _____

Date _____

OPTIONS FOR PROCESSING INFORMATION ON PAST CRIMES

NO IMMUNITY

- Specific information (i.e., date, place, name of victim) would not be collected on past crimes.

- Information on the range, type, and pattern of sex offenses would be collected.

- Information on the range and types of past crimes would be reported on an M.O. sheet which will be entered into CCIC and can be queried by law enforcement.

SENTENCING

LIMITATIONS

- Specific information on past crimes would be obtained and reported to the appropriate law enforcement agency.

- If district attorneys decide to prosecute they would utilize sentences which increase the length of supervision but still allow for the possibility of community supervision when the offender is complying with treatment and monitoring requirements.

- Sentence options could include:

Lifetime probation, Sex Offender's Act (one day to life), or deferred sentence.

- Information on past crimes would be reported in CCIC M.O. data base

LIMITED IMMUNITY

- Specific information on past crimes would be obtained and reported to the appropriate law enforcement agency.

- Offenders would sign a limited immunity agreement which would include provisions that they would not be prosecuted on the offense as long as they complied with recommended treatment and did not reoffend.

- Information on past crimes would be reported into the CCIC M.O. data base.

FULL IMMUNITY

- Specific information on past crimes would be obtained and reported to the appropriate law enforcement agency.

- Offenders would not be prosecuted for past crimes.

- Information on past crimes would be reported into the CCIC M.O. data base.

The State of Polygraph Testing on Sex Offenders Under Community Supervision in Texas

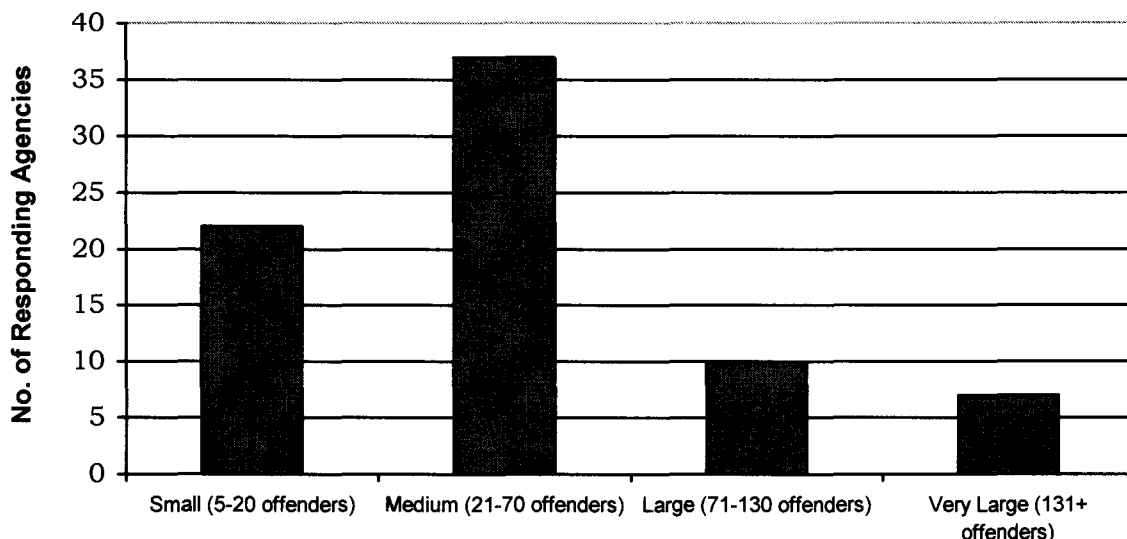
Brian McKay

Key words: parole, post-conviction sex offender testing, probation, survey

In April 1999, Hunt County (Texas) Community Supervision and Corrections Department (CSCD) surveyed Texas adult probation agencies to assess the current use of sex offender supervision tools and practices. In addition to describing practices currently used, the survey was also used to monitor trends in sex offender supervision by comparing the results to those of similar surveys in previous years. Responses received provided useful information about the prevalence of various techniques, including the polygraph.

Surveys were mailed to each of the 122 community supervision and corrections departments in Texas (it should be noted that adult probation and parole are separate in this state). This survey was sent only to CSCDs, local entities formerly known as adult probation departments. The 76 responding departments collectively supervised approximately 5,675 sex offenders during Fiscal Year 1998. Four agencies supervised 5 offenders, and the largest offender population supervised by one department was 924. Departments were placed into one of four categories according to the size of the sex offender population supervised, as reflected in Figure 1.

Figure 1. Size of Sex Offender Populations



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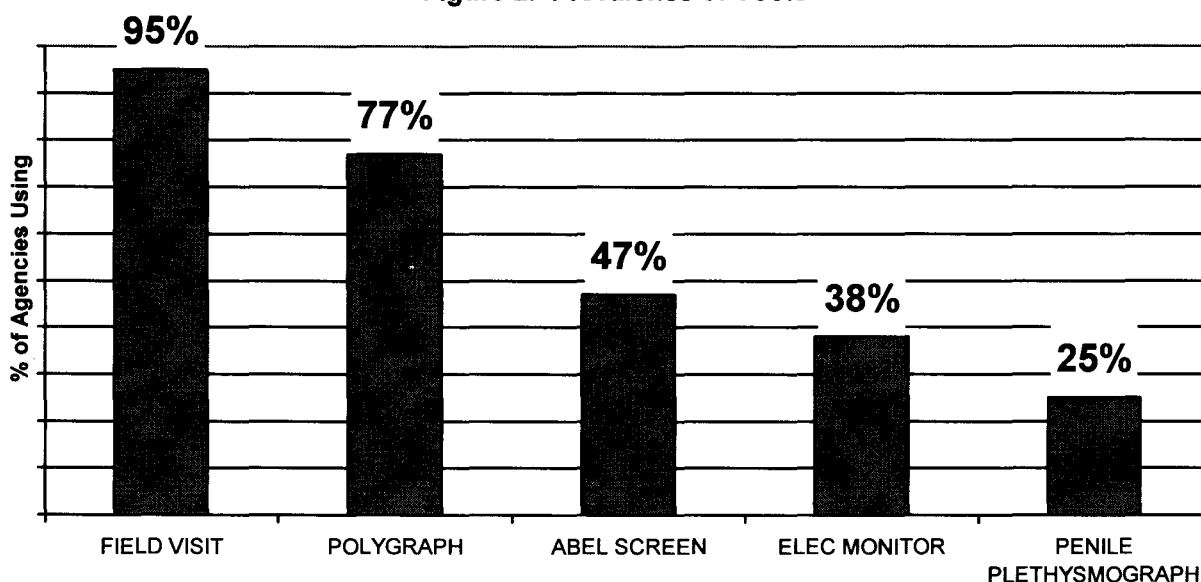
Prevalence of the Polygraph

The use of polygraph testing for sex offenders was found to be quite common among probation departments. More than three-quarters (77%) of the responding agencies reported using polygraph in the supervision/treatment of sex offenders. This is much higher than what is considered the national average of about 16%.¹ The figures also reflect a rapid growth in the use of polygraph testing during the past few years. Similar surveys in 1996 and 1997 found polygraph usage in 49% and 54% of

responding Texas agencies respectively (Hunt County CDCS, 1996; 1997).

The only tool more commonly used among reporting departments was the field visit, the practice of contacting offenders outside the probation department (e.g. at home, work or the counseling agency). Ninety-five percent of the agencies use field contacts as a means of supervising sex offenders. Only field visits and polygraphs were used by more than half of the agencies. The number of agencies using various tools and techniques is summarized in Figure 2.

Figure 2. Prevalence of Tools



Conventional wisdom would suggest that the agencies not utilizing polygraph testing would be supervising small numbers of sex offenders and/or are in the West Texas region, where the availability of polygraph examiners may be scarce. In fact, there was little difference in the use of polygraph between the different sizes or locations. Seventy-one percent of the very large

populations use polygraph testing, compared to 100% of large, 77% of medium, and 68% of small populations. Mapping the agencies that do not use polygraph showed that half of them are in the sparsely populated areas of West Texas. One quarter of the agencies not utilizing polygraph were found in East Texas, with others in the coastal and central regions.

¹ This figure was reported by Suzanne Pullen at the 1999 American Probation and Parole Association Training Institute (August 20, 1999, New York). As part of an NIJ study, she and other researchers have researched the use of polygraph in sex offender supervision across the nation.

Barriers to Use of Polygraphy

All agencies were asked to identify the most significant barrier to the use of polygraph testing in their respective jurisdiction. The most striking observation from the responses is that none of the departments indicated a belief that the polygraph is an ineffective tool. No other practice, including field visits, enjoyed such respect. Forty-four percent of the departments reported experiencing no significant barrier to the use of polygraph. Thirty-seven percent indicated that cost is the primary obstacle, and fewer still reported that judicial education (11%) and availability (8%) were limiting factors. Categorizing departments according to size and the reported barriers showed that departments supervising larger populations were more likely to identify judicial education (30% among large and very large populations) as the most significant barrier, whereas cost (42%) and availability (24%) were increasingly cited as barriers for agencies supervising small populations of sex offenders.

Isolating departments not currently using the polygraph revealed that the most common obstacle to its use was cost (44%). Availability was another common hindrance, reported by 37% of these agencies.

Other Observations

The responses of probation departments indicated a recent growth in the use of polygraph testing of sex offenders. Of those

employing the tool, 34% have done so for not more than one year. Again, it appeared that the agencies supervising large and very large numbers of sex offenders (when grouped together) were only a little less likely to be new to the use of polygraph when compared to those supervising medium and small populations of sex offenders. Twenty percent of large and very large populations were new to polygraph, whereas 30% and 29% of medium and small populations respectively had begun using polygraph within one year of the survey.

Departmental structure for supervision of sex offenders varies across supervision departments. Some departments have created specialized caseloads for sex offenders, staffed by officers specially trained in supervising the unique population. Others have no specialization, distributing sex offenders among regular general caseloads staffed by officers who may or may not have specialized training related to sex offenders. Sixty-six percent of responding agencies reported having specialized caseloads for the supervision of sexual offenders. Of those with specialized caseloads, 90% utilized polygraph testing. For those that do not specialize the supervision of sex offenders, less than 58% use clinical polygraphs. The relationship between the practice of specializing supervision and use of polygraphs was found to be significantly related ($\chi^2 = 10.62, p < .005$). This figure supports the statement that polygraph testing is a component of progressive sex offender supervision.

Table 1. Use of Specialized Caseloads and Polygraph

Use of Specialized Caseloads	Use of Polygraph		TOTAL
	Yes	No	
Yes	45	5	50
No	15	11	26
TOTAL	60	16	76

Discussion

This author sees four primary conclusions to draw from the survey responses. First, Texas can be considered "ahead of the curve" when it comes to the use of the polygraph in the post-conviction sex offender application. Polygraph testing of sex offenders on community supervision was found to be almost five times more prevalent in Texas than the United States as a whole. One plausible explanation for its proliferation may be the state's established guidelines for the administration of polygraph examinations on post-conviction sex offenders. Additionally, the Council for Sex Offender Treatment (CSOT), the state agency responsible for licensing sex offender treatment providers, has strongly advocated the use of polygraph testing in conjunction with sex offender treatment programs.

Second, polygraph testing appears to enjoy a tremendous amount of respect from community supervision and corrections departments throughout the state. No department identified a belief that the tool is ineffective as their primary barrier to the use

of polygraph. It would stand to reason that even those departments not currently using polygraph understand its utility.

A third conclusion is that cost of post-conviction sex offender polygraph testing has apparently been perceived as a formidable barrier for some departments. This observation is interesting in light of the prevailing view that it is important to have offenders bear the expense of their own polygraph examination, thus making them more invested in passing the examination and avoiding further expenses of re-taking an examination.

Finally, the strong correlation between the use of specialized caseloads and polygraph supports the view that polygraph testing has become an established tool for the supervision of sex offenders in progressive community supervision and corrections departments across Texas. It appears that for the foreseeable future the polygraph will remain a golden arrow in the quiver of community corrections agencies seeking the most effective methods of sex offender supervision.

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Erratum

In *Polygraph*, 29(1) an article appeared entitled "The State of Polygraph Testing on Sex Offenders Under Community Supervision in Texas." The author, Mr. Brian McKay, would like to express sincere thanks to Margaret Griffin, employed by the American Probation and Parole Association as a sex offender management specialist with the Center for Sex Offender Management. In her former employment as a community supervision officer with Hunt County CSCD, Ms. Griffin conducted the 1996 and 1997 administrations of the Texas sex offender supervision survey. Her pioneering efforts have helped lead Texas probation agencies to identify and promote effective supervision techniques, and she has been an ardent proponent for the use of polygraph testing on sex offenders under criminal justice supervision. The author regrets any oversight which prevented this appreciation from being expressed in his article.

Sex Offender Testing: Still Basic Polygraph

Robert G. Lundell

Over the last 15-20 years in which the application of polygraphy has expanded into the field of sexual offender management and assessment, so has the number of so-called "appropriate" test methods and formats. Well meaning examiners have digressed from what they should have learned in basic polygraph school, to methods of testing which could be best described as anywhere from flawed to outrageous. Most of us have heard all the horror stories: a 20-question test—all relevant questions, no comparisons, sacrifice relevants, symptomatics, or even neutrals. There have been an excessive number of relevant questions in some examinations, even when using comparisons. What continues to occur with alarming frequency is the examination where the format is fine, but the relevant questions do not fit the definition we all should subscribe to: single in issue, narrow in scope, concise, and does not allow for multiple meanings or interpretations. When examiners stray from that concept of basic polygraphy, they invite disaster, not only by offering opinions about truthfulness to a bad question, but by not addressing those issues of primary importance.

In 1998, at the annual meeting of the American Polygraph Association (APA) in Washington, DC, a subcommittee that had been working together for the previous year, presented to the Board of Directors a set of standards for this specialized field of Post-Conviction Sex Offender Testing. Ultimately, these new standards were adopted. Now any member of the APA who is engaged in the practice of post-conviction testing of sexual

offenders is required to complete an approved 40-hour course, and pass a written examination administered by the APA.

These standards authorized two examination formats: Zone Comparison, and Modified General Question Techniques. No more than four relevant questions can be used in these formats, and while the standard allows for "reasonable departures" from validated methods, such deviations need to be fully supported by other professionals, and consistent with the research. Nowhere does the standard allow for changing the basic definition of any polygraph question. These new standards will compliment, not subvert, all the existing standards of practice of the American Polygraph Association.

With this in mind, examiners who engage in this form of testing must make good decisions in their selection of relevant questions. Only relevant questions enjoy the special status of being assigned a score, and ultimately an opinion of either truthfulness or deception. It is really no different than any other kind of testing in that regard: Given a set of facts, or general circumstances, the examiner must make the proper choice of what the target(s) or relevant questions will be. Those questions must have a degree of intensity and distinctness unlike any other question on the examination. They must be clear, unambiguous, and free from uncertainty or mental exercise. After all—aren't we saving that kind of a question for other positions on the test? And, if an examinee is exhibiting responses which are consistent with deception

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Mr. Lundell has been testing sexual offenders for over 17 years. He is the Chairman of the National Training & Resource Group (NTRG) which has been providing instruction to members of the APA to meet the 40-hour course requirement for certification. He and associate Susan A. Holmes are members of the Jackson County, Oregon, Sex Offender Treatment Team, which is a designated Resource Site by the Center for Sex Offender Management (CSOM), a division of the U.S. Department of Justice.

to this relevant question, we know exactly where and how to inquire during the posttest interview.

To illustrate the importance of proper selection of target relevant issues, let's examine the three primary types of examinations used in sexual offender testing: 1) Specific Issue, 2) Sexual History (or Disclosure), and 3) Maintenance.

The Specific Issue examination normally addresses the crime of conviction. Either the convicted offender is in total denial of having committed the offense, or is in denial about certain parts of the victim's allegations. In either case those specific issues can be easily resolved through polygraph testing. The test format is simple and the relevant questions ask about something important, with real significance. It will also be distinct, focused, and possess all the attributes of a relevant question. Sound familiar? It's like a real polygraph test, and is the same test format as would be used in a pre-conviction, or investigative examination. In post-conviction testing, these examinations assist in breaking down denial when the offender is concealing the truth about his crime.

In the case of Sexual History or Disclosure type testing, the identification of target issues and ultimate selection of relevant questions requires the examiner to know something about sexual offenders. No longer are the issues for testing already in place, since this type of test is not being employed to resolve an issue in dispute. The examinee is on parole or probation for a sexual offense he has admitted committing. Obviously, if an offender is in denial about his offense, he would not be taking a Sexual History test, but would be taking a Specific Issue test. Those offenders who have admitted their offense participate in a treatment program, usually every week, where they prepare a comprehensive, and often lengthy, written sexual history covering their entire lives. Not only does this disclosure material contain information about offense behavior, but also normal sexual experiences. The preparation of this written disclosure may take the offender two or three months to complete. Before the polygraph examination can take place the offender will present his history to his

therapist and peers in group therapy, and they will often provide input for changes or revisions. When properly prepared, the disclosure packet may have well over 100 pages of material, and much more, if the offender is reporting a large number of hands-on victims. Ultimately, a copy of this disclosure will be provided to the examiner for a final review. When the examiner approves it, the offender is set up for the examination.

The science of polygraphy has remained fairly static over the last several years, although instrumentation and methods of collecting the physiological data have greatly improved. What is evolving is the art of the examiner to increase the reliability of the science. Absent either, polygraphy does not exist. This is why examiner knowledge of issues related to sexual offender behavior is so vitally important. When presented with all this information about the offender's history, often contained in a heavy three-ring binder, the examiner must make proper decisions concerning the target or relevant issues for the examination. The examination must meet the test of basic polygraph: approved test format, containing appropriate questions, each complying with those established standards recognized by our industry. In the case of a Sexual History examination, an examiner would violate that very principle if the following type of questions were asked as a relevant:

Have you lied about anything in your sexual history?

Have you lied to me regarding any part of your sex history?

Have you left anything important out of your sex history?

These are some of the examples of questions that do not meet the test as a relevant question. They are not single-issue, specific or concise, and if some response occurs when the offender answers no, on what issues would a posttest interview focus? Doesn't it also seem reasonable that these kinds of questions could be expected to produce some reaction, even in the mind of the truthful person? In fact, this kind of question really embodies other qualities often used in

polygraph testing: thought provoking, degree of uncertainty, contemplative, mental exercise. Can a question be a relevant and a probable-lie comparison question at the same time? Of course not. It is also possible that an offender could be concealing a significant issue of offense behavior in his past which would not be discovered by this kind of a broad based question. In fact, we know from experience that an offender may actually fail to react to such a question, even if his answer is technically a lie, because he does not experience the fear of detection about the other important issue, since that specific behavior was not targeted on the test. In these unfortunate situations, the art has abandoned the science.

For example, an offender has taken several sexual history disclosure examinations over a period of about two years. He has continued to fail a question about lying or leaving anything out of his history. After each failure the examinee offers up some bit of information which he claims he remembered during the test, or was confused about the number of times a certain behavior occurred, or thinks his age at the time of a particular event was different than what he reported in his disclosure, etc. While the examiner may feel he has validated the test by getting admissions from the offender on this so-called relevant question, he is really missing the point entirely. Actually, this particular offender had transferred from another county to one of our programs. He is a convicted child molester, who had admitted two incidents with a neighbor child. Since he had two female children of his own, about the same age as his victim, Child Protective Workers interviewed them during the course of the original investigation. Both girls denied being offended by their father. Apparently, no one ever recognized the need to explore whether this man had in fact offended any other children, including his own. He had been allowed to stay home with his family this entire time. When tested at our office, we narrowed the scope, and developed relevant questions that specifically inquired whether he had sexually offended any other children besides the one, and whether he had sexually offended either of his daughters. He failed the test, and admitted other children victims, including one of his daughters. Over the

years, we have seen so many of these examples of bad testing through improper target selection, we sometimes wonder if polygraphy in these cases did more harm than good.

What this really comes down to is that the examiner must review that sexual history and then make a determination of what will be the target relevant issues. This test will be a search, but an appropriate search that will focus on specific forms of criminal or improper sexual behavior which the offender has denied is part of his history. Although there is not a specific allegation being addressed, these kinds of appropriate relevant inquiries could be considered exculpatory in nature. The following are examples of how one should identify target issues.

An offender is on probation for exposing himself while parked in his vehicle. He claims this only happened one time in his life. Could that be true? Wouldn't it be better to ask him: Besides this one time, have you exposed your penis any other time to someone in public? rather than, Have you left anything out of your sex history?

Consider the rapist, who admits he broke into the home of a stranger and sexually assaulted the woman, but denies any history of that behavior. From a supervision and treatment perspective, knowing the truth about this offender's history related to rape and violence is extremely important. Surely, a competent examiner could put together a relevant question or two which could establish the truth.

A grandfather admits he sexually molested one of his grandchildren over the summer. She was 9 years old. He has 11 other grandchildren living in various part of the state. In his history, in addition to this one victim, he admits to offending one of his daughters, 30 years ago. He insists he only molested two children in the last 30 years: his daughter and his granddaughter. We will never know if that is the truth or not if we rely on any of the bad examples: Have you lied to me about your sexual history? or Have you left anything out of your sexual history?

The offender admits his crime consisting of exposing himself, primarily to young children. He is 30 years old, never been married, and has confessed to committing hundreds of similar incidents of exposing to children. In his completed history packet he denies ever actually physically molesting a child, or having a child touch his penis. Certainly, this is an issue of critical importance and needs to be addressed in appropriate relevant questions—not the bad example type.

These are just some of the situations in which examiners may find themselves every day. We must scrutinize carefully the offender's self-reported history. We then must determine the most important issues that need to be covered on the examination. No specialized training is necessary to bring an offender into your office and ask him if he has lied about anything in his history. In fact, you wouldn't even really need to read the information yourself ahead of time. By making the bad examples into relevant questions, you're more than likely to see the presence of reaction when he answers no. You might even get some kind of an admission during the posttest interview when you tell him he failed the test. Maybe he will come back in a week or two, and you can do the same thing again, with predictable results. The most troubling aspect of these cases, and in a way somewhat ironic, is that this sex offender knows exactly what you should be asking him, and is relieved every time you don't.

With this same information in mind, let's look at the procedure for establishing relevant target issues for the Maintenance or

Monitoring examination. These tests are done to assist in the supervision and treatment of the offender. The collection of information during a structured pretest interview is vital. The offender does not know the relevant questions until he and the examiner prepare them just prior to testing. The interview serves to identify, through admissions, as much as possible concerning his activities during the time frame in question: anywhere from a week to the recommended maximum time of six months. This test, like the Sexual History, is a search of target issues. Since the examination is limited to four relevant issues, we need to make the best use of each question, while remembering not to succumb to outside pressure by asking relevant questions which fall short of the definition. Offering opinions about truth or deception to issues of fantasy, plans or intentions, motivations or desires, are generally not acceptable. Relevant questions on all examinations should deal with actual behavior that would be either criminal, or a specific violation of probation or treatment. Examples would be: physical sexual contact with anyone, sexual contact or touching of a minor, prohibited contact of any kind with children, possession of pornography, frequency or location of masturbation, exposure, and alcohol and drug use. The list of appropriate target issues on Maintenance tests is extensive, but selected relevant questions should have clear importance to the effective monitoring of the offender. Questions of a broad based nature such as lying to his probation officer or therapist, falsifying reports, and all-encompassing compliance questions, are very effective when used as comparison questions.

We Need You to Become Experts in the Post-Conviction Polygraph¹

**Kim English, Linda Jones, Diane Patrick,
Diane Pasini-Hill & Suzanne Gonzalez**

Abstract

To improve the risk management of convicted sex offenders, the criminal justice system needs highly trained, experienced sex offender polygraph examiners. In 1998, researchers asked 679 probation and parole supervisors about their use of the post-conviction polygraph. Drawing on data obtained from this survey, we present information that the authors hope will encourage examiners to initiate the assembly of local teams to manage convicted sex offenders. Examiners who are currently conducting post-conviction polygraphs can review what probation and parole supervisors need from them, and can use this information to advance current practices.

I was sent a client who was under supervision in another jurisdiction for the past four years for molesting his daughter's friend. He was allowed unsupervised visitation with his daughter, which included overnight visits. I reviewed the case file information and saw that he received numerous polygraph examinations on his sexual history. He was asked in several exams: "Have you left anything out of your sex history?" Each time he was found deceptive, he would reveal a small violation, essentially throwing them a bone. I noticed that the exams never addressed specific questions about any other victims. Since he was allowed visitation, I felt strongly that his children might be at risk. So, I asked him "Have you ever molested any of your own children?" During the post-test, he finally confessed to sexually abusing his daughter. No one had ever asked him that before.

-Susan Holmes, Polygraph Examiner
Jackson County, Oregon²

To improve the risk management of convicted sex offenders³, the criminal justice system needs highly trained, experienced sex offender polygraph examiners. A highly experienced, well-prepared post-conviction polygraph examiner can change the world: Susan Holmes changed the world of this child.

Funded by research grants from the U.S. Department of Justice, researchers and policy analysts at the Division of Criminal Justice, in the Colorado Department of Public Safety, began studying the management and containment of adult sex offenders in 1993. Over the years, we have conducted two national telephone surveys (in 1994 and 1998) of probation and parole supervisors, reviewed the published research in the areas of sex offender treatment and victim trauma, and collected data directly from the case files of sex offenders. We met with treatment providers, victim advocates, attorneys, criminal justice officials, and many polygraph examiners from across the country. We also observed polygraph exams, attended American Polygraph Association annual meetings,

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¹ This research was supported by grant number D97LBVX0034 from the National Institute of Justice to the Colorado Division of Criminal Justice. The views expressed here are the authors and do not necessarily represent the position of the National Institute of Justice.

² Susan Holmes and Rob Lundell are partners in their firm, Polygraph Associates of Oregon, in Medford.

³ For an explanation of risk management, see Cooley-Towell et al., this issue.

annual conferences of the Association for the Treatment of Sexual Abusers, and the American Probation and Parole Association. We traveled to sites in Arizona, California, Colorado, Louisiana, Massachusetts, New York, Oregon, Texas and Wisconsin to discuss issues at length with professionals managing sex offenders.

We learned a great deal from these professionals, many of whom are actively engaged in developing and improving innovative methods for addressing the risk that sex offenders pose to the community. Promising practices for progressive community-based management of adult sex offenders are scattered across the country. The methods evolve as members of each profession-probation, parole, treatment, and polygraph-apply new learnings to this important public safety endeavor.

In our first research report, *Managing Adult Sex Offenders: A Containment Approach*, published by the American Probation and Parole Association (English, Pullen and Jones, 1996)⁴, we described a five-part strategy that includes the use of the post-conviction (PC) polygraph for managing sex offenders. Our current research focuses more directly on the use of the polygraph in the management of adult sex offenders, and how its use can be maximized within the containment approach.

In 1994, our national telephone survey indicated that less than ten percent of probation and parole agencies used the polygraph for post-conviction purposes with adult sex offenders. Another survey was conducted with the same sample in 1998. Findings from the 1998 study indicate that the use of the PC polygraph climbed from 9.8% to 16.3%. Despite its relatively limited use, the value of applying polygraph technology to the

management of adult sex offenders is increasingly evident. This special edition of *Polygraph* is reflective of its value.

In 1998 we asked 679 probation and parole supervisors, in nearly hour-long interviews, about their use of the PC polygraph. A number of obstacles were associated with the use of the polygraph (discussed later). Nearly one-third (32.9%) of the respondents who employed this tool reported that "using excellent examiners" is the best way to overcome obstacles to this approach to managing sex offenders.

Drawing on data obtained from this survey, we present information that we hope will encourage examiners to initiate the assembly of local teams to manage convicted sex offenders. Examiners who are currently conducting PC polygraphs can review what probation and parole supervisors need from them, and can use this information to advance current practices.

Why Examiners are Needed to Specialize in Sex Offender Testing

Adult sex offenders are not like other offenders. Because of the stigma and sexual deviance associated with their crimes, this aspect of their lives is meticulously and deliberately hidden from others. The effects of sexual assault on victims are often brutal and long lasting (see Wyatt and Powell, 1988).⁵ The cost of these crimes to the victim and to society is enormous.⁶ Summit (1988) acknowledges the psychological damage inherent in the full scope of abusive behaviors, emphasizing touching as well as rape: "Sexual touching, so often trivialized by words such as fondling or molestation (annoyance), is only the physical expression of a climate of

⁴ This publication is available from APPA in Lexington, Kentucky. The phone number to purchase a copy is 606-244-8207.

⁵ Sexual assault victims, compared to non-victims, are at a significantly higher risk to abuse alcohol and drugs, to suffer from depression, anxiety, nightmares and social isolation, and to attempt suicide (Kilpatrick, 1992; Peters, 1988; Briere and Runtz, 1988).

⁶ The National Institute of Justice has estimated that the cost incurred by a sexual assault victim (including lost wages, quality of life and associated social costs) exceeds \$85,000 (Miller et al., 1995).

invasion, isolation and abandonment." Every sexual assault, from a violent stranger-rape to voyeurism by a family member, may represent a significant act of betrayal. The fundamental need for safety-by the victim and the larger community-is a key reason that sex offender risk management must be undertaken by highly trained and skilled professionals.

Information about past and present deviant behavior-essential to assessing dangerousness-is extremely difficult to obtain. Offending patterns are usually ingrained, compulsive, and probably lifelong (Marshall, Laws and Barbaree, 1990; Prentky et al., 1997). According to practitioners, sex offenders are often highly functioning people who use their social skills to gain access to victims. Prentky et al. (1990:62) assert that, for many sex offenders, "the victims are their social and sexual companions; the offenses are their social and sexual life."

It follows, then, that most rape victims know their attacker, and these crimes are those most likely to be kept secret and hidden. According to the National Victim Center's *Rape in America: Report to the Nation* (1992), 78% of forcible rapes involved a person known by the victim. Husbands or ex-husbands account for 9% of rapes, and boyfriends or ex-boyfriends account for 11% of these crimes. Koss' (1990) research of women on 32 college campuses reported that 57% of rapes occurred on dates. Further, 50% of 323 women interviewed for a study of marital rape were sexually assaulted 20 times or more. Twice as many battered women suffered from chronic rapes (20 or more) as the women who were raped and not battered (Finkelhor, 1979).

Research on sex offenders reveals an astonishing level of secret sexual abuse activity. Abel and Rouleau (1990) studied 561 sex offenders who responded to an ad in the paper or voluntarily sought treatment from two community-based clinics. They found that half of the sample engaged in sexual abuse before the age of 18. This "early onset" group had committed, on average, 380 sex crimes by age 18. Ahlmeyer, Heil, McKee and English (in press) analyzed data from 35 Colorado inmates

who admitted, on average, 521 sex offenses and 182 victims.⁷ With this high level of activity, it is easy to understand Kilpatrick et al.'s (1992) estimate, based on victimization surveys, that 13% of women will experience a forcible rape in their lifetime.

Not only are most sex offenders extremely active, a substantial proportion assault many types of victims. For example, it is a common myth that incest offenders perpetrate their crimes against only family members. Abel and Rouleau (1990) found that 23% of that sample committed incest and also abused individuals outside the family. In Weinrott and Saylor's (1991) study of 99 incarcerated offenders, 50% of the incest offenders admitted to assaulting children outside the home (none of these crimes were detected by authorities). Becker and Coleman's (1988) study of incest reported that 44% of their sample who committed incest against female children also sexually abused females outside home; 11% of this group also assaulted males outside the home and 18% raped adult females. Faller (1990) studied 65 biological fathers in intact families who committed incest. One-third of these incest offenders molested children outside the home, and 80% molested more than one child.

Research shows that trauma to the victim increases with the frequency and duration of the victimization (Hindman, 1988; Peters, 1988; Beichman et al., 1992; Finkelhor, 1979; Russell, 1983). Family members are easily accessible to the perpetrator and many incest victims report enduring rapes occurring over many years. Lamb and Edgar-Smith (1994) studied 60 sexual assault victims: 42% had been assaulted by a parent or parental figure; 17.5% were assaulted by a sibling. Twenty percent of the sample were abused for over five years, and half of this group had been assaulted on a weekly basis. This group did not disclose the abuse for an average of ten years after the assaults began.

Kilpatrick et al. (1992) found that 84% of rape victims never reported the crime to authorities. Dupre et al. (1993) estimated that fewer than 10% of rapes are reported. Not

⁷ Abel et al. (1990) and Ahlmeyer et al. (in press) include both hands-on and hands-off offenses.

surprisingly, the American Medical Association (1995) called sexual abuse the "violent silent epidemic." After all, this level of activity can only occur in secrecy.

Finally, research revealed one more important piece of information about sex offender activity: sex offenders carefully plan their crimes. This is good news. When the containment team learns the planning process for each offender, strategies can be developed to interrupt this planning, and new sex crimes can be prevented. Polygraph examiners play an important role in eliciting and verifying these high-risk and precursor behaviors, thereby preventing further victimization. Amir (1971) found that 75% of rapists ruminated about the act before committing it. Nearly twenty years later, Pithers (1990), founder of the sex offender treatment program in the Vermont prison system, explained:

...[M]any offenders carefully plan offenses so they appear to occur without forethought... Although victims may be selected opportunistically, the act itself has generally been nurtured for a considerable time in the offender's most secret fantasies. The sex offender's deviant fantasies are tantamount to planning sessions for the refinement of further behaviors. The compulsivity of the sexual aggressors' deviant fantasies differentiates them from those of nonoffending men, who may experience a deviant fantasy momentarily but quickly reject any thought of acting on the impulse (p. 344).

Research indicates that most sex offenders know their victims, plan their attacks, operate in secrecy, and assault many times. This means that most perpetrators have access to victims and sufficient privacy to commit sexual assaults many, many times without getting caught. These findings led some practitioners to reassess the methods used to work with this population. Criminal justice professionals, law enforcement officers, child protective workers, victim and offender therapists, and others began to work together to interrupt the offender's access to victims and any privacy they might enjoy. Their efforts, along with those of polygraph examiners, have enhanced public safety in this arena. This strategy is called a containment approach.

The Containment Approach

The containment approach for managing adult sex offenders is described in detail elsewhere (English, Pullen and Jones, 1996; English, 1998), but the data presented in this article need to be evaluated and integrated within this system. For this reason, a brief overview is provided here.

Managing the risk of adult sex offenders requires developing (and continually updating) a locally based collaborative effort, built on empirical research. The effort is rooted in acknowledging the harm done to victims, and recognizing and attempting to expose the secret, manipulative lifestyle that allows offenders the opportunities to abuse others. Offenders are then held strictly accountable for their behavior. The containment approach has five parts.

Figure 1

SEX OFFENDER CONTAINMENT APPROACH

<i>Victim-centered philosophy: "What's best for the victim?" guides decisions</i>	<i>Multi-disciplinary coordination, agency partnerships, job specialization, and ongoing training</i>	<i>Containment and risk management strategies: post-conviction polygraph exams, specialized treatment, criminal justice supervision</i>	<i>Informed, consistent, and written public policy, agency protocols, and multi-agency agreements</i>	<i>Research and quality control measures for each aspect of the program: treatment, polygraphs and supervision</i>
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The professionals responsible for the day-to-day case management of the offender are specially trained to manage the risk of this dangerous population. The core containment team includes the sex offender treatment provider, PC polygraph examiner, and the criminal justice case manager (the probation or parole officer). This team works closely together to understand each case, share information freely (confidentiality is waived in the containment approach) and encourage the disclosure of inappropriate behavior, planning activities, contact with potential victims, and new assaultive behavior. It places the responsibility for monitoring sexual offenders squarely on the containment team, rather than solely relying on offender self-reports or victim reports.

The polygraph is used to verify an offender's sexual history disclosure and monitor an offender's unique assault patterns. It alerts the therapist or supervising officer of potential sexual offending. According to polygraph examiner Jeff Jenks, "the greatest use of the polygraph is the disclosure of information which allows the system to tighten control and make a safer environment" (personal conversation, July 8, 1996). Containment-focused case management depends on the team obtaining and sharing key pieces of information about the offender and then systematically and consistently responding to that information for the purposes of risk management.

Survey Findings Important to Examiners

Method

To better understand the use of the PC polygraph, we re-surveyed the same agencies that we first telephoned in 1994. In the 1994 survey, we investigated how sex offenders were being managed on probation and parole. In 1998, we zeroed in on the role and value of the PC polygraph.⁸ The nationally representative sample was stratified by population density and geographic region, and the response rate was over 90%.⁹

Use of the PC Polygraph is on the Rise

In 1998 we interviewed 679 probation and parole agency supervisors. Many (78.3%) respondents reported that their agencies *rarely or never* used the PC polygraph with sex offenders. Just over one-in-five respondents (16.3%) reported that they were *often or always* using the PC polygraph with adult felony sex offenders in 1998, compared to 9.8% in 1994. The proportion of respondents using the PC polygraph almost doubled in a four-year time span. This growth rate underscores the need for officials in local jurisdictions and professional organizations, such as the American Polygraph Association, to define best containment practices and implement methods of quality control.

⁸ Interviewers re-contacted all 1994 telephone survey participants (or their replacements). Twenty offices consolidated (9 that did not use the PC polygraph), and another 33 offices either no longer existed, no longer supervised sex offenders, or refused to participate in the study. See English, Pullen and Jones, *Managing Adult Sex Offenders: A Containment Approach*, published by the American Probation and Parole Association, 1996.

⁹ Using a brief screening questionnaire, telephone interviewers divided respondents into two groups: those who never or rarely used the post-conviction polygraph with sex offenders, and those who *sometimes, often, almost always or always* used the polygraph as a management and supervision tool. Those in the *never or rarely* group were administered a brief questionnaire designed to elicit information on other agency practices and barriers to the use of the polygraph with sex offenders. Respondents reporting more frequent use of the polygraph (*sometimes, often, almost always or always*) were administered a lengthier questionnaire, intended to explore a number of issues such as when and how the polygraph was used, consequences for deceptive results or new information revealed, and changes in management of sex offenders due to the use of the polygraph. The short questionnaire entailed a five-to-ten minute interview. The longer interview lasted nearly an hour, on average. Interviews were conducted during the summer of 1998.

According to Table 1, almost one-fourth (24.5%) of the 1998 respondents began using the polygraph within two years of the telephone survey, and another 9% had been using it for less than one year. This recent implementation also reflects the need for specialization in PC polygraph examinations. Still, the use of the PC polygraph is not new to

many jurisdictions. Officials who are reluctant to implement a containment approach because it seems like a "radical new idea" will find this information surprising. Almost half (45.2%) of the respondents reported five or more years of use (28.4% reported using the polygraph for five to nine years, and 16.8% reported using it for more than nine years).

Table 1
Length of time the post-conviction polygraph has been in use by respondents (n=155)

Less than one year	9.0%
1-2 years	24.5%
3-4 years	18.7%
5-9 years	28.4%
Over 9 years	16.8%
Don't know	2.6%
Total	100.0%

*The respondents reported using the post-conviction polygraph with sex offenders sometimes, usually or always.

Examiners: Collaborate with a treatment provider! The best way to initiate a containment approach is to collaborate with a sex-offense specific treatment provider, as

presented in Table 2. Over one-third (35.5%) of respondents credited a treatment provider with introducing the idea to use the PC polygraph.

Table 2
Where did the idea to use the post-conviction polygraph originate? (n=155)

Treatment provider	35.5%
Probation and parole officer	10.3%
Agency was exposed to the idea <i>training, networking with other professionals, reading</i>	21.3%
Polygraph examiner, parole board, legislation, other criminal justice source.	12.3%
Don't know	31.0%

Note: Respondents could choose more than one answer.

It is not surprising, then, that when asked how examiners are selected, 38.1% said they rely on the treatment provider (another 25.8% said they rely on an agency list or state registry). (Data not presented.)

How and why is the PC polygraph used? The data presented in Table 3 summarize how the PC polygraph is typically used.¹⁰ Nearly two-thirds (63.9%) of the respondents use the polygraph to monitor the offender's compliance with treatment and supervision. Only half reported using the polygraph to obtain or validate sexual history information.

This is unfortunate. It is only through disclosure of the scope and frequency of a lifetime of sexually abusive behavior that the

treatment provider can tailor a treatment plan that accurately targets the offender's needs. Likewise, without validated sexual history information, the probation or parole officer cannot know the complete range of victims (ages, genders) whom the offender has harmed.¹¹ As one study participant committed to protecting victims remarked:

If you don't get him [the perpetrator] to disclose all those past secrets--every one--then he is in charge of what information you get. And you don't want the sex offender to be in charge of anything because of his power and control issues.

---Treatment Provider

Table 3
How is the post-conviction polygraph examination regularly used? (n=155)

Monitor the offender for compliance with treatment/supervision	63.9%
Obtain sexual history information	52.2%
Obtain specific-issue information about the current crime, an allegation of a new crime, or to assist the offender break through denial	45.8%

Note: Respondents could choose more than one answer.

Respondents were asked about the usefulness of the PC polygraph in managing adult sex offenders. A summary of the respondents' comments is presented in Table 4. The survey data reflect a variety of benefits gained from use of the polygraph. Most respondents (76.1%) believe the polygraph increases knowledge of the offender's behavior. Two-thirds (66.5%) reported it improves the management and supervision of sex offenders, and 58.1% reported that it helps prevent offenses.

According to Table 4, then, a large number of probation and parole supervisors described specific benefits to using the polygraph. Many respondents reported that "you can't supervise these offenders without it." One respondent said "it helps to find out their true behaviors and not just what they tell us." Table 4 presents an inspiring description of the services provided by PC polygraph examiners, vital to the safekeeping of our communities.

¹⁰ See Cooley-Towell et al., this issue, for a description of the three types of PC polygraphs.

¹¹ See Table 1 in Cooley-Towell et al., this issue.

Table 4
Benefits of the Post-Conviction Polygraph in Managing Sex Offenders

Summary of Respondents' Comments (Respondents may have more than one response.	Proportion of Sample Reporting
<p>Enhances disclosure of crimes and knowledge about of the offender. <i>Increased knowledge of the offender's behavior; provides more information; causes offender to be more truthful; forces a level of honesty; offender gains insight and depth of understanding; "helps find out their true behaviors and not just what they tell us;" there is less guessing; The offender talks more to the probation/parole officer after the polygraph has "tripped them up." Can identify more serious issues; can identify more areas of concern; can find out about deviant behaviors; alerts us to potential violations/offending behavior; provides a full picture of the offender's history; finds out who we "are really dealing with"; provides more information about the offender's cycles and abuse stimuli. Keeps offender honest and accountable. Obtains a comprehensive overview of the offender.</i></p>	76.1%
<p>Leads to better management and supervision. <i>Provides another way of monitoring the offender; provides more security, more control, more restrictions for those who need them; allows for a quicker response to technical violations. Can increase supervision if there is a deceptive polygraph finding. Verifies that conditions are followed; ensure compliance with court orders, parole, child safety zones; can "catch them in their deviant acts". Influences the offender's behavior, provides a "scare factor" , provides leverage for the offender to comply with supervision. Useful for maintenance.</i></p>	66.5%
<p>Helps prevent offenses. <i>Less likely to reoffend; can treat them before recidivism occurs; can catch them earlier, can detect recidivism patterns; can supervise to a point that there is no recidivism. Provides us with supervision strategies so the offender will not reoffend. "Chances of other victims under supervision is nil." Helps identify and assess risk; can protect society and victims. "They know we are watching them."</i></p>	58.1%
<p>Helps provide better and more appropriate treatment. <i>More information for treatment; can design treatment more effectively; affirms treatment; we can target areas of treatment; "we would never know the appropriate treatment without it." Provides another tool in treatment; can step up treatment; can assess treatment progress and compliance; provides better evaluation and assessment for treatment and can assess amenability to treatment. Can address behaviors in treatment or confront in group; can "catch that inappropriate thought and get the proper treatment."</i></p>	40.6%
<p>Helps break down denial.</p>	17.4%

Better able to apply consequences for behavior. <i>When they fail, they can go back to court. Offenders can be revoked; aggravating information is presented to the parole board; can lead to the immediate removal of a sex offender from the community. Exposes new crimes so we can tell if the offender should be in the community. When polygraph findings are positive, we can decrease restrictions if appropriate.</i>	7.1%
Yes, polygraph is a benefit, <i>but specific information not provided.</i>	3.2%
Specialized sex offender caseloads developed as a result of using polygraph.	1.3%
No changes to the management of sex offenders or increase in public safety <i>because the polygraph has been in place for some time, so operations remain the same, or respondent was too new to know about changes implemented due to polygraph. One respondent did not know.</i>	18.1%

Barriers You Will Likely Face

Respondents were asked what kinds of implementation problems their organizations overcame to begin the use of the PC polygraph. The largest proportion of responses (34.8%) fell into the category of "opposition from various groups." Of those, 47.7% of respondents stated that offenders and/or their families objected to the use of the polygraph, and 33.5% reported opposition by the defense bar. One fourth of the respondents were unaware of opposition to the polygraph by specific groups (data not presented).

Legal issues, including concerns about Fifth Amendment violations (self-incrimination) and immunity from prosecution for past crimes, were raised by 17.4% of respondents. Usually these concerns are linked to crimes uncovered during the sexual history polygraph process. "It is extremely rare that we do not uncover new information during the sex history exam," (polygraph examiner, personal conversation). These are valid concerns. Although it is rare for a prosecutor to grant blanket immunity for past sexual crimes, some prosecutors do offer a limited immunity for past similar sexual crimes. Generally, the offender must be

actively engaged in treatment for limited immunity agreements to be invoked. Some prosecutors who are reluctant to grant limited immunity, are however, willing to review new case information within the context of the offender's current participation in treatment and rehabilitation.

Another common method for handling self-incrimination is instructing the offender to disclose the age, gender, relationship, and the location of the assault, without revealing the name. Most commonly, there is not enough evidence to prosecute these past crimes. Further, information gained solely from a polygraph exam is unlikely to meet evidentiary tests in court. These issues are important for policy makers to discuss and resolve together.

Another 12.3% of respondents commented that implementation problems resulted from a lack of local qualified examiners, too few examiners, and an inability to find Spanish-speaking examiners. Lack of funding for examinations was also mentioned as an obstacle. According to survey data, 52.0% of respondents stated that offenders paid for the polygraph examinations. Implementation problems are presented in Table 5.

Table 5

What were the most difficult implementation problems your agency faced when the polygraph was first implemented?

Summary of Respondents' Comments	Proportion of Sample
No problems	9.0%
Opposition from various groups, e.g., public defenders, defense attorneys, courts, judges, parole board, administration, department of correction, treatment providers, and offenders.	34.8%
Legal and immunity issues, i.e., results not admissible in court, wanted to use it for presentence investigation, types of sanctions to impose, concern about information used against offender, concerns about subpoena for files and historical information, how to use the information.	17.4%
Validity of the polygraph, i.e., accuracy, inconclusive tests, lack of scientific data about validity.	11.0%
Lack of qualified and competent polygraph examiners	12.3%
Offenders cannot pay	10.3%
Various resource issues, e.g., funding for program, training probation officers, less time for caseload.	10.3%
Lack of information, education and training. Also, learning how to ask the right questions for the polygraph.	7.7%
Viewed as treatment provider problem	1.3%
Other	4.5%
Don't know, or too new on the job to know.	10.9%

Note: Respondents could choose more than one answer.

Advice from the Field

So how did jurisdictions manage to implement the PC polygraph in the face of these barriers? We asked survey respondents' what advice they would give to those interested in developing a sex offender

management process that includes the PC polygraph. This is rich information. It provides a blueprint for successful integration of the PC polygraph with probation and parole supervision of sex offenders. Table 6 summarizes implementation advice from probation and parole supervisors.

Table 6
Advice from survey respondents for overcoming implementation problems.

Summary of respondents' comments	Proportion of Sample
<p><i>Educate judges, attorneys, the legislature, probation and parole officers, offenders; provide specific training and skill development for staff; be prepared to address concerns; provide good support and statistics; provide the legal community with existing case law; have attorneys sit in on the pretest and send them copies of the report. Emphasize the use of the polygraph for treatment and supervision. Obtain information from agencies using the polygraph.</i></p>	<p align="center">38.7%</p>
<p><i>Find excellent polygraph examiners. Examiners must be educated, certified, qualified, experienced, and competent. Examiners must ask good questions, check the background of the offender, do a thorough pretest and understand the offender thought process. Make sure the examiner understands the probation or parole program and the treatment program. Use a screening process to select examiners; seek out an examiner who is willing to branch into this area and follow sex offender testing requirements. Alternate examiners to avoid "habituation." Make sure the exams are of sufficient length, focus on one or two basic questions, make sure written polygraph reports are distributed to the team.</i></p>	<p align="center">32.9%</p>
<p><i>Recognize that this is a process, it takes time, and the value of the polygraph is shown over time.</i></p>	<p align="center">22.6%</p>
<p><i>Find a way and "just do it!" Be persistent, make it an expectation that the department requires a polygraph, mandate offenders to participate, make it the offender's responsibility to pay for it; develop payment strategies, e.g., offenders can pay up-front or pay over time. Find a way "because it's the right thing to do."</i></p>	<p align="center">20.6%</p>
<p><i>Develop policies and procedures that resolve conflicts and ensure consistency. Address how to use the information, use of sanctions, reporting new offenses to law enforcement, frequency of exams. Require offender to admit offense in court. Decide in advance how to respond to offenders who avoid taking the polygraph. Videotape the examination process.</i></p>	<p align="center">15.5%</p>
<p><i>Make polygraph examinations a condition of community supervision or treatment. Revoke the case if the offender does not participate.</i></p>	<p align="center">14.8%</p>
<p><i>Know its limitations. It is a supervision and monitoring tool, some findings are inconclusive, some offenders cannot be tested.</i></p>	<p align="center">10.3</p>

Use the results. <i>The information improves treatment, confront the offender with the results, use it to break denial, "be prepared for what you learn," anticipate disclosures.</i>	9.7%
Communicate and coordinate <i>with probation/parole officer, treatment provider and polygraph examiner.</i>	7.7%
Gather support, and gather it early, <i>from parole board members, policy makers, attorneys, judges, and other authorities. Get testimonials from treatment providers.</i>	5.2%
Test early and often. <i>Get baseline information and test regularly.</i>	3.2%

Note: Respondents could give more than one answer.

The majority of responses fell into two categories. Over one third (38.7%) of respondents emphasized educating decision makers as a key strategy for overcoming implementation problems. Officers often photocopy articles from journals (like *Polygraph*) and attach them to revocation reports and other court motions. Examiners sometimes get on training agendas for criminal justice and treatment providers. Also, letters of introduction describing the extent of special training received along with photocopied articles can be sent to criminal justice administrators. These are examples of how one begins the education process.

"Find excellent examiners" was the second most frequent response (32.9%). An excellent examiner must be specifically trained in this area. Since the field is continually evolving, examiners must regularly obtain specialized training. As noted in Table 6, examiners must thoroughly prepare for the exam. This entails an extensive review of criminal justice and treatment file information, including sex history details. Preparation may be the most critical component of the exam.

If you don't prepare, you'll only scratch the surface rather than digging three feet underground—that's where you'll find the real dirt. Without proper

preparation, they'll con you. They con everybody.

- Polygraph examiner

Many sex offenders are professional manipulators with a lifetime of experience. They seize offending opportunities unseen by others. Without adequate preparation, domains of inquiry may be missed, and question construction may be compromised.

So, how do you obtain the information you need to prepare? Responses indicated that agencies provide a variety of criminal justice information, from details of current offense (35.5%); criminal history (25.8%); sex history/psychological evaluation (18.7%); entire file (14.8%); pre-sentence report (13.5%); conditions of release (6.5%); victim information (5.2%) and post-sentence update (2.6%).¹² (Data not presented.)

One out of five respondents indicated that they rely on the treatment provider to give information to the polygraph examiner. Since the therapist is more likely to have the sex history information than the supervising officer, it makes sense that they would supply the examiner with this material (data not presented).

¹² Respondents could report more than one response.

Forty percent of respondents indicated that polygraph examiners provide both written and verbal reports of polygraph results to the probation/parole agent, while 38.0% indicated that examiners provide written reports only. Nearly 12.0% of the probation/parole officers surveyed receive the results via the treatment provider, not the polygraph examiner (data not presented). Thorough preparation results in a comprehensive pretest interview. Rapport must be established and general concepts (such as "sexual contact," time periods, and behaviors) defined. The examiner must discuss the case file information with the offender to identify the scope of deviant interests. Based on earlier conversations with the containment team members, discussion with the offender and review of file information, the examiner develops the best relevant and comparison questions designed to reveal the very personal assault patterns and behaviors of each offender. Needless to say, this process takes time.

According to our survey data, two hours was the average length of an examination, and 36% said the exam lasted

longer than two hours. Nearly ten percent of respondents reported the exam lasted less than one hour. Given the material that must be covered during an effective PC polygraph examination, one lasting less than two hours is unlikely to uncover the depth of information necessary to protect the community (data not presented).

Satisfaction Guaranteed!

Ninety-one percent (91.0%) of the survey respondents reported that they were satisfied with the quality of services received from polygraph examiners (data not presented). Table 7 presents the reasons reported for satisfaction. Communication, the skill level of the examiner, and the examiner's professionalism were the most frequent responses. Those who expressed dissatisfaction with the examiner mentioned the need for more professionalism and communication (6.5%); 2.6% were concerned that too many tests scored inconclusive, and they lacked sufficient control over the questions (data not presented).

Table 7
Respondents' reasons for satisfaction with services from polygraph examiners.

Summary of respondents' comments	Proportion responding
<i>Good communication, i.e., willing to discuss case with officer, talks to officer before and after the exam, stays in touch, provides information not otherwise known, is willing to attend staff meetings. Recommends questions to ask, is easy to work with, is forthright, explains so we can understand.</i>	37.4%
<i>Good skills related to sex offenders, i.e., knowledge about and well-educated in examining sex offenders, knows what to look for with sex offenders, good at question construction, can break down denial, licensed, certified. Uses modern equipment.</i>	34.2%
<i>Professionalism, i.e., efficient, thorough, honest, experienced, reliable. Produces quality reports that are easy to read and understand.</i>	32.9%
<i>Timeliness, i.e., polygraph examination, results, and report writing are done in a timely manner. Does "emergency" tests when necessary.</i>	16.1%
Cost effective/convenient.	2.6%
Don't know, or too new to know.	5.8%

Consistency of communication between the supervising officer and the polygraph examiner was at the heart of the survey respondents' satisfaction with the polygraph process (37.4%). Not surprisingly, 92.3% of respondents indicated that their agencies require the sex offender to waive confidentiality among members of the containment team. A waiver of confidentiality is essential to ensure a fully functioning team.

As reported by respondents, possessing good skills was the second most frequent response (34.2%). Another 32.9% stated that professionalism was very important. Networking with colleagues who are working in this area can enhance both skill level and professionalism. Use one another to develop quality control procedures that will increase confidence in the profession. Regularly schedule time to review and score a sample of each other's charts, and discuss the construction of relevant and comparison questions. Refer to each other if you are getting many no deception indicated (NDI) or inconclusive results because this could be the result of poorly constructed questions. Videotape or audiotape the exams to avoid the common problems that surface when an offender recants a confession later

Survey Respondents Who Do Not Use the Post-Conviction Polygraph

Nearly 80% of probation and parole supervisors reported that their office or agency *never or rarely* used the PC polygraph (n=533). More than half (55.0%) reported that implementing the polygraph has not been seriously considered. Almost one-fifth (18.4%) of the group that *never or rarely* used the polygraph reported a lack of polygraph examiners as a barrier to implementation. The northeast and central regions¹³ of the United States were more likely than either the southern or western regions to report this as a barrier to implementation. More than one in five (22.7%) respondents from the northeast and 27.2% from the central region reported this obstacle. Please see Figure 2 for the geographic distribution of respondents who

reported a lack of polygraph examiners. Respondents in probation and parole offices that had specialized sex offender caseloads were approximately twice as likely to consider its use than those without such caseloads (60.8% compared to 39.2%).

This information represents considerable opportunities for the PC polygraph profession. Figures 2 and 3 reflect areas where exposure to the PC polygraph may be limited. The maps may reflect areas where the polygraph community can investigate the introduction of the containment approach. Examiners interested in pursuing this field should contact probation or parole agencies specializing in sex offender supervision along with local sex offense-specific treatment providers. Victims organizations should also be contacted to participate in the development and promotion of this essential risk management tool.

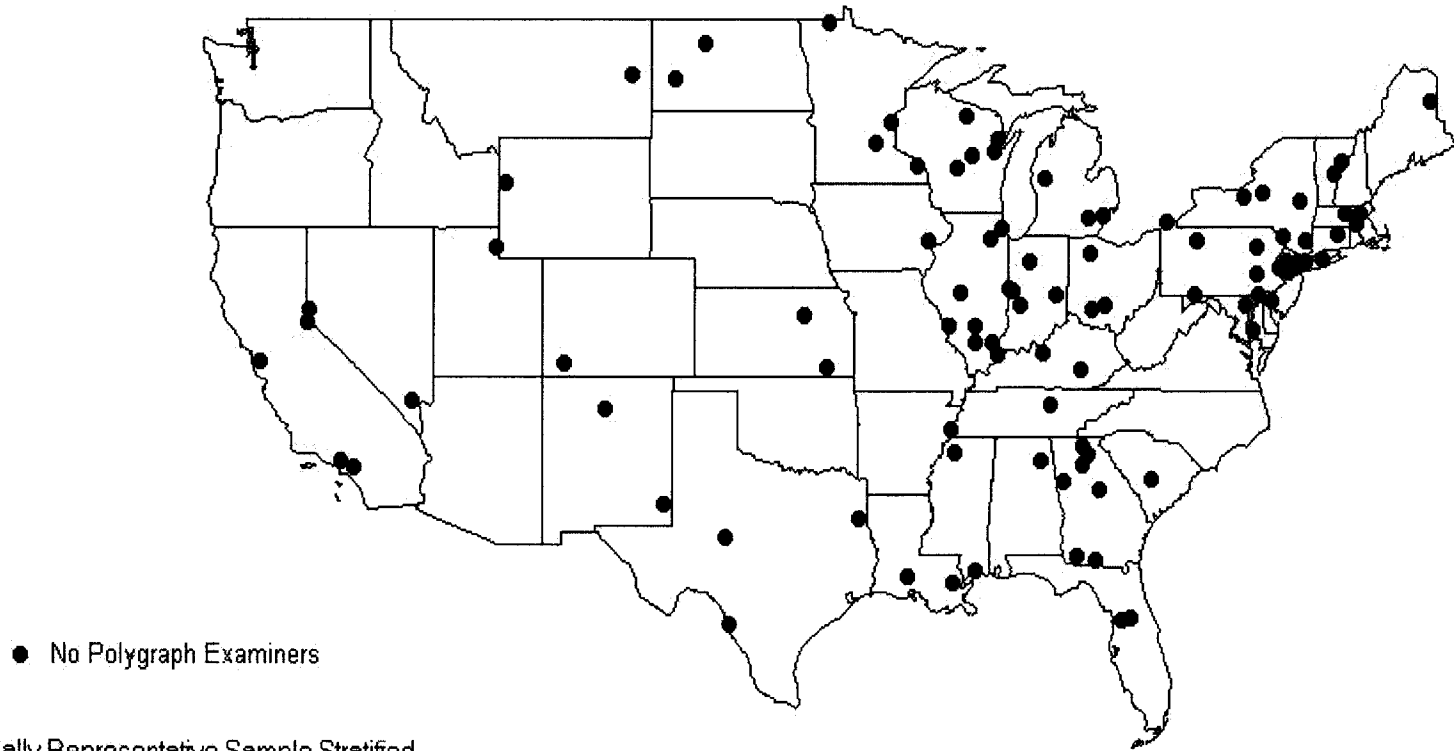
Recommendations for Those Interested in Pursuing this Area of Specialization

- Collaborate effectively as part of a team of professionals that works together to assess and manage the risk of sex offenders. Work to understand the role and responsibility of each member of the containment team. While the treatment provider may hope for progress and the supervising officer may be suspicious of the offender, the role of the polygraph examiner is to remain neutral and to communicate neutrality to the offender. Be open to the concerns of other team members about the polygraph services provided. Teams often work together for many years, continually learning from each other.
- Most probation and parole officers credit treatment providers for initiating the use of the PC polygraph. To start a containment approach to managing adult sex offenders, meet with a specially trained sex offender treatment provider. Contact Safer Society in Brandon, Vermont, at 802-247-3132, to obtain a list of treatment providers in your area.

¹³ Northeast states were categorized as CT, DC, DE, MA, MD, ME, NH, NJ, NY, OH, PA, RI, and VT, and central states were AL, IL, IN, KS, MI, MN, MO, ND, NE, and WI.

Figure 2
1998 National Telephone Survey of Probation/Parole Supervisors
Respondents Report Not Using the Polygraph

Barrier Reported—Lack of Polygraph Examiners (n=98)



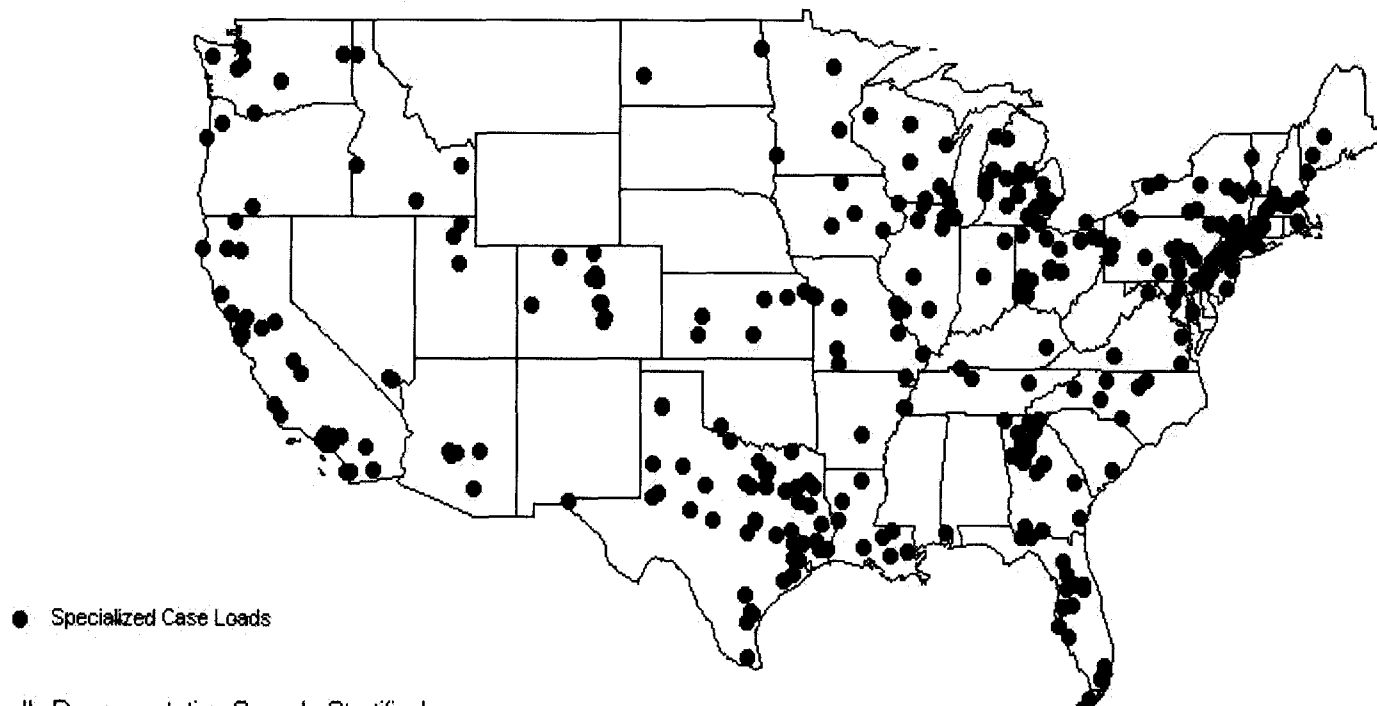
Nationally Representative Sample Stratified
by Population Density and Geography.
679 Agencies Responded, 533 Rarely/Never
Use the Polygraph with Sex Offenders
Post Conviction.

Map Prepared by L. Swolfs, Research Analyst, Office of Research and Statistics, DCJ

Figure 3

1998 National Telephone Survey of Probation/Parole Supervisors
Respondents Report Specialized Case Loads (Summer, 1998)

Specialized Case Loads (n=360)



● Specialized Case Loads

Nationally Representative Sample Stratified
by Population Density and Geography.
679 Agencies Responded.

Map Prepared by L. Swolfs, Research Analyst, Office of Research and Statistics, DCJ

- Educate key people in your community. Bring research and other relevant information to underscore the need to improve traditional ways of supervising convicted sex offenders.
- Obtain the necessary training to ensure your skills are top-notch. Commit to getting ongoing training since the field is evolving and polygraph techniques, knowledge and research are continually reassessed according to current sex offender management strategies.
- Preparation, preparation, preparation! This is a critical first step in conducting an excellent polygraph examination. Actively obtain case file information on clients. Review the material thoroughly, focusing on high-risk topics to be addressed during the exam.
- Plan to spend at least two hours conducting an examination. A thorough examination includes a carefully prepared and administered pretest, the actual test, and the posttest.
- Remember the value placed on communication. Probation and parole supervisors wanted frequent communication, before and after examinations. Discuss each offender in detail with the supervising officer and the therapist prior to conducting the exam. Design a report format that lists the questions asked and presents information disclosed during the pretest, examination, and posttest test. Distribute the written report to the treatment provider and the supervising officer.
- Professionalism was considered important by many respondents. Professionalism is boosted by additional education, membership in official organizations, subscribing to journals, following the American Polygraph Association Standards for the PC polygraph, and obtaining regular training by APA-certified or Department of Defense Polygraph Institute-approved trainers.
- Since agencies with specialized sex offender caseloads were more likely to consider the use of the PC polygraph (compared to agencies without specialized caseloads), include these professionals in your meetings with therapists.
- Remember, patience is necessary to promote containment principles; this takes time. But as many respondents stated, "Find a way and just do it!"

Sexual offending usually occurs within a lifestyle of deviant sexual behavior. The behavior is wrapped with lies and secrets. The post-conviction polygraph examiner works with other specialists-sex offender therapist and criminal justice probation or parole officer-to elicit the secrets and obtain information about individual offenders that can be used to assess and manage risk to potential victims. Examiners who collaborate with this team can make a significant contribution to the community and to their profession.

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Post-Conviction Polygraph Testing: Then and Now

Stan Abrams and Gordon Simmons

Abstract

This paper consists of a brief review of the history of post-conviction sex abuser testing, a survey of the use of this procedure throughout the United States, and some recommendations that should enhance the validity of these approaches.

Key words: post-conviction sex offender testing

Post-conviction polygraph testing was initiated by two judges in the mid-1960's, but for the most part it died until 1973. This approach was revitalized by Judge John Beatty in Portland, Oregon. He permitted those whose criminal records were so poor that they ordinarily would not have been considered for probation to enter this program if they agreed to periodic polygraph testing. The purpose in those early years was to reduce the recidivism rate by employing periodic polygraph testing to serve as a deterrent to continued criminal behavior. In a three-year follow-up study, Abrams and Ogard (1986) demonstrated that 69 percent of those individuals under polygraph supervision were successful in avoiding revocation in contrast to only 26 percent of a comparable control group without polygraph testing. The differences in rates of recidivism were statistically significant ($p < .001$). These findings occurred in spite of the fact that there was a greater likelihood that those in the experimental group would be more apt to be discovered re-offending because they were also being polygraphed. Just as important, since there was a concern about habituation reducing polygraph accuracy, the findings of high validity also were most dramatic.

Another aspect of historical significance is that the physical abuse of children was not even generally recognized until about 1962. Before then, those children with repeated fractures were diagnosed as having

brittle bone disease. There was even less awareness of child sexual abuse, and not until 1975 was it really recognized as a significant problem. Even then, the offender was typically viewed as an old man wearing a raincoat loitering around a school. However, by 1980 child sexual abuse was considered an epidemic problem.

The success of polygraphy with the general criminal population continued over the years, with this approach being expanded throughout the Pacific Northwest. However, when it became obvious that sexual child abuse was epidemic, it became increasingly important to focus this testing on sexual offenders rather than the general criminal population. The reasons were not only because of the epidemic nature of this problem, but because of the life-long damage that was inflicted on children, and because some victims were becoming victimizers, thereby perpetuating and expanding the problem. Some of the motivation to recommend the testing of sexual offenders, in contrast to the general criminal population, also rested with the belief that it would be less likely that this manner of testing would be eliminated if testing were conducted on pedophiles (Abrams & Abrams 1993). This belief has been confirmed with the passage of time.

Some time later, disclosure testing was developed and patterned after pre-employment

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testing. Therefore, it was not the same as the usual specific polygraph examination in that interrogation preceded the test, with polygraphy being utilized as a lever for obtaining admissions. This was studied by Abrams, Hoyt, and Jewell (1991) who confirmed that polygraphy was indeed a very effective tool for obtaining admissions when it was employed in this manner. Judges, therapists, and corrections officers also reported that this was another very valuable advantage to polygraph testing.

As therapists became enamored with these approaches, they requested presentations by polygraph examiners at the professional meetings of the Association for the Treatment of Sexual Abusers (ATSA). Therapists from other states became interested in developing programs of this nature in their states, and polygraphists too became interested in becoming involved in this type of testing. Therefore, polygraphy became one more area of specialization within the realm of the treatment and control of sexual offenders. There were specialists who administered and interpreted the plethysmograph; pediatricians using the colposcope studied the physical signs of sexual abuse seen in children; defense attorneys emphasized defending accused offenders; and there were prosecutors who only dealt with abuse cases. Other attorneys specialized in suing those individuals who had been found guilty of abuse, and some corrections officers' case loads were composed only of sexual offenders. These and other specialists joined polygraphists in this new business, and with this, post-conviction testing expanded from two to thirty-three states as well as being used in Germany and Canada. The junior author of this paper painstakingly contacted every state to determine the degree of use that was being made of this approach. This is reported in Table 1 with the findings representative of the year 1999. It should be noted, however, that the current accuracy of these findings is dependent on the knowledge of those surveyed, and on the changes that have occurred since the survey was conducted.

Presently, there is absolutely no doubt that post-conviction polygraph testing of sexual offenders is highly accepted in this country. Corrections officers believe that it is

the most effective way of measuring the probationers' risk to society and to deter their acting out. It also frees their time so that they can more effectively supervise their other charges. Judges have indicated that they believe this approach is highly accurate and of great assistance to them during sentence hearings. Therapists rely very heavily on polygraphy to break through their patients' denial, which they believe to be a very important part of the treatment process. Also, there is a savings of tax payers' money, since public funds are not used to house these offenders in prison. Most importantly, society is better protected. Finally, the value to the field of polygraphy lies in the fact that the positive attitude toward post-conviction sex offender testing has improved the image of the polygraph profession in general. Now physicians, psychologists, attorneys, judges, and corrections officers all view polygraphy in a much more favorable light.

The three broad fields of polygraph, therapy, and corrections have formed what Lundell has called a Triangle to serve to contain the offenders, and thereby protect society. Working together, the abuser is supervised closely by the corrections officer, tested by the polygraphist to determine if he is re-offending and also to deter him, and the therapist acts to evaluate the risk of the patient and utilize treatment measures to assist him in controlling his deviant impulses. Although it is unlikely that these individuals can ever be cured, it is believed that many of them can learn to control their aberrant behaviors.

The senior author always has been concerned with the possibility of this approach deteriorating to the level of some employment testing in the past. Unfortunately, this has occurred, but just how extensive this is, is difficult to measure. There is no doubt that there are "chart rollers" who conduct as many as ten tests in a day and those who employ a fifteen-minute test. In fact, the junior author reported complaints of this nature in his poll of the various states. The APA and President Weinstein should be lauded for setting standards for post-conviction testing and for Donnie Dutton and his Committee for the development for the Post-Conviction Polygraph Training Program. The training will

unquestionably encourage the use of improved testing techniques, and those who elect not to follow the standards will certainly lack the support of the APA if complaints are made against them. This writer would strongly favor very stiff penalties if the standards and the code of ethics are not followed. The more polygraphists behave like professionals, the more they will be treated and viewed as professionals by both their colleagues and those in other professions as well.

Now what is required is more research to demonstrate the validity of the approaches that are used and further standardization of the procedures based on these findings. There are differences in the various approaches utilized, and without a scientific evaluation of these methods, there is simply no way of determining which are the most effective.

The following are some recommendations presented by the senior author. It is recognized that if these recommendations were to be followed, they could reduce the income of some examiners. However, it is strongly believed that there would be an increase in the validity in the periodic testing and a lesser risk to the children of the community. One should seriously consider that the reduction and almost elimination of employee testing in the private sector started with litigation related to what was believed to be inaccurate testing results, and finally ended in legislation that dramatically reduced the use of this procedure. It would be most unfortunate to lose post-conviction testing since it answers so many important needs in the community.

Recommendations

While multiple-issue testing is weaker than single-issue examinations, it has certain advantages as an investigative tool. However, the competition among the relevant questions tends to dilute the physiologic reactivity of some of the less threatening relevant issues, and in Backster's terms, dampens those reactions. This causes a tendency toward inconclusive findings on the less powerful relevant items. Moreover, since single-issue tests have the advantage of scoring to the stronger comparison question on the first relevant question, false positive findings

(labeling a truthful person as deceptive) are reduced without affecting the false negative rate (labeling a deceptive person as truthful). This is based on both the findings of Capps and Ansley (1993) and Abrams (1997). These disadvantages that are inherent in multiple-issue testing obviously present problems in post-conviction testing, since the disclosure tests and most of the periodic tests that are conducted suffer from these same weaknesses. It is believed that when important issues need to be resolved, it is far better to administer several single-issue tests in place of using multiple-issue examinations.

Although the APA has accepted the MGQT, it is believed that Backster's exploratory test is preferable. The MGQT presents concerns to this writer because the relevant questions, which precede the comparison questions, might elicit more reactivity because of their position earlier in the test. Since a problem with the polygraph error rate in the direction of false positives still exists, the relevant questions preceding the comparison questions would seem to increase the chances of a deceptive finding in a truthful person. Also, the comparison questions are often several questions away from the relevant questions, resulting in a lesser likelihood of equal reactivity as compared to when they abut each other. Since the final comparison question is more toward the end of the chart, the electrodermal response could be minimized through fatigue, again enhancing the possibility of a false positive finding. Finally, if one of the comparison questions is lost through an artifact, there is only one comparison question left to compare with three or four relevant questions. For all these reasons, Backster's exploratory test is recommended.

The greater number of relevant questions in an examination, the more likelihood of inaccurate and inconclusive results because of the previously mentioned competition. Therefore, it is recommended that the number of relevant questions in a test does not exceed three.

When dealing with other professionals and other professions, there is often a tendency for a hierarchy to develop with those with the higher degrees or greater egos to see

themselves as experts in all areas. The examiner must not give up his or her position as an expert in polygraphy, whose role among other things is determining which questions should be asked. For example, therapists rightfully believe that a thought could lead to the deed, therefore, they often want relevant questions related to the subject's fantasies. However, to bend to a therapist's wishes and waste a relevant question on whether the patient is having sexual fantasies about children is inappropriate. Of course they do. They might minimize it and indicate that it is just a thought, but they are sex abusers and if successfully treated they might manage to think of something else, but the thoughts are always going to be there. Questions of that nature make a far better comparison question.

Every polygraphist has probably been approached by an avid attorney brandishing a sheet with many items asking that his client be tested to determine if he were truthful to every item on that page. It would be a miracle if the subject were truthful to all of them, and even if he were, there would probably be some issues for which he was unsure. Uncertainty is part of Reid's definition of a comparison question. Therefore, questions that ask the subject whether he is truthful on all of his responses on the Sexual History Questionnaire, for example, will almost always result in a deceptive finding. One must recognize that at times therapists become so impressed with polygraphy that they ask more than it can provide.

The senior author recently heard an examiner testify in court. The testimony that the polygraph findings were of truthfulness were followed by a confession that, "The attorney asked me to ask those questions." One way an attorney can enable his client to obtain a false negative outcome is to have the examiner ask the wrong questions. Again, only the examiner determines which questions will be asked. Permitting anyone to dictate the questions, especially an attorney for one side of the case, literally becomes a matter of the examiner permitting someone to "beat the test."

The concept of the Halo Effect in polygraphy means that continued contacts with the same examiner breeds some manner

of relationship. If it is positive, it tends to bias the examiner in that direction. Expecting a truthful finding, he tends to see it in the tracings. Bias is a very powerful manipulator of perception and behavior. Ideally, a new examiner should be employed approximately every four or five tests of a given offender. Added to the Halo Effect is the problem of habituation, another factor contributing to false negatives, which can be minimized by switching examiners. An examiner should not administer more than four periodic tests in a day, and fewer if disclosure tests are included. Periodic tests should last a minimum of ninety minutes, and disclosure tests inevitably must be even longer.

Presently, polygraphists are the darlings of corrections officers and therapists. Examiners make the role of probation officers so much easier by determining who has re-offended. Therapists extol the virtues of this new adjunct to their therapy which almost magically breaks through the patient's denial. It must be remembered that deterrence is very useful, but it does not necessarily imply accuracy. Patients in fear of being apprehended by the "black box" might not re-offend, but if they do and continue to be found truthful, that pedophile has been given a license by the polygraphist to molest a child. If the offender is apprehended, the child has a right to sue, and if the examiner has used inappropriate methods, the victim has a right to collect. The history of pre-employment testing should be remembered. First there was litigation, then legislation. When the senior writer wrote *A New Beginning* (1991), it was with the awareness that these new approaches would mean more testing for many examiners that might some day even surpass the employment testing. What a waste it would be if these very effective techniques were to be lost through the gluttony of a few. When a non-APA member who had been characterized as one of the most knowledgeable polygraphists in the country was attacked in court for his inappropriate testimony, and when examiners err and label a deceptive person truthful, it has a very negative impact on the entire polygraph profession. Therefore, every polygraphist bears the responsibility of conducting examinations in a professional manner. It is believed by the writers that the APA's

standardization policy, requirement for continuing education, and a specialized training requirement for post-conviction training, has moved more in the direction of making polygraphists professional.

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Pre- and Post-Conviction Polygraph: Building Blocks for the Future - Procedures, Principles, and Practices

Eric J. Holden

Abstract

The author examines the development and structure of the validated pre-conviction psychophysiological detection of deception (PDD) test and evaluates those procedures in light of the characteristics of other behavioral sciences testing procedures. The elements that cause the PDD procedure to conform with recognized testing criteria are examined, including standardization, norm data, reliability, and validity. Recommendations for distinguishing test results from professional opinions are made. Additionally, a model is proposed that describes the elements of a pre-conviction validated PDD test, and the psychophysiological principles that allow any PDD test to discriminate truthful and untruthful reactions are reviewed. Post-conviction PDD tests are examined in the context of those testing requirements and fundamental principles. Recommendations are made that distinguish testing multiple issues from the concept of mixed issues testing. Finally, the author describes five defined post-conviction tests that can be effectively used for sexual offenders in treatment and under conditions of supervised probation and parole.

Key words: mixed issues, model PDD test, multiple issues, pre-conviction, post-conviction sex offender testing, probation, psychological set, reliability, sexual offenders, standards, tests, theory, treatment, utility, validity

Since the mid-1960s, when polygraph testing procedures were first employed to evaluate the behavior and history of offenders (Abrams, 1993), the concept and practice has flourished and captured the attention of many state legislatures, courts, probation and parole agencies, and treatment providers throughout the United States. This is most apparent in the management of sexual offenders. The "Containment Approach," for example, is a model developed in the mid 1990s that suggests that implementation of the post-conviction polygraph tool, coupled with collaboration among specialized professionals who supervise and treat sex offenders, is an essential component of effective sex offender

management (English et al., 1996). This inclusion of detection of deception professionals with supervision and treatment professionals working closely in the case management of sexual offenders currently under court supervision has been referred to as "collaborative polygraphy" (Mack & Gougler, 1997).

A survey released in 1998 reported that approximately 35 states authorize the use of one or more post-conviction polygraph test procedures as a condition of an offender's probation or parole (Simmons, 1998). This practice has been broadened in some states to include testing of juvenile sex offenders¹ as

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¹ V.A.C.S., Texas Family Code, Section 54.0405

well as adult sex offenders. District² and Appellate Courts³ have upheld the use of polygraph as a condition of probation and parole and have admitted the test's results and admissions from these sessions in revocation hearings.

The usefulness (utility) of post-conviction polygraph examinations to professionals who manage sex offenders is heralded by those who have incorporated it into their programs. The information derived from the examinations can be instrumental in risk assessment, measuring progress in treatment, and assessing compliance to conditions of supervision. Those who have not implemented the post-conviction polygraph test often cite a lack of resources and lack of education about its effectiveness as primary hindrances to implementation (Griffin, 1997).

Consumers of the post-conviction polygraph test and examiners alike should be clear on the following two issues:

1. Support from the judicial system and state legislation have made its use increasingly important and available to treatment and supervisory professionals; and,
2. Post-conviction polygraph tests draw heavily upon pre-conviction procedures and principles for credibility.

If this bright future for post-conviction testing is to continue with the support and endorsement of the collateral professions, the polygraph profession will have to define the methodology of these tests in light of what is known about valid polygraph test functions, and conduct them in that way only. In the future, the credibility and acceptance of polygraph testing in this post-conviction role will depend largely on the profession's willingness to recognize the limitation of its

test processes, and to base opinions solely on the strength of validated procedures.

An Overview

The emergence of post-conviction testing has provided an opportunity for examiners to assess how applicable pre-conviction test formats and procedures are to a variety of post-conviction interests; to evaluate the fundamental principles that underlie any valid polygraph test; to recognize the standards that make No Deception Indicated (NDI) and Deception Indicated (DI) conclusions reliable, and the professional opinions of truthful and untruthful valid; to determine how post-conviction tests can conform to these standards; to understand what effect variations from these professional standards will have on defending a professional opinion; and, to identify what distinguishes a test's utility from its probable accuracy.

While collateral professionals are exploring new and innovative ways to use polygraph tests with sexual and other offenders, polygraph examiners must continue to comply with established and validated testing procedures and principles. The evolution of polygraph testing from Frye⁴ to EPPA⁵ to Piccinonna⁶ to Daubert⁷ and beyond should have made one thing crystal clear to polygraph professionals - detection of deception testing is made vulnerable when the lessons of history and the standards of professional practice are not heeded - "you gotta dance with them that brung ya" (author unknown). This paper will address those issues that distinguish post-conviction from pre-conviction tests after defining standards recognized as fundamental to a test process. Additionally, the author will recommend a structure for conducting post-conviction tests in light of accepted polygraph principles. This effort will require a re-definition of some terms and the creation of new concepts as well.

² *Marcum v. State*, 983 S.W. 2d 762, 768 (Tex.App.-Houston [14th Dist.] 1998, pet. ref'd)

³ *Ex Parte Renfro*

⁴ *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923)

⁵ The Employee Polygraph Protection Act 29 U.S.C. § 2001, et seq.

⁶ *United States v. Piccinonna*, 885 F. 2d 1529 (11th Cir. 1989)

⁷ *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1998)

Part A of this paper will describe what makes an evaluation process a "test" and what it takes to fulfill that mission. The factors required of polygraph procedures to function as tests, the importance of structure, standardization, consistency in grading and evaluation methodology, and the capability of making accurate assessments of a psychological event (lying) with physiological criteria, will be briefly described. Finally, it will be noted that to make the test process work, the test administrator must follow all the rules.

Part B of this paper will examine briefly the internal structure of the Psychophysiological Detection of Deception (PDD) test that makes it work and that allows examiners to assess what it is they believe they are assessing - truthful and untruthful behavior. To accomplish this purpose, we will review the basic premise of the pre-conviction, specific issue, and validated test, and we will classify the constants or building blocks that generally accompany such a test. In that light, the basic principles that are fundamental to the polygraph test that allow for the instrumental detection of deception will be reviewed. These basic principles are:

1. Why people react physiologically when they lie - concerns about exposure, being detected and the consequences;
2. Why examiners are capable, with a standardized test structure, of differentiating deception from nondeception (labeled "psychological set"); and
3. How mixing relevant issues can seriously compromise the above, therefore compromising the validity of a professional opinion.

Part C will evaluate post-conviction examinations, their internal structure, and the target issues being evaluated. Readers will learn how their structures vary from the building blocks that make up the pre-conviction test. Additionally, we will address how taking liberties with the testing process can compromise defensibility of an opinion.

Finally, we will offer a suggestion about how post-conviction examinations can be conducted with the principles and building

blocks of a valid specific issue test in mind and without violating the fundamental principles of PDD tests. We will suggest testing guidelines.

Part A

The Development and Structure of a Test

Tests in the behavioral sciences are developed to accomplish a certain mission. That mission or purpose may be to identify something, to better understand something, or to differentiate issues of a psychological or behavioral interest. The polygraph examination's mission is to determine when an individual is being truthful or untruthful during a testing process. The key words here are "the testing process." Simply put, the requirements for an evaluation procedure to function as a "test" include sufficient standardization to comply with the intent and purpose of that concept in testing, and; sufficient data for norms to have been established.

Polygraph tests have been criticized by other testing professionals as not truly being tests and as being unreliable, in great part because of differences about standardization - a concept at the heart of testing procedures (Blinkhorn, 1988). Despite these criticisms, friends and critics alike have historically referred to PDD tests in the literature as "tests." Abrams (1989, p. 2) describes the polygraph test as "the scientific approach to detecting deception." Raskin (1988, p. 96) described polygraph tests as "techniques that employ physiological measures for assessing credibility with regard to specific acts, events, or knowledge." Yankee suggested the term "Psychophysiological Detection of Deception (PDD) examination or "test" to replace the older term "polygraph examination" or test (Matte, 1996, p. 4). This article will adopt the language of Yankee by referring to a polygraph examination or "psychophysiological detection of deception test" by the acronym "PDD."

Critics of PDD procedures and techniques also refer to the detection of deception as conducting "polygraph tests" (Gale, 1988; Lykken, 1998). How can these PDD procedures be defined as tests and simultaneously criticized for not being tests? While differences

exist between psychological/psychometric and psychophysiological tests in how standardization is accomplished, the differences are more of definition than of compliance with concept and purpose. Standardization for psychometric test instruments has been attributed to its test question consistency. In other words, the same questions are asked of every test taker (Blinkhorn, 1988). For PDD tests, however, standardization has been achieved with standardized structure, meaning the same rules of question presentation and development, test structure, and principles of test administration apply to every test taker. The confirmation that PDD testing has reached a level of standardization in its application is reflected by the scientific studies that support the significant accuracy and reliability of PDD opinions when the structure and principles of those test procedures are not violated (see validity and reliability below).

Additionally, for a procedure to be designated a test, individual test responses must be evaluated against established population norms or norm groups i.e., "a sample of people on whom a test is standardized" (Aiken, 1988, p. 489). Blinkhorn (1988, p. 31) defined test norms as "the range of scores in a large sample of people who have taken the same test. These norms provide a standard of comparison for scores on a standard test - this is what makes the results of the test interpretable." In reference to PDD testing, Blinkhorn concludes, "the decision as to whether an individual examinee is lying is taken on the basis of comparison of responses of that examinee only (relevant to comparison questions) and not by comparison with other examinees' responses directly." (1988, p. 31)

In review, PDD examiners are comparing individual responses of the test subject directly to the patterns of physiological reactions of a larger sample of verified truthful and untruthful examinees, and thus are referring to a population norm each time an examiner numerically scores a test or causes a computer algorithm to do so. The quantification (numerical scoring) procedures and the criteria for decision making (established cut-off points, for example) are based upon the psychophysiological knowledge accumulated from these

populations of known truthful and untruthful subjects, and upon identifying reactions that can be grouped to distinguish truth tellers from liars. Based on the standardized structure and population norms of PDD testing, it appears biased to suggest that these criteria for PDD testing do not exist. Many scientists and practitioners alike believe that the PDD's structure and evaluation procedures comply in development and application with a test process, and that those procedures comply with the scientific demands of a test structure. Simply put, the requirements for any evaluation procedure to function as a test include sufficient standardization to comply with the intent and purpose of that concept in testing and sufficient data for norms to have been established. A reconsideration of those two components indicates that the PDD professionals and involved scientists have accepted and met that challenge.

For a test to function as expected, however, it is crucial that the practitioner comply with every rule of test administration and evaluation. The level of compliance with defined test procedures likely will determine the defensibility of the test opinions. Examiners should adhere to the specifications, the underlying principles, and the structure of a test's format and procedures if the professional opinions are to be defended and supported by scientific conclusions about reliability and validity. This requirement exists whether the test is conducted pre-conviction or post-conviction. In short, all tests should comply with a testing model.

Components of Psychological Tests

Psychological tests defined by Aiken (1988, p. 498) are "any device used to evaluate the behavior or performance of an individual." Cronbach (1960) defined tests as "a systematic procedure for comparing the behavior of two or more persons." Blinkhorn (1988, p. 30) defined psychometric tests as "any method that infers a person's mental state, behavioral tendencies, or capacities from a standard sample of behavior" and noted "that theory is very highly developed - it is one of the outstanding durable achievements of scientific psychology."

Generally, a test's standardization includes references to the following:

- How the procedure and questions are administered
- Validation of the techniques and the questions
- Reliability of the scoring and evaluation procedures

Others address the criteria of psychological testing. Ruch (1963, p. 356-358) identifies what makes a good measuring instrument as validity, reliability, objectivity in scoring, standardization as it is administered, and norms against which to compare individual scores. Additional criteria noted are "freedom from bias in the scoring interpretation" (Blinkhorn, 1988, p. 30). Clearly, there is no dispute that standardization, validation, and reliability are keys to a test procedures definition and success.

The Importance of Standardization

Standardization, or "administering a carefully constructed test to a large, representative sample of people under standard conditions for the purpose of determining norms" (Aiken, 1988, p. 496), is a requirement of proposed testing tools. It represents the only scientific way that an individual's responses on a test (verbal, physiological, behavioral) can have a base of comparison against a larger group with known and defined characteristics. These characteristics can be such things as a personality type, a behavioral trait, or in the case of PDD testing, truthful or untruthful behavior.

Whether the test is psychological or psychophysiological, standardization also involves how the test is administered. With psychological and psychometric tests, standardization generally involves asking everyone the exact same test questions (Blinkhorn, 1988, p. 30-31) - a difficult proposition for the PDD examiner. This difference has provided a platform for much of the criticism that PDD tests are not standardized because the PDD relevant and comparison questions must be tailored to meet

the test's purpose (i.e., robbery, murder, rape, compliance with probation conditions, etc.), and because, within defined guidelines, some latitude exists to modify a basic test question to the individual's age or awareness level.

Psychometric and Psychophysiological Test Development

This distinction between psychological/psychometric and psychophysiological behavioral evaluations is one of procedure and definition, and not one that violates the integrity or intent of a defined test process. When the similarities of PDD and psychometric test development and validation are compared, the PDD test can stand with the other behavioral evaluation procedures as a significant and consistently discriminative tool. As will be seen, PDD tests have developed into a standardized process capable of consistently being evaluated without bias, especially with the assistance of computer algorithms being developed, and are capable of reliably differentiating deception from non-deception. A general comparison of psychometric and psychophysiological test development will help demonstrate these similarities.

With psychological/psychometric tests, for example, a population diagnosed with specific personality traits (based on characteristics defined in the *Diagnostic and Statistical Manual of Mental Disorders*⁸ is identified and questioned. How those questions are responded to, as a population, gives rise to a series of questions that can be incorporated into a test format, or structure. When any individual is then administered that test format, his or her responses can be compared with those of the validation population (norm data), and judgments about a broader issue, such as personality type in this example, can be made. The test format is then scientifically studied to determine how accurately that particular test format, when administered as developed, differentiates the characteristics attributed to that larger validation population. A professional opinion about that individual's characteristics or behavior is then possible. A test has been developed.⁹

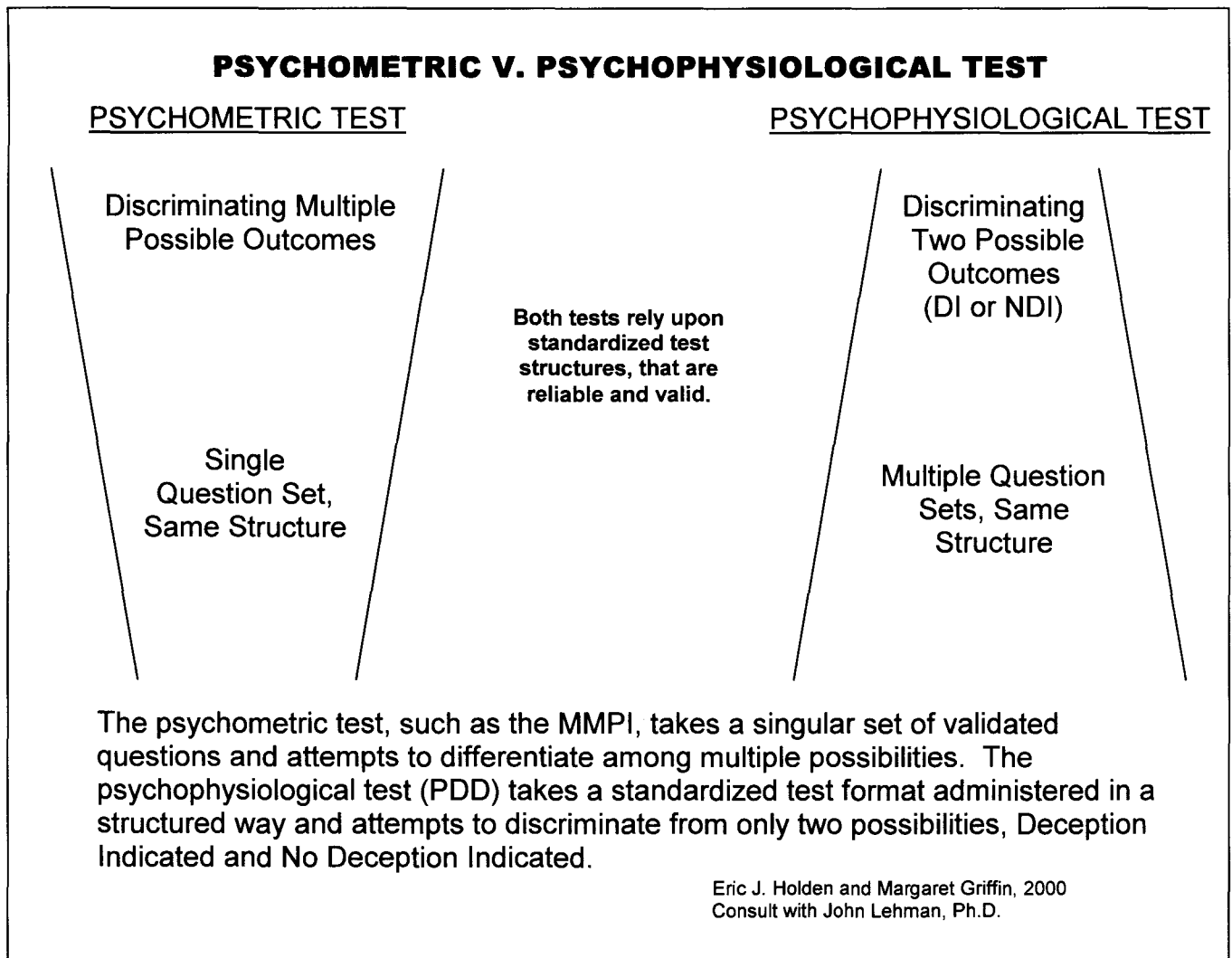
⁸ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (1994).

⁹ John Lehman, Ph.D., Licensed Clinical Psychologist, Personal Commentary, Dec. 1999 - Feb. 2000.

PDD test structures developed in a comparable way. Populations of individuals with known characteristics (confirmed truth tellers and deceivers) were identified. How those individuals responded physiologically to questions during an experimentally designed but structured test were studied, evaluated, and the common physiological response characteristics were grouped into patterns (profiles). Test procedures yielding the most accurate and consistent results in discriminating the truthful from the untruthful were structured formally into formats (Comparison Question or other formats). Subsequently, when an individual is administered a PDD test with one of the structured formats that person's physiological responses can be compared with those of a larger validating population (norms). The test results identify the test taker as demonstrating

psychophysiological characteristics similar to those of the validation group (deception indicated or no deception indicated). Judgments about a broader issue, truthful and untruthful behavior, can then be formed. These procedures and structured formats continue to be studied for their value at differentiating the truthful from the untruthful (validation) when the formats are administered as designed. A test has been developed.

Contrasted with psychometric tests, efforts to standardize PDD testing have focused less on standardizing the same broad question presentations to everyone (due to the varied issues that PDD tests address and the need to tailor questions to these issues) and more on standardizing the structure of the test questions, test formats, and test procedures administered to everyone.



Again, verification that PDD test procedures are sufficiently standardized through their structure occurs when scientific research supports the position that opinions from those researched formats yield valid and reliable assessments of truth and deception. To comply with this definition of standardization through structure requires that all the following elements be implemented:

- An interviewing protocol that is structured;
- Test question development that is structured;
- Test formats (MGQT, ZCT, Reid, Arther etc.) that are standardized and validated;
- A test administration that is standardized and structured;
- Consistent physiological recording methods that are standardized;
- Standard applications of scoring rules; and
- Opinions and conclusions reported in a standardized and professional way.

Regardless of how the rules of structure or standardization are defined for psychological, psychometric, and psycho-physiological or other behavioral sciences tests, those rules represent the foundation of the validated procedures. With field testing, when the rules are compromised, the support of scientific studies is also compromised. Valid test procedures should not be violated because the test structure provides the vehicle that allows physiological responses - when lying - to be elicited, focused to the area of greatest perceptual threat, and evaluated. The structure itself is designed to accommodate accepted principles that are fundamental to distinguishing accurately truthful from untruthful behavior. Specifically, those principles explain why and how individuals respond physiologically when lying.

All the fundamental principles of PDD testing are based upon the following scientific premise: Autonomic Nervous System (ANS) reactivity will occur to the act of lying when a threat is recognized by the examinee in a situation where exposure of the lie is likely.

The formal laboratory environment is designed to provide that situation. The validated test format is designed to activate that potential exposure. This mission can be accomplished only by following the rules designed for the test process. It should not be altered, and the principles that make the entire process effective must be respected. Using the shell of a standardized format, without applying the core principles and procedures of professional practice, is not enough to justify or lend support to a PDD opinion.

The Structure of the Test is Critical to the Validity of the Test

Professional opinions from post-conviction tests must be based on the same standards of test structure and PDD principles that have been demanded of pre-conviction tests, if validity and reliability studies about pre-conviction tests are to be used to support those opinions. The same questions asked of a pre-conviction test must be asked of a post-conviction test, and these questions are as follows:

- Did the test as administered comply with industry standards for format and question integrity?
- Were the principles of detecting deception violated to accomplish a particular test purpose?
- Was the defensibility of a professional opinion compromised by violations of principle or procedure?

To determine the answer to these and other questions surrounding post-conviction tests, it is important to understand how validity and reliability interact with test results and professional opinions.

Validity - Accurate Opinions Defined

Validity of a PDD test refers to the likelihood that the test procedure will differentiate truthful from untruthful persons. Ben-Shakhar and Furedy write, "The most important criterion for evaluating measurement procedures is validity, which refers to the degree to which inferences made on the basis of the test scores are true." (1990, p. 34). Ansley (1997) published a survey of

approximately eighty (80) scientific studies addressing the issues of validity and reliability utilizing specific test formats. The indications from the respected scientists conducting and supervising those studies were that PDD testing is a valid procedure. Simply stated, a professional opinion (truthful or untruthful) based upon raw test data (scores) is "a probability statement of potential error" (Holden, 1997). Validity addresses what scientific studies say about the likely accuracy or error associated with a professional opinion in light of the known and established accuracy rates with the larger studied populations, if all rules of test administration are complied with.

The involvement of members of the scientific community and the validation of PDD test procedures becomes increasingly important as courts more frequently review PDD test results for admissibility, and as post-conviction examinations and their results become increasingly a factor in offender monitoring and treatment. For the practitioner, validity, in effect, means the professional can have confidence that the opinion rendered has a minimal probability of error. For example, if the examiner concludes that the examinee is being untruthful to the relevant test questions, will the facts ultimately prove the examiner right? If not, how often will the examiner likely be wrong? (Probable error rate). Nothing has been more important for establishing credibility for PDD tests in our society than the scientific community's involvement with the PDD profession. Scientific studies are the mainstay of support in the defense of professional PDD opinions, and testimony about opinions, whether pre- or post-conviction, must reflect the knowledge of that data.

While members of the scientific research community may argue the merits of field studies and mock crime studies, or debate the generalization of studies to practical field applications, the practitioner mostly needs to be aware that studies of validity have been conducted, what conclusions can be formed from those studies about likely accuracy and error, and what formats those studies apply to. In brief,

practitioners of pre- or post-conviction tests are responsible for knowing:

1. What standardized (unmodified) techniques are available to use
2. What scientific principles make those techniques valid indicators of deception
3. What scientific support (validity) exists for those procedures and techniques

Practitioners should keep in mind that defending a professional PDD opinion (truthful or untruthful) depends on the test's administration and the studies that support those test procedures.

Reliability — An Essential Element in Determining Test Validity

Reliability refers to how consistently a set of PDD test charts can be re-evaluated in the same way by the direct examiner (intrarater reliability), by different examiners (interrater reliability), or by re-testing (test-retest reliability)¹⁰. Ben-Shakhar and Furedy state that reliability "refers to the consistency (or reproducibility) of the test scores." (1990, p. 33). Studies about PDD procedural reliability can be found in scientific and other professional publications (Ansley, 1997). It is fundamental to the defense of PDD test opinions that the test itself be determined reliable before the test's validity is concluded. For example, it is possible that a PDD test is reliable, but the opinion about truthfulness is erroneous, i.e. everyone agrees about the test results but everyone is wrong (true false positive and false negative error). A test may not be considered valid if it is not reliable. While reliability is a key ingredient of validity, it alone does not speak to conclusions of truthfulness. Ben-Shakhar and Furedy state, "Reliability alone is insufficient for evaluating tests or measurement procedures." (1990, p. 34). Reliability only addresses how consistently professionals evaluate data in the same way.

These briefly described principles of science - validity and reliability - should be a

¹⁰ Department of Defense Polygraph Institute, School Handout

primary consideration of the examiner every time a PDD test is conducted, whether it is pre-conviction or post-conviction. Ultimately, despite all the other values of a PDD test session, the defensibility of the professional opinion rendered by the examiner is the most critical. The rules of testing are not negotiable!

It's a new ball game since we've had to go to Court and prove it. Standardized instruments are the only defensible tools in Court. ¹¹

-Anna Salter, Ph.D.

Distinguishing Test Results from Professional Opinions

As a matter of procedure, the examiner's test result and professional opinion are different entities and should be reported separately. Much like reliability and validity, test results and professional opinions are inter-related, one dependant on the other, but yet they are distinctively different. (Holden, 1999)

Test results are determined by evaluating raw data, i.e. the physiological reactions on the charts that are scored. Based on the patterns evaluated, these raw data are then labeled No Deception Indicated, Deception Indicated, or Inconclusive. These labels were adopted by the PDD profession some years ago to identify the physiological response patterns reported by the practitioner and other evaluators (QC reviewers, computer scoring, etc.). These are not professional opinions of truthfulness or untruthfulness. There should be significant agreement between reviewing examiners about whether the data are NDI, DI, or INC, because of standardized applications of scoring procedures to raw data displays on the charts. For quality control review purposes, evaluation of the chart data is a check of clarity and consistency in identifying the physiological response patterns displayed on the charts. Computer algorithms being developed assist in establishing reliability of the test results, however, they should not be considered the opinion maker.

The test results (scores) are only part of the criterion to establish validity.

Professional opinions represent the examiner's overall conclusions based upon the test results, but following a complete evaluation process. Professional opinions should be reported as Truthful, Untruthful, or No Opinion. After obtaining the test results, the examiner should evaluate all aspects of the test process, document that each phase was conducted in a manner consistent with professional standards and principles of practice, and then formulate an opinion that the examinee is considered to be truthful or untruthful about the relevant issue.

Professional PDD opinions can best be formed by what can be termed the process of exclusion, i.e., a determination that "no other event, besides truthful or untruthful responses by the examinee to the relevant test questions, likely caused the reaction patterns that were displayed on the charts" (Holden, 1999). This assessment process by the examiner can occur only by evaluation of what transpired from the beginning to the completion of the test process. Most examiners are aware that other mental, emotional, physical, and psychological factors, in addition to the examinee's truthfulness, may be a cause of physiological reactions that could influence the outcome of a test. Those factors include a poor relationship between the examiner and examinee, accusatory or unprofessional conduct prior to or during the examination, violations of the examinee's trust, countermeasures employed by the examinee (Barland, 1999), and others. These factors are outside the scope of this paper, however a good description of many of them can be found in Chapter 9 of Matte (1996).

The American Polygraph Association now requires that a video or audio recording of post-conviction examinations be available for that organization to conduct a complete quality control evaluation, in part, because of these possibilities and, in part, as a necessary tool to assist in establishing validity. It is

¹¹ Anna Salter, Ph.D., Address to the 1999 American Polygraph Association Seminar (1999).

what precedes the actual testing phase that sets the stage for the test's accuracy. This requires a posttest evaluation by the direct and reviewing examiners of: the examinee as a test subject, the testing environment, the target issues and test questions asked, the instrumentation, the format selected, the professional evaluation protocol followed, the reliability of the test results, and a conclusion that no factors, other than truthfulness or untruthfulness, likely were causes of the physiological reactions displayed on the charts. This describes the process of exclusion. When it has been documented that all these steps have been taken, the examiner then may confidently render a professional opinion that the examinee is considered to be Truthful, Untruthful, or that No Opinion is possible. The following is recommended language for reporting test results and professional opinions, pre- or post-conviction:

- **Test Evaluation and Results:** Numerical scoring and grading consistent with nationally standardized procedures evaluated the examination. Additionally, the test data were evaluated by the algorithms: (Polyscore, Identifi, Axciton, etc.) This evaluation resulted in a finding of NDI or DI or INCONCLUSIVE.
- **Examiner's Professional Opinion:** Mr. Smith's answers to the relevant test questions during this (computerized) polygraph examination are considered to be: TRUTHFUL, UNTRUTHFUL or NO OPINION.

If an examiner or QC reviewer suspects that a variable other than truthful or untruthful answers by the examinee was a likely cause of the physiological reactions displayed on the charts, the professional opinion should be No Opinion, even though the test results are reliably DI or NDI. Countermeasures are a clear example of this condition.

Finally, computer assessments primarily address reliability. They cannot take into account the observations made by a professional examiner. Thus, only a professional examiner is capable of finalizing an opinion about a person's truthfulness.

Part B

Building Blocks of a Pre-Conviction Validated Test Format

Before post-conviction tests, terms such as pre-conviction and post-conviction were not part of the polygraph professional's language. Those terms were adopted to distinguish the conditions under which a PDD test was being requested, i.e. before a person was convicted and while an investigation was ongoing as opposed to, after a person was convicted and after the investigation was concluded. Post-conviction tests have stirred some concern among professionals about test procedures being used, about the methodology associated with testing 'clinical' issues (i.e. fantasy), about appropriate relevant and comparison questions for post-conviction scenarios, and about observing the fundamental principles of the psychophysiological detection of deception. Different schools of thought have emerged and there is some confusion in the field about procedures, methodology, and defensibility.

These legitimate concerns afford the PDD profession an opportunity to construct a model of a pre-conviction PDD test, the type that has been validated, and thereby to identify the factors that are accepted as having a presence in validated pre-conviction PDD tests. The model will provide a reference guide for evaluating the variables that often accompany the multi-purposes of post-conviction testing. If the factors involved in a post-conviction test vary from what has been constant with the pre-conviction test model, solutions must be found to minimize those differences if valid testing in a post-conviction scenario is to be conducted.

Pre-Conviction Tests

Early on in basic polygraph schools, students are taught to recognize and be aware of fundamental principles specific to understanding polygraph testing and the evaluation process: A valid specific issue test is a single issue test; don't mix relevant issues or targets on the same test; cause the focus of the truthful examinee to be on the comparison questions and that of the deceptive participant to go to the threat of exposure about the

relevant material, etc. These and other fundamental principles have served as the foundation upon which test formats have been constructed and validated. Dissecting pre-conviction scenarios that historically have been addressed by PDD examiners gives rise to what may be called building blocks, or constants, elements accepted as ever-present in a pre-conviction specific issue test. In general, a defined conflict or dispute in positions exists that the PDD test will address. There are accusations and suspects, there are accusers and deniers, there is likely punishment of some form if guilt is established, and the outcome of the investigation is pending. Until the evolution of post-conviction testing, only rarely have PDD tests been conducted after disputes have been resolved, after cases have been settled or adjudicated, after a case has been worked through the justice system, and after the suspect has been sentenced. These conditions represent the status of the examinee when a post-conviction test is conducted, however. Providing a framework to account for these variables within the model's building blocks is the ultimate purpose of this paper (see Part C).

Early efforts to distinguish these two procedures resulted in the pre-conviction test being defined as "standardized applications of polygraph testing traditionally dealing with specific allegations by known complainants (civil or criminal), issues currently under investigation or indictment, issues involving conflicting positions or statements (accusations and denials), the outcome of which is pending, and for which some type of punishment is likely if the guilt of or deception by the examinee is established" (Holden, 1997).

Additionally, because accusations, accusers, and case facts are known with the pre-conviction scenarios, the cause of Deception Indicated patterns to the relevant test questions can be readily pinpointed (Did you rob the First National Bank on or about February 4th?). This luxury is often not present with the post-conviction tests. In three of the four post-conviction test categories, there is no specific accusation, no specific crime being investigated, and no complainants. The relevant question targets address categories of offense or misbehavior,

such as violations of probation conditions, violations of treatment conditions, or falsification of specific written documents. For this reason, pinpointing targets, it is important to narrow the scope of the relevant questions as tightly as possible (see Part C).

A PDD Testing Model - The Building Blocks

The model is a beginning for the profession. The value of the model is that it provides a framework. Examiners can compare a proposed PDD test to the constants of the model to determine if there appear to be any variables of principle or procedure. If not, proceed. If variables are found, determine how that test could be designed to minimize variance. Then, work to approximate the model and the test opinion becomes a defensible, validated one.

Variables are not necessarily an obstacle for accuracy or defensibility if controlled and accounted for. Variables that can significantly enhance error, however, are those that impact psychophysiological principles or test format structure. Those psychophysiological fundamentals are discussed later in this paper.

The Building Blocks (Constants of a Pre-Conviction PDD Test) include:

1. Specific allegations made
2. Defined time of reference (TOR) and frame of reference (FOR) are narrow and linked together (defined below)
3. Victims, complainants, or witnesses identified
4. Defined conflict or dispute in positions exist
5. Relevant events are not mixed
6. Elements for fear of detection, exposure and consequences exist
7. Examinee is suspect and denies involvement
8. Consequences if guilty are pending
9. Admissions of guilt are against self-interest

Each of the nine listed elements above represents a building block of a pre-conviction test. The constants need little explanation for the professional, however a scenario may help to demonstrate the presence of the issues addressed by the building blocks.

Scenario #1: "On February 14th, 1999 Officers responded to a 911 call at 415 Main St., the home of M/M Jones. Ms. Jones reported that she saw her husband off to work that morning and a stranger (male) was apparently hiding in the garage. The assailant entered the house from the garage, grabbed Ms. Jones and assaulted her. She got a brief look at his face under the mask and thought she recognized the voice as a solicitor recently in the neighborhood. An offense report was developed by the investigators and a suspect was identified. The suspect was asked to take a PDD test and he agreed. He denied knowledge or participation in the offense.

Available to the examiner to conduct the PDD test is the following: Known specific allegations, identified case facts (offense report), an identified victim and accuser (frame of reference), a defined conflict exists between parties, and the suspect denies any knowledge or involvement in the sexual assault. The examiner knows the TOR (date of offense) and the FOR (material in the offense and investigative reports). These elements set the boundaries for the examination and place limits on the scope and focus of the relevant question material. Additionally, third party involvement aids in establishing the fear of exposure, detection, and consequences (Amsel, 1997); an investigation into the above allegations is ongoing at the time of the examination; the consequence if the suspect is guilty is likely punishment; and, admissions of guilt likely would be against self-interest. The building blocks of the validated model are accounted for and are constant (ever present). The constants represent the elements present in the laboratory that set the scene for the psychophysiological reactions associated with the instrumental detection of deception.

Scenario #2: The Mom and Pop grocery store at 201 Main St., Anywhere, U.S.A. was burglarized during the weekend of January 12-14, 1998. Taken in the burglary was the office safe, cartons of cigarettes, beer, and an assortment of groceries. Total loss was about \$3500. Law enforcement authorities were contacted, and an investigation began.

The investigators believe someone working at the store may be involved, and the employees were asked to take a PDD test to aid in the criminal investigation. The nine building blocks are in place, and by definition, are constant with the model.

Even with mock crime studies, elements of the nine building blocks are factored in. Allegations are made of an offense, case facts are developed, victims and accusers are known, and test subjects deny the allegations. Therefore a conflict exists, the relevant questions are defined by the TOR and FOR, admissions are against self-interest (including loss of reward, etc.), the consequences of detection are pending, the investigation is ongoing, etc. PDD research scientists attempt to represent real life scenarios with mock crime studies that will generalize to field PDD testing.

Whether the test to be conducted is pre-conviction or post-conviction, building blocks that are consistent with PDD principles are required for valid testing. A building block model for post-conviction testing, while beyond the immediate scope of this paper, is being constructed similar to the pre-conviction sample above that will account for potential variables and remain true to psychophysiological principles and standardized test practices. This paper offers an introduction only to the concept of building block models for PDD test development.

Psychophysiological Principles Underlying Valid Testing

Test structures (formats) are about how physiological reactions can be identified, recorded, and used to discriminate one psychological event (deception) from another (nondeception). Psychophysiological principles are about why those reactions occur during that test in the laboratory setting and what principles are at work when those reactions occur. The principles to be focused on in this paper are closely interrelated when working within the framework of the PDD test. They are at the very heart of every valid opinion formed from a PDD test and they represent the core of defensibility for a properly conducted PDD examination.

The Physiological Reactions to Lying

"Lying per se does not create the psychological detection of deception reactions." So what does?" asked Amsel (1997). A number of authors and scientists have addressed what causes physiological reactions to occur to lying in the PDD setting. The consensus appears to be that it is some degree of fear or concern about being detected in the lie. Matte (1996, p. 190) writes that the act of lying does not necessarily activate the Autonomic Nervous System (ANS). Rather, he proposes that it is "the reason for the act" that causes the ANS Activity, i.e., the reason one feels compelled to lie during a PDD test.

Amsel (1997) reviewed the various theories that have been proposed over the years to account for this occurrence. Additionally, his original research resulted in his conclusion that three subsets of fear exist that likely contribute to enhancing reactions physiologically, during the PDD test, and wrote "it was concluded that the extent of psychological detection of deception reaction is a function of the extent of the fear of consequences in proportion to the extent of the motivation that exists within the subject while being tested. Fear of detection is an additional factor existing that amplifies physiological reactions." Specifically, Amsel has offered the following definitions of the subsets of fear that likely contribute to causing the physiological reactions that appear on a PDD chart:

1. *Fear of the Consequences* is the fear that exists within the subjects when being sanctioned by an interested third party that initiated the test;
2. *Fear of Detection* is the fear that exists within deceptive subjects that the crime or wrongdoing they committed will be revealed;
3. *The Motivation to Deceive* is the motivation to be found truthful in the laboratory while being tested.

Matte (1996, Ch. 5) and Abrams (1989, p. 33-34) both have done justice describing the different views that likely contribute to this reaction capability. Abrams reported that the most accepted of the concepts and theories relates to the fear of consequences, but goes

on to propose that it is a "broader hypothesis" that likely accounts for these reactions. Further, Abrams writes that there is a generalized tension or anxiety that occurs during PDD testing that includes other concerns. He states that it is predominately the fear of consequences that is most important.

Matte (1996, p. 190) proposed that the pattern and degree of physiological change varies according to the intensity of the feelings and the type of situation. He concluded that, regarding a PDD examination, it is the fear of detection and the fear of consequences if the individual is detected that causes the physiological reactions recorded on the charts. From the perspective of each of the above authors, the fear of exposure or motivation to deceive in the laboratory, the fear of detection, and the fear of the consequences if found lying, appear to have gained the most acceptance as necessary elements to the accurate instrumental detection of deception.

PDD examiners need to be acutely aware of how the elements of fear in post-conviction tests differ from the anticipated or expected fear of consequences and detection that are generally seen with pre-conviction scenarios. With some post-conviction tests (i.e. sexual history) conducted for treatment providers, offenses committed prior to the start of probation or court supervision are not identified for punishment purposes, but for treatment purposes. With these examinations, the primary concern of treatment providers is the intentional withholding or falsification of information in the sexual history questionnaires by the offender. The concern is less that offenses or behaviors occurred in the past, and more that the offender is intentionally lying or falsifying information about their sexual history. Lying presents an obstacle to effective treatment plans (See Salter-Holden Sexual History Questionnaire, 1999, Appendix A). Thus, the relevant issue on disclosure tests becomes the act of lying about offenses, rather than the offenses themselves. Truthfulness on the Instant Offense and Sexual History Disclosure Tests generally do not result in punishment for admissions of prior wrongdoing. Truthfulness is praised and supported for the offender complying with the treatment goal of basic honesty.

The point to be made is that the expected outcomes from confessions, admissions made, and even deception indicated test results differ not only between

pre- and post-conviction PDD tests, but also among the different post-conviction tests themselves. The rules are discussed in Part C.

Figure 2

Psychophysiological Reactions to Lying in the PDD Laboratory					
Pre-Conviction Versus Post-Conviction					
An Issue of "Situational-Relevance" (Holden, 1971)					
CAUSES & EFFECTS OF "LYING IN THE LABORATORY"	FEAR OF DETECTION (EVENT RELATED)	FEAR OF EXPOSURE (EXAMINER RELATED-SITUATIONAL RELEVANCE)	FEAR OF CONSEQUENCES (EVENT RELATED)	EFFECT OF ADMISSIONS	EFFECT OF LYING (Non-Variable)
THE MODEL					
PRE-CONVICTION SPECIFIC ISSUE TEST	YES CONSTANT	PROPER PROTOCOL	YES CONSTANT	LIKELY PUNISHMENT CONSTANT	NEGATIVE CONSTANT
POST-CONVICTION INSTANT OFFENSE DISCLOSURE TEST	DIFFERS VARIABLE	PROPER PROTOCOL	DIFFERS VARIABLE	LIKELY PRAISE VARIABLE	NEGATIVE CONSTANT
POST-CONVICTION SEXUAL HISTORY DISCLOSURE TEST	DIFFERS VARIABLE	PROPER PROTOCOL	DIFFERS VARIABLE	LIKELY PRAISE VARIABLE	NEGATIVE CONSTANT
POST-CONVICTION MAINTENANCE OR MONITORING	YES CONSTANT	PROPER PROTOCOL	YES CONSTANT	LIKELY PUNISHMENT CONSTANT	NEGATIVE CONSTANT

Key: "Successful interviews, test development, and establishing psychological set in post-conviction testing depend upon making the examinee's perception of relevant and comparison issues related to the constant of "lying to the examiner in the laboratory."

Eric J. Holden - 1999

The goal of Disclosure Tests (Sexual History and Instant Offense) is to confront

denial, and thus to enhance the effectiveness of the treatment plan.

“Denial is a key defense mechanism of an offender. There can be denial of fact, awareness, impact, responsibility, planning, deviant sexual arousal, and of denial itself. Denial is a continuum of cognitive distortions that can take a lifetime to change. To benefit from treatment, the offender must accept responsibility for his or her abusive behaviors, and admit to the deviant sexual arousal and problems in managing the deviancy. The post-conviction polygraph provides an opportunity for the client to acknowledge his or her denial, and to break through it. Once the denial is broken and the lie is exposed, there is a flood of information and emotion that is helpful in treatment and supervision. The offender’s admissions can be liberating and facilitate a shift in his or her self-perception. He or she experiences what it feels like to be responsible and realizes that the truth is not devastating.” (Molett, 1998)

“Reality is not what happened, from the offender’s perspective, but what people think happened, and he will play to the audience for his version to become the generally accepted truth...Observers often underestimate what offenders gain and what victims lose when the offender refuses to admit... Avoidant defenses such as denial reduce the cognitive field.” (Salter, 1995, p. 224-229)

Post-conviction (Instant Offense) examinations are conducted to determine if the offender is untruthful, and in denial concerning the offense. The variable from pre-conviction testing is that the offender is already convicted or under court supervision when the tests are given; and thus, no further penalties await because he or she later chooses to lie. These tests are conducted for treatment providers and treatment plans. It is expected, therefore, that the offender’s fear of detection and consequences after the date of conviction will likely differ from what it would have been while under indictment or pending conviction. This difference represents a variable. In post-conviction Disclosure Tests, the primary source of fear or concern by the examinee must be directed to lying to the

examiner in the laboratory, a constant in all the building blocks. Any adverse effects from the PDD test would be for lying, not for admissions made. The recommended structure of post-conviction tests in Part C is designed to minimize the variables between post-conviction tests and the pre-conviction model.

The term “Situational-Relevance” (Holden, 1971) is being introduced in this paper. It defines the need to focus the examinee’s fear or concern to “lying to the examiner in the laboratory, “ i.e. the lie becomes the relevant issue in that situation (the PDD test). Situational relevance is defined as the concern the offender experiences about the consequences of lying in the PDD setting on the date and time of that particular examination. Virtually, in all pre- and post-conviction PDD tests, the act of lying should become the most relevant concern of the examinee. The Control-Stimulation Test (Matte, 1996, p. 307) has been used historically as a method of enhancing the confidence of the truthful examinee in the test process and the concerns of the untruthful examinee about lying. The concept of situational relevance further focuses the examiner’s attention to this issue, especially with post-conviction tests.

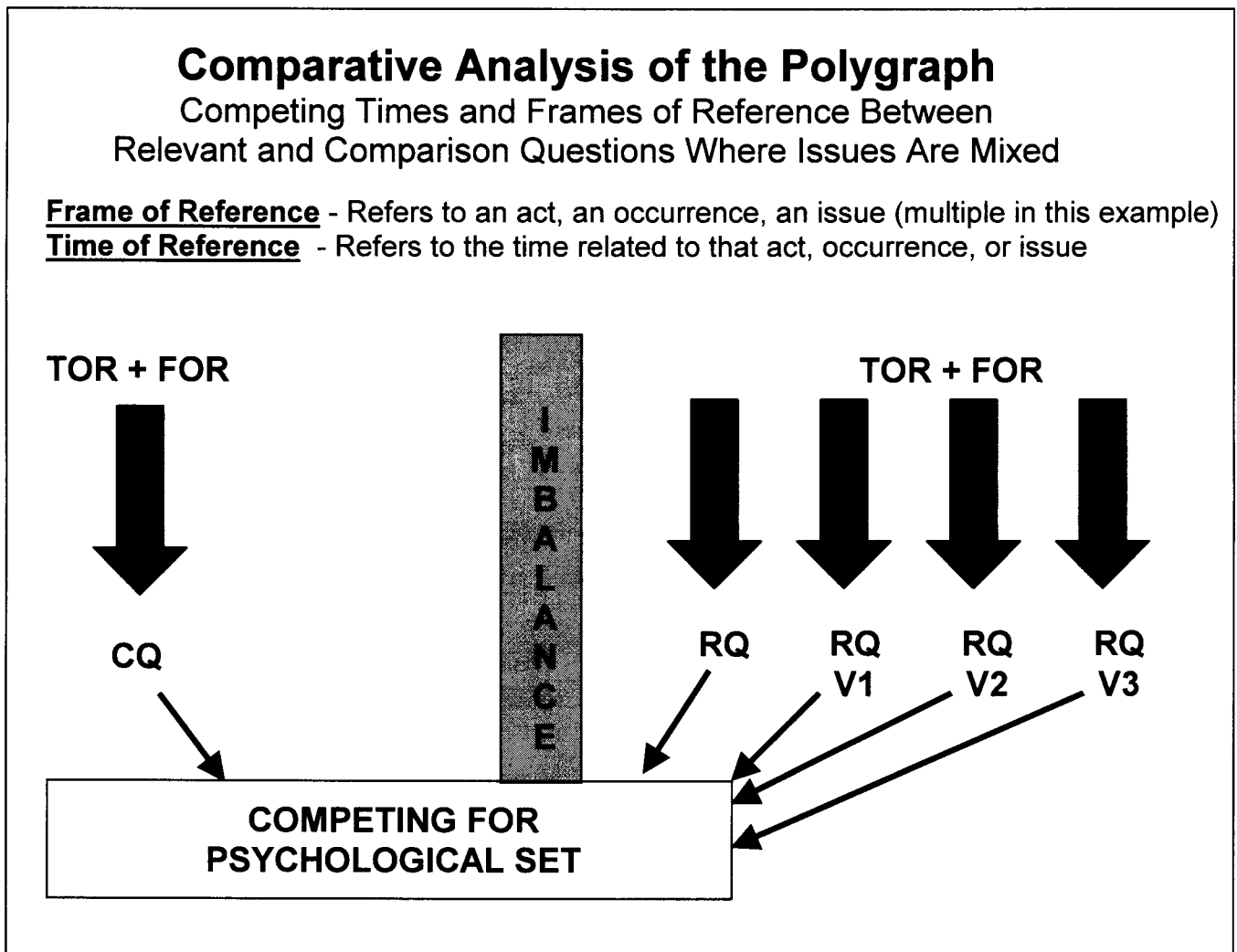
Psychological Set and Mixing Issues - The Powerful Duo

With the exception of the development of the concept of comparison (control) questions attributed to John E. Reid in 1947 (Abrams, 1989, p. 103), probably nothing has had a greater impact on the field of the instrumental detection of deception than the concept of psychological set, first proposed by Backster in 1962 (Matte, 1996, p. 259). Backster described psychological set as “psychological competition” that develops between the comparison and relevant questions in a probable-lie comparison question test (Matte, 1996). In reference to the PDD test, Matte (1996, p. 322-323) describes Backster’s psychological set concept as “designed to pose a threat to the security of both the innocent and guilty examinee by offering them separate threats from which they must choose which one most endangers their well-being.” Backster explained that the examinee

establishes a “set towards the stimulus” that holds the greatest threat to his or her well-being. The subject, according to Backster, involuntarily focuses on that set while tuning out other stimuli (Abrams, p 94). Matte (1996, p. 323) describes this principle in this way: “the human being cannot process all the stimuli in their sensory world.” The mind, he writes, “can register only some of the information it is exposed to, so the mind focuses on that which is most important to the examinee at any given moment and filters out the rest.” Thus, a person’s ability to focus on issues is limited. Backster further defined the concept of psychological set focus in terms of “anti-climax dampening.” This derivative of psychological set impacts test results in the following way:

“The examinee’s psychological set will be drawn to the test question holding the greatest threat to his/her well-being thus engaging in selective attention which may tune out test questions of a lesser threat, hence causing an anti-climax dampening effect on all questions except that which has gained the examinee’s selective attention. Therefore, when two distinctly separate crimes are included in the same test, the suspect who is guilty of both of them may respond only to that crime which he/she feels to be the greatest threat to his/her well-being. Furthermore, the relevant question offering the greatest threat to the guilty examinee will cause partial or complete dampening of control (comparison) question reactions, thus an anti-climax.” (Matte, 1996, p. 323)

Figure 3



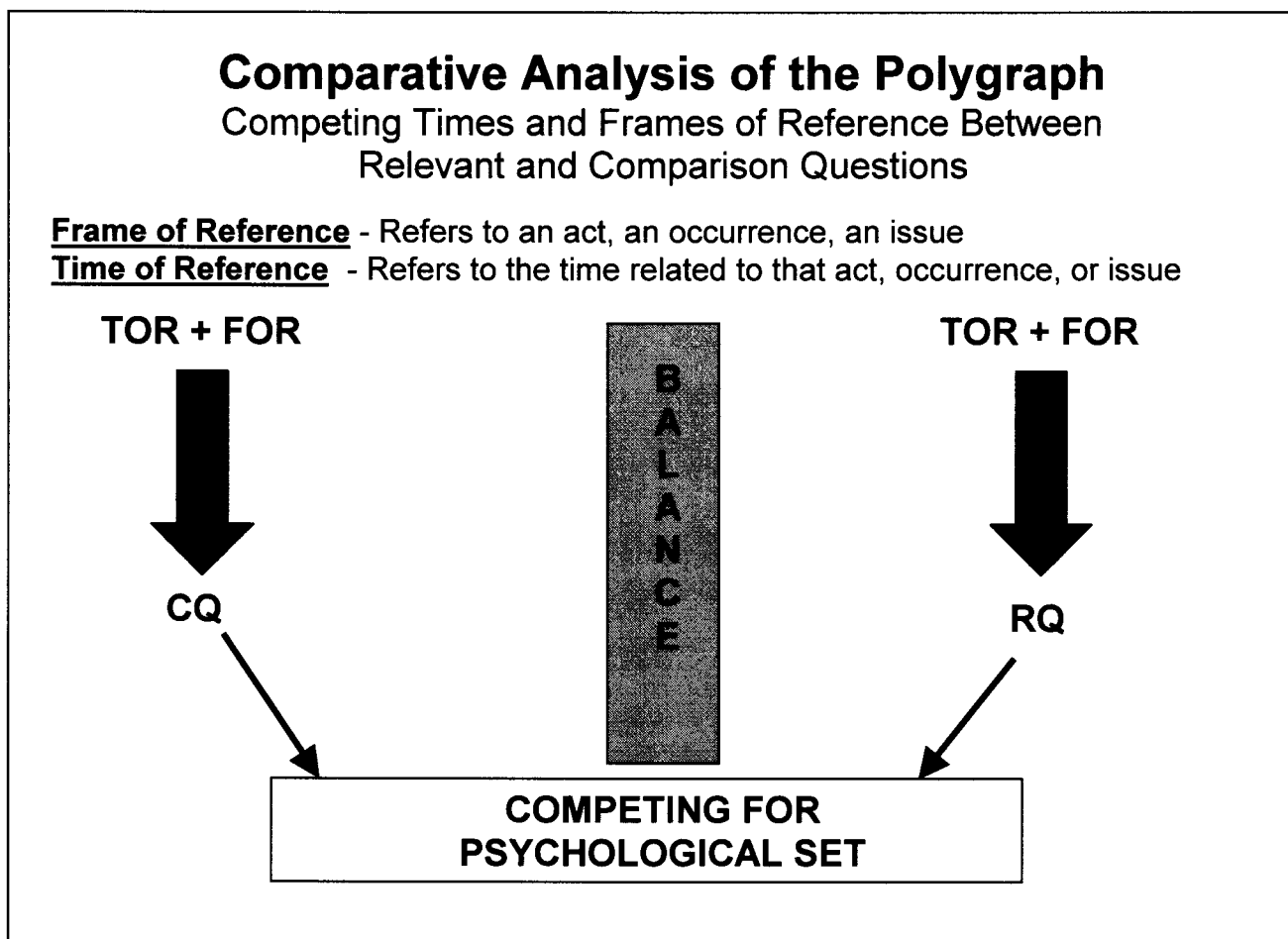
It is predominately for the reasons described above that mixing relevant issues on a specific issue test is professionally unacceptable. Mixing issues, an adjunct to the principle of psychological set, needs to be revisited for post-conviction testing in light of its overall role in the PDD test process. This requirement is driven by the need to establish rules that would signal a field examiner that the psychological set competition between comparison and relevant questions might be unbalanced.

This imbalance may occur by adding variables (V1, V2, V3, etc.) to the relevant question set. When this occurs, the relevant questions begin competing with each other, diluting the competition between the relevant question set and the comparison question set. Examiners have been taught not to mix two different issues (crime events) on the same test, i.e. a robbery on the morning of March 5th

with another robbery at a different time or place. If these two different crime events are mixed, the psychological competition between the different crime events limits the examinee's ability to focus either on the relevant questions as a set or on the comparison questions as a set, prior to the examinee making the selective attention choice.

Evaluating more significant physiological reaction patterns to the comparison question set or the relevant question set forms opinions of DI or NDI. This significance is attributed to the signal value of each set of questions by the examinee, i.e. "differentiation in signal value between relevant and control (comparison) questions" (Matte, 1996, p. 267). These causes of signal value need to be as singular (balanced) and as focused as possible in order to accomplish the PDD test mission - focusing deceptive reactions on one question set or the other. (See Figure 4)

Figure 4



Most professionals would conclude that if relevant issues are mixed, the test is improperly conducted and less validity would be attributed to the test's outcome. It would not be considered a violation of psychological set, however, to test multiple issues if they share a commonly defined time of reference and frame of reference in as much as the consequences and fear of detection would be similar. Multiple homicides at one location on March 5th will exemplify this.

“An intruder entered a residence at 105 Main Street at 2:00 pm on March 5th. Neighbors heard shooting and police were called. Upon entering the residence, three people were discovered fatally shot in what appeared to be a foiled robbery attempt.”

An examiner could validly test a suspect over involvement in the three homicides on the same PDD test, because all three homicides represent one event even though it includes multiple issues. Those multiple issues involve the same time of reference and the same frame of reference, that is, they occurred at the same time and in the same location. Further, the consequence for anyone involved in that event has the same potential. The fact that more than one victim exists does not prohibit the examiner from addressing all elements of that event on the same PDD test. This would not be considered mixing issues. Mixing issues is not the same concept as multiple issues. Both are defined in terms of TOR and FOR.

The questions allowable on an Army Modified General Question Test (MGQT), for example, demonstrate that multiple issues can be tested, but they must have a constant time of reference (time of offense) and a constant frame of reference (offense information). Within the MGQT, relevant questions generally include:

- Secondary involvement (Did you plan...?)
- Direct participation in the crime (Did you shoot...?)
- An evidence-connecting question (Were you present...?)
- A knowledge issue (Do you know who...?)

These are, in fact, multiple issues because an individual may have planned and not been present or may know who but was not present, etc. Comparison question procedures (such as the MGQT format above) require spot scoring, i.e. deception indicated to any one relevant question spot requires a DI test result overall to be reported, even though a lack of physiological reactions may have occurred to one or more of the relevant questions in the series. An examiner, therefore, may not validly opine that deception was indicated to a single relevant question in the series and report no deception to the others. This requirement for spot scoring addresses the reality of anti-climax dampening. Thus, in post-conviction tests where issues are mixed (treatment rule violations and probation violations for example), decisions can be made that may mislead a third party user about what question caused the DI opinion. Was it one question, two questions, or more that were DI? Assume that the DI results were focused primarily on the treatment issue questions with little or no reaction to the probation violations, a third party user would likely conclude from a DI report that the examinee was lying about the probation violations as well. Third party users can make unjust decisions when mixed-issue tests are conducted. On the other hand, if examiners attempt to selectively report the spot reactions, violations of rule, principle, and procedure may have occurred. The guidelines in Part C are designed to address this issue.

It is not multiple issues that define psychological set or mixed issues. Rather, it is differing time periods or differing events in the same relevant question series that account for these adulterants. Differing issues or differing time periods signal the examinee about potentially different outcomes to lying. Hence, different perceptions of the threat of detection and fear of consequences about the different issues addressed in the relevant question series can result. The examiner now has violated a cardinal principle of PDD testing by contaminating the psychological set focus, and thereby elevating the probability of a false positive error. The psychological focus between the comparison and relevant questions has become unbalanced.

From an examination of these principles it can be concluded that two elements are present and consistently address the structure of psychological set: time of reference and frame of reference (Holden, 1997, p. 7).

Time of Reference (TOR) refers to the specific time period that the relevant questions will focus on. That time period must be finite and is limited in scope by the frame of reference. The TOR helps set the barriers that limit the focus of psychological set for relevant questions. By its definition, time of reference helps to eliminate mixed-issues testing by not crossing the time barrier (Holden, 1997, p. 34).

Frame of Reference (FOR) refers to the specific body of information that the test questions focus on, both relevant and comparison, within the barriers established by the time of reference. That body of information must be defined, finite, and have limits on its focus. It serves as the reference source for relevant questions. It assists the TOR in focusing psychological set, and it has a relationship with the TOR that gives the test structure and sets barriers that eliminate target contamination (mixed issues) and that prevent anti-climax dampening effects within relevant question sets.

The rule that should be followed to avoid mixing relevant issues, pre- or post-conviction, is to establish consistency within the framework of the test by establishing the barriers of structure defined by the TOR and FOR. Formally, the time barrier is defined as that spot where psychological set could potentially change. All relevant questions should address issues contained within the stated time barrier. For example, issues in an offender's sexual history (defined as events occurring prior to the date of current conviction or probation (JPCOT, 1998)) should not be included on a relevant question series with an issue about an offender's behavior or activities while under conditions of probation or parole established by the court. This contamination crosses the established time barriers.

It could be concluded that a sexual re-offense while on probation would extract a far greater likelihood of punishment (incarceration) in the mind of the offender than an admission of an additional victim (unknown and unidentified, or identified with no outcry) that had occurred years before the offender was ever arrested, charged, or under court supervision. Sexual re-offense while on probation is a violation of a current contract between the offender and the court. Sexual history tests are conducted primarily for treatment providers to assist in the development of effective treatment plans and generally are not a condition of probation or ordered by the court. These two distinctively different times and frames of reference (monitoring tests and sexual history tests) represent spots where the fear of detection and the fear of consequences likely would differ or change, thus establishing where the time barrier would be erected. In light of what has been defined herein, the concept of mixing issues can be defined.

Mixing Issues in Pre-Conviction Tests

Mixing issues in pre-conviction tests can be defined as:

1. Crossing the established and defined time barriers
2. Mixing frames of reference, even if the TOR is the same (a homicide and a theft that occurred in the same store at the same time), due to the possible perceptions of different consequences and fear of exposure by the examinee - RQ #1 "Did you shoot the store attendant?" in a series with RQ #2 "Did you steal the cigarettes missing from the store?"
3. Mixing issues of defined and known conflict with issues of no known conflict (examinee accused or suspected but denies offense versus the examinee is not accused of anything but denies doing anything illegal or improper while on a job.)

Mixing Issues in Post-Conviction Tests

Mixing issues on post-conviction tests can be defined as:

1. Crossing the established and defined time barriers
2. Mixing frames of reference, i.e. mixing issues of clinical interest (fantasy issues or treatment rule violations) with violations of probation conditions (drug or narcotic use, alcohol use, travel restriction violations, etc.) or with sexual re-offending (sexual re-offense or criminal sex law violations). These different frames of reference represent different perceptual threats of exposure and potentially different consequences, and introduce variables that violate principles of psychological set when mixed.
3. Mixing relevant issues that involve known and defined conflict with relevant issues addressing no known or defined conflict. For example, it would be considered inappropriate to mix relevant test questions about the crime the offender has been convicted of (Instant Offense) in the same question series with relevant questions about a maintenance issue (behavior while on probation). In the case of the Instant Offense, investigative and offense reports define a conflict (subject accused of a crime and convicted but denies all or part of the offense). In the case of a maintenance test, there is no specified conflict. The offender is denying having done anything illegal or improper, and there are no accusations, identified victims, or known crimes.

It is not considered mixing issues on a post-conviction test if all relevant test questions are within the same time of reference (since you have been on probation, or since your last PDD test, or before the date of your conviction) and have the same frame of reference (violation of written probation conditions, violations of criminal sex laws, falsification of a sexual history questionnaire, falsification of a written treatment contract, etc.). It must be noted that post-conviction PDD examinations are addressed as specific issue tests, and subsequently, must be

consistent with and conducted as specific issue tests.

While this paper should not be considered, in any way, a criticism of any particular philosophy of post-conviction testing, it will be proposed that guidelines be adopted that standardize the time and frame of reference for each defined post-conviction test target and that prohibit mixing issues on a post-conviction test. In Part C of this paper, recommended guidelines for conducting and structuring post-conviction tests will be suggested that are clearly defined by these time barriers and the professional principles they represent (JPCOT, 1998).

The principles of psychological set and mixing issues are of such importance that every examiner must deal with them on every specific issue test. There are no exceptions.

Part C

Recommended Guidelines for Conducting Post-Conviction PDD Examinations

(Terms and Definitions)

References will be made in Part C of this paper to the Joint Polygraph Committee on Offender Testing (JPCOT), a multi-profession committee that met from 1994 to 1998 for the purpose of developing guidelines for the structure of PDD examinations of sexual offenders, post-conviction. Pioneering work had been reported (Jackson County, Oregon Study, 1991; Abrams & Ogard, 1986; Abrams & Abrams, 1993) that demonstrated the utility of PDD testing with offender populations, and PDD's impact on offender recidivism and denial. Utility was not at question. Professional standards to address the variances noted between standardized pre-conviction test procedures, and the application of those procedures to post-conviction interests were the focus. Education of the end user also was an interest and resulted in the decision of involved PDD professionals to have representation from treatment, probation, parole, law-enforcement, and polygraph participate in the development of the guidelines from their inception. Those participants and their organizations are found listed in the JPCOT Guidelines (JPCOT, p. b-c).

Standardized Formats for Post-Conviction Tests Defined

For purposes of post-conviction testing, the JPCOT determined that standardized examination techniques only would be recognized and that a clear description of the criteria for recognizing specific techniques was required (JPCOT, 1998, p. 10). Those criteria are as follows:

- a) A technique or procedure which has achieved a published, scientific database sufficient to support and demonstrate validity and reliability from the application and use of that specific polygraph technique; and,
- b) A technique or procedure that is evaluated according to the published methods for that specific procedure, and that provides for numerical scoring and quantification of the chart data, where applicable; and,
- c) A technique or procedure that has not been modified without the support of sufficient published validity and reliability studies (see a above) for that particular modification; and,
- d) A technique or procedure that has been taught within the past two (2) years as part of the formal course work at a basic polygraph school accredited by the American Polygraph Association (APA).

New Allegations Made While on Probation or Parole

Specific allegations (new outcry) made against an offender while on probation or parole should not be considered matters to be addressed with post-conviction tests, and should not be referred by probation/parole officials or treatment providers to a post-conviction (clinical) examination. Outcries under investigation should be referred to the criminal justice system, as is any other pre-conviction case, despite the current probation conditions. These issues involve investigators, grand juries, defense and prosecution attorneys, judges, etc. New complainant and victim outcries against an offender are not matters that are the purview of post-conviction

PDD examinations. These become pre-conviction matters (JPCOT, p. 15).

Defining Principles of Valid Post-Conviction Tests

Principle #1: Post-conviction examinations should be structured to address two distinctively different time periods of the offender's life. These two periods define the times of reference (TOR) for the test:

- Events in the offender's life before going on probation or parole
- Events in the offender's life after going on probation or parole

The point that separates these two life phases is the time barrier. Events from these two differing time periods should never be mixed in the same relevant sequence. That would constitute crossing the time barrier and result in a mixed-issues test.

Principle #2: Post-conviction examinations that address events before the date of conviction are treatment issue tests, and include:

- The Disclosure Test over the instant offense
- The Disclosure Test over the sexual history

Events from these two different frames of reference (FOR) should never be mixed in the same relevant sequence. To do so would result in a mixed-issues test by mixing defined and known conflict events with undefined and unknown conflict events.

Principle #3: Tests that address events after the date of conviction may address probation violation issues or treatment violation issues. Those tests include:

- The Monitoring Test to investigate sexual re-offense and unauthorized child contact
- The Monitoring Test to investigate other probation or parole violations
- The Monitoring Test to investigate treatment issue violations while in the treatment program

These three different frames of reference should never be mixed in the same relevant sequence. To do so would result in a mixed-issues test by mixing different psychological threats, different perceptions of possible consequences, and different fears of exposure.

Principle #4: Post-conviction tests are designed to address one of two distinctly different targets:

- Compliance with defined conditions of treatment
- Compliance with defined conditions of probation or parole.

SUMMARY OF POST-CONVICTION TESTS COMPLYING WITH A VALID MODEL

TYPES OF POST-CONVICTION TESTS	
TREATMENT ISSUES	PROBATION/PAROLE ISSUES
DISCLOSURE – INSTANT OFFENSE	MAINTENANCE
DISCLOSURE – SEXUAL HISTORY	MONITORING
MAINTENANCE – TREATMENT ISSUES	

TEST TYPE	TIME OF REFERENCE	TEST TYPE
BEFORE DATE OF CONVICTION		AFTER DATE OF CONVICTION
DISCLOSURE – INSTANT OFFENSE		MAINTENANCE – PROBATION
DISCLOSURE – SEXUAL HISTORY		MONITORING – PROBATION
		MAINTENANCE – TREATMENT

TEST TYPE	FRAME OF REFERENCE
DISCLOSURE – INSTANT OFFENSE	OFFENSE, INVESTIGATIVE REORTS, OUTCRY/VICTIM STATEMENTS
DISCLOSURE – SEXUAL HISTORY	COMPLETED, WRITTEN SEXUAL HISTORY QUESTIONNAIRE
MONITORING TEST	SEX LAWS VIOLATION, SEX CRIMES, UNAUTHORIZED CONTACT WITH CHILDREN
MAINTENANCE – PROBATION ISSUES	WRITTEN PROBATION CONDITIONS
MAINTENANCE – TREATMENT ISSUES	WRITTEN CONTRACT OF TREATMENT CONDITIONS, TREATMENT QUESTIONS

Mixing Issues and the Perception of Threat in a Post-Conviction PDD Test

“Crossing the time barrier is interpreted to mean mixing all or any two of the defined post-conviction test areas of inquiry on the same relevant test question sequence. Crossing the time barrier and mixing other issues as defined herein can

significantly effect the results and subsequently the opinion of the examiner, and is not recommended” (JPCOT, p. 14).

In post-conviction tests, the time barrier separates phases of an offender’s life when similar behaviors result in very different outcomes:

BEHAVIOR	TIME PERIOD	LIKELY OUTCOME
ADDITIONAL VICTIMS, SEX LAWS VIOLATIONS, DEVIANT SEXUAL ACTS	BEFORE CONVICTION	BENEFITS FROM TREATMENT
	AFTER CONVICTION	REVOICATION/INCARCERATION

Clearly, those events would account for different perceptions of threat of exposure, threat of detection, and threat of consequences, would influence the balance between the RQ set and the CQ set, and would expose the RQ series to anti-climax dampening, if mixed.

Mixing Frames of Reference that Separate Different Areas of Inquiry

In post-conviction tests, offenders are asked about their truthfulness regarding compliance with rules: rules of probation, and rules of treatment programs. While they are all rules, they differ in importance to the offender and signal different possible outcomes for lying. It cannot be assumed that an admitted violation of a treatment rule (i.e., missing a group session), an admitted violation of a travel restriction (probation violation), and an admitted new sexual victim while on probation would be met with the same punishment. Thus, questions addressing these different events should not be mixed on the same test question sequence. They represent potentially different psychological sets and cross the established barriers. The barriers are set at those spots where psychological set is likely to change (see Part B).

When relevant questions that address a defined conflict (known event) are mixed with relevant questions that address no defined conflict (unknown event), mixing of issues has occurred. This may appear confusing, but whether or not a conflict exists can be determined by asking this question: Have specific allegations been made that a crime, illegal offense, violation of a specific type, or act of wrongdoing occurred? If so, a conflict to be resolved by the PDD test exists. If not, the PDD test is investigating the denial of the offender that he or she has done something that violates a rule or law, and the test is to confirm or refute the denial. The variable that must be considered, however, is that when relevant questions refer to issues of undefined conflict, and deceptive reactions occur, the examiner may have difficulty specifying which relevant issue evoked that reaction, and what those reactions mean to the other issues in the question set. The need exists to limit the scope of the investigative questions (FOR) to issues or events with a similar potential outcome or consequence, and with a constant time frame. This prevents a mixed-issues test. Any relevant question series that mixes known and unknown conflict positions represents a mixed-issues test and comes in conflict with the fundamental principles of the science. As a reminder, multiple issues are not the same

as mixed-issues tests. Multiple issues with the same defined TOR and FOR are not in conflict with fundamental principles of PDD testing (see below).

The structure of these recommended guidelines is designed to distinguish the different times and frames of reference associated with the post-conviction tests.

Multiple Issues on Post-Conviction PDD Tests

In Part B of this paper it was defined that mixed-issue tests violate cardinal principles of psychological set. Multiple issues in testing do not. Likely, multiple issues will be referenced on a variety of Sexual History, Disclosure, and Maintenance tests for treatment and probation. Those tests are designed to investigate a variety of probation violations, treatment rule infractions, deviant sexual acts, thoughts, and actions, both past and current, and to assist in the determination of risk.

What distinguishes multiple- from mixed-issues testing is singularity or uniformity of the TOR and FOR of the relevant material. If each issue addressed by the RQs has a similar likely punishment or outcome if guilt or deceit is established; if no single issue in the series would likely be more severely dealt with than another if lying is detected; if the likelihood of discovery is equivalent (cocaine use the day before the PDD test that could be detected if a urinalysis was required is not equivalent to disclosure on a PDD question about alcohol consumption within the past two years of a probation); and if the TOR and FOR of the relevant questions in the series is consistent, the test should not be considered to have mixed issues. It would be consistent with the principles of valid test procedures. A multiple-issues test, as defined, complies with the building blocks of a validated pre-conviction format.

Post-Conviction Tests Conducted for Treatment Purposes

Treatment issue tests are not intended to address matters that are violations of probation, but are designed to identify whether deception is occurring about historical events

in the offender's life, or about violations of rules and principles of an ongoing treatment program. These PDD examinations are specifically intended to assist the treatment provider in the development of effective treatment plans, treatment goals, and the assessment of treatment progress. The relevant targets of these treatment examinations are:

1. Lying about the offense he or she was convicted of and is currently on probation or parole for (or incarcerated for). The test developed to address this issue is the Disclosure Instant Offense Test.
2. Lying about the offender's sexual history prior to the date of conviction, excluding the instant offense. The test designed to address this issue is the Disclosure Sexual History Test.
3. Lying about compliance with the treatment program rules and goals. The test designed to address these issues is the Maintenance Test for Treatment Purposes.

Lying, denial, and withholding important factual information from treatment team members is described as detrimental to the purposes of treatment, prevention of recidivism and the protection of society (Knapp, 1996, p. 13.9). As a rule, post-conviction examinations conducted for treatment purposes are not court ordered as conditions of probation. Despite this, the offender may be removed from a treatment program for refusal to cooperate, for refusal to break denial, for refusal to comply with the necessary conditions of treatment, and for falsifying statements and documents. This removal may place the offender in violation of the condition of probation or parole that requires the offender to be involved in such a recognized program. This action can lead to revocation. For these and other professional reasons, it is incumbent for the PDD examiner to closely follow professional rules and guidelines for valid PDD testing and thereby to lend support to professional opinions.

Post-Conviction Tests Conducted for Supervisory Purposes

Post-conviction examinations ordered by the court as conditions of probation and parole originate with the court's desire to have offenders' compliance with the conditions of probation monitored and, simultaneously, to utilize every effective means to prevent recidivism and protect society. Probation offers an alternative to incarceration for sexual offenders under conditions of agreed compliance with the court's terms. The post-conviction PDD test affords the court a method of assessing compliance with those terms and agreements. The relevant targets of these supervisory examinations are:

1. Lying about sexual re-offenses, the commission of other sexual criminal violations, and contact with a child for sexual purposes while under court supervision. The test designed to address these issues is the Monitoring Test.
2. Lying about other violations of probation or parole conditions (excluding the targets of the monitoring test). The test designed to address these issues is the Maintenance Test for Probation Violations.

These issues are different frames of reference because the outcome for violations in those two distinctive target areas would likely differ. For example, a sexual offender re-offending or committing other sexual crimes would likely elicit a rapid and sure-fire revocation action. Judges, supervising officers, and other court officials must be able to distinguish these kinds of violations from other types of probation/parole infractions. The Monitoring Test is intended to address these specific offenses. Other violations are investigated with the Supervisory Maintenance Test where relevant questions may ask about drug use, alcohol use, violations of travel restrictions, etc., infractions that may not evoke as severe an action as a sexual crime (re-offense). Thus, for these PDD tests to be supportable, different frames of reference must be distinguished and not mixed.

Psychological set becomes unbalanced when any defined time of reference is mixed with another; when any defined frame of reference is mixed with another; or when times and frames of reference cross the defined time and frame barriers.

"Based on all available scientific research, mixing issues during any examination may significantly reduce the examiner's ability to form valid and reliable opinions about the relevant questions. Issues of psychological set, anti-climax dampening, and other principles forming the foundation of the polygraph science must be adhered to; thus, the need not to mix issues and the requirement for defined single-issue examinations. For example, any examination mixing sexual history relevant questions with relevant questions about the instant offense or about violations of probation and parole would be mixing issues and would not be considered by the JPCOT to be a valid or an appropriate examination technique. As well, mixing relevant questions about issues that do not constitute violations of probation or parole with relevant questions about issues that do constitute violations of probation or parole in the same examination format (question series) would mix issues and should not be done." (JPCOT, p. 12-13)

The Recommended Structure of Post-Conviction PDD Examinations

The Disclosure Test Over the Instant Offense

Time of Reference

The time of reference is the declared times that the instant offense occurred or was ongoing. This may be a reported one-time incident or the outcry may have alleged the sexual contact with a child occurred over a period of years. Whatever is defined in the offense and investigative reports becomes the time of reference for this PDD test.

Frame of Reference

The frame of reference is the written documentation about the offense that the offender was convicted of and includes offense reports and any other investigative information from the court. It is extremely important for the PDD examiner to know the specific outcry

statement made by the victim (especially a minor) and the subsequent statements and allegations made by adult complainants, before conducting this PDD test.

Test Purpose

The test purpose is to determine “if the examinee appears deceptive or nondeceptive in his/her denial of guilt (all or part) to the offense(s) for which he/she has been convicted or is under court supervision” (JPCOT, p. 15). Two specific tests may be conducted:

- a) To examine the denial of the offender about all or any part of the reported offense. These tests are conducted only when the offender denies guilt.
- b) To examine additional but unreported sexual violations of the victim to obtain full disclosure. “The child may not know how to make a full disclosure about what has actually happened to her. Perhaps she was forced to keep her full victimization secret. If this is not disclosed, the offender now has been allowed to continue in treatment without admitting the full extent of his actions with the victim. Once more, he/she has been allowed to minimize” (Scheve, in press).

Distinguishing Characteristics

This examination should be run as any pre-conviction specific issue test by structure and design. Special precautions need to be taken with the Instant Offense Test in the development of comparison questions, in as much as the offense likely does not have the same fear level of detection and consequence as it did prior to conviction. This is a treatment test now, therefore the relevant target addressed should be “lying about the offense” and lie comparisons are recommended. Note: The Instant Offense Test(s) should be conducted prior to the Disclosure Test over the Sexual History. There is little reason to believe that an offender will be completely truthful about additional sexual history matters if they are in denial about their instant offense.

The Disclosure Test Over the Sexual History

Time of Reference

The time of reference is “the examinee’s lifetime prior to the date of conviction, excluding the offense(s) for which the examinee is currently under court supervision” (JPCOT, p. 13).

Frame of Reference

The frame of reference is a completed, written Sexual History Questionnaire (See Salter-Holden Sexual History Questionnaire, 1999, Appendix A).

Test Purpose

The purpose of this examination is to: “Explore sexual histories including additional victims, therapeutic issues, and sexual deviance prior to the date of conviction. These test procedures may allow for greater variance in relevant question development than a single target test (multiple issues)” (JPCOT, p. 15-16). Three test approaches should be considered:

- a) Testing over the complete truthfulness of the entire Sexual History Questionnaire document. Appropriate procedures for this approach would include a You-Phase, a Zone Comparison, or an appropriate MGQT procedure.
- b) Testing over a single selected section from the Sexual History Questionnaire. For example, the treatment provider may choose to focus the test target on additional victims. Any Zone Comparison, MGQT format, or other validated test procedure is appropriate.
- c) Testing over more than one selected section from the Sexual History Questionnaire. This is allowable as a multiple-issues test because, as described above, all sections share a common time and frame of reference, admissions in all sections have an equivalent likely consequence, etc. Test procedures recommended are comparison question formats (MGQT, etc.) that require spot scoring. Caution should be taken in conclusions drawn about

non-responsive relevant questions issues (anti-climax dampening).

Distinguishing Characteristics

These are treatment tests conducted to assist treatment providers in the development of effective and appropriate treatment plans and goals tailored to that specific offender. Additionally, these valuable tests are relied upon "by Court officers, attorneys, supervision officials, and others on the team in the development of appropriate supervision and treatment goals and programs" (JPCOT, p. 16). Great care should be taken in mixing sexual fantasy or ideation in the same relevant question series with behaviors and deviant acts. Caution should be used in the development of comparison questions with these tests. The relevant target issue should be lying and denial about events in the Sexual History and thus, lie comparisons are recommended.

The Monitoring Test

Time of Reference

The time of reference is from the date of conviction to present, or any time period therein (i.e. since your last polygraph test).

Frame of Reference

The frame of reference includes the written conditions of probation or parole, with particular attention to those sections that address child/victim contact; criminal law violation statutes, etc.

Test Purpose

The purpose of this examination is "to investigate whether or not the offender has committed any illegal sexual act(s) or had contact with a child forbidden by supervision regulations during the period of supervision" (JPCOT, p.16). This test is specifically designed as a tool to assist in reducing recidivism.

Distinguishing Characteristics

Specifically, this test is differentiated from the Maintenance Test to allow a clear identification of re-offense, sex crimes, or unauthorized child contact, which are considered serious violations of probation (parole) conditions. Including these violations with other types of probation violations on a

multiple-issue test can mask (anti-climax dampening) a clear assessment of that critical concern (re-offense) to supervision and court officers. Zone Comparison and other validated probable-lie comparison question formats are appropriate.

The Maintenance Test for Probation Violations

Time of Reference

The time of reference is from the date of conviction to present, or any time period therein (i.e. since your last polygraph test).

Frame of Reference

The frame of reference includes written conditions of probation and any supplemental probation documents.

Test Purpose

The purpose of this examination is to identify the offender's truthfulness regarding any violations of the conditions of probation or parole excluding those defined for the monitoring test. These examinations "are particularly useful in reducing the probability of recidivism and selection of the target issues to be investigated during each particular session should be made by the examiner in conjunction with the supervision specialists. Results of these examinations are meant to assist supervision specialists in developing supervision strategies, and in assessing risk while on probation" (JPCOT, p. 17).

Distinguishing Characteristics

Generally, these should be conducted as multiple-issue tests and appropriate probable-lie comparison question formats can be easily applied. Caution should be taken in the preparation of comparison questions, keeping in mind that the relevant questions address issues without defined conflict, i.e. there are no accusations or specific violations alleged. Also, caution should be taken to avoid a mixed-issues test by excluding issues assigned to the monitoring test or those that address treatment concerns. Moreover, if significant reactions are manifest to any relevant issue in a multiple-issue test, examiners are obligated to conduct single-issue testing on the reactive issue before rendering an opinion if the PDD results are to be used for anything more than investigatory purposes.

The Maintenance Test for Treatment Issues

Time of Reference

The time of reference is from the date of conviction to present, or any time period therein (i.e. since your last polygraph test).

Frame of Reference

The frame of reference includes any and all treatment contracts, treatment questionnaires, or other expressed concerns of the treatment provider team.

Test Purpose

The purpose of this examination is to “assist treatment providers in developing individual treatment plans and goals and in assessing risk while on probation” (JPCOT, p. 16). These examinations are extremely important to facilitate treatment providers’ understanding of the offender’s compliance with treatment goals, and to evaluate treatment effectiveness in dealing with deviant sexual fantasy, sexual acting out, and misrepresentations to the treatment team.

Distinguishing Characteristics

Generally, these should be conducted as multiple-issue tests and appropriate probable-lie comparison question formats can be easily applied. Caution should be taken in the preparation of comparison questions, keeping in mind that the relevant questions address issues without defined conflict, i.e. these tests investigate clinical self-reports and compliance with treatment issues. Generally, there are no accusations or specific violations alleged (if there were, specific issue tests would be most appropriate). Also, caution should be taken to avoid a mixed-issues test by excluding issues assigned to Maintenance Tests that address probation concerns or issues assigned to the Sexual History Disclosure Test. Moreover, if significant

reactions are manifest to any relevant issue in a multiple-issue test, examiners are obligated to conduct single-issue testing on the reactive issue before rendering an opinion if the PDD results are to be used for anything more than investigatory purposes.

Additional Issues

Investigative (Utility) Post-Conviction PDD Tests

When a PDD examination is conducted and variables are identified that may affect the defensibility of the professional opinion, they may still be considered valuable sessions. The particular value of post-conviction investigative tests is that issues can be resolved and helpful admissions obtained. In general, these examinations are differentiated from validated test procedures because they are found to contain variables that were not controlled in the conduct of the pre-test interview or examination. Uncontrolled variables in a test process increase the likelihood of opinion error and thus, decrease the defensibility of the professional opinion.

Comparison Questions in Post-Conviction PDD Tests

Comparison questions have a vital impact on the accuracy of post-conviction PDD test opinions, pre- or post-conviction. This issue is beyond the scope of this paper and will be addressed in other publications under development. However, it is important to note that in the same way that comparison questions were designed for pre-conviction issues with building block elements in mind, post-conviction comparison questions must be designed with the building blocks of those tests clearly in mind.

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SEX OFFENDER DISCLOSURE QUESTIONNAIRE

Anna Salter and Eric J. Holden

Wisconsin Department of Corrections

PROBLEM LIST

Community Corrections and/or your treatment program requires you to fill out this problem list because it is not possible to effectively supervise and/or treat a sex offender without knowing the nature and extent of the offending behavior. A doctor would not set a bone without seeing an x-ray. Today, many knowledgeable people will not supervise or treat sex offenders without having the information on this problem list. The problem list is not a complete sexual history. It does not ask you about consenting, non-violent sexual experiences with other adults. This problem list focuses on deviant sexual behavior, e.g., on sex with children, violent sex or sexual practices that violate another person's boundaries or their privacy. You will be asked to list every deviant sexual act that you have ever committed during the time periods defined in each section. You will be given a polygraph on the truthfulness of this information and results will be shared with your agent and your treatment provider in order to enhance your supervision and the effectiveness of your treatment. You are not being asked to provide identifying information about victims. Because you are required to complete this problem list, you will not be asked to give information specific enough to be used to prosecute you. You can accurately fill out this form and pass your polygraph without giving any identifying information about your victims. You are required, however, to fill out information about the sex and age of victims, degree of force, and so forth because that information is crucial to successful monitoring and treatment of sex offenders. Research suggests that sex offenders who fill out disclosure questionnaires and take polygraphs are more likely to succeed on supervision than those who do not. If you have questions about this form, or the uses to which it will be put, please ask your therapist or Community Corrections agent.

POLYGRAPH DISCLOSURE QUESTIONNAIRE

Anna C. Salter and Eric J. Holden

ALL QUESTIONS RELATE ONLY TO BEHAVIOR THAT OCCURRED BEFORE THE DATE OF YOUR LAST CONVICTION FOR A SEXUAL OFFENSE. ALL QUESTIONS EXCLUDE THIS LAST OFFENSE OR ANY OFFENSES THAT OCCURRED SINCE YOUR LAST CONVICTION.

IN SHORT, THIS QUESTIONNAIRE IS ABOUT YOUR HISTORY PRIOR TO THE DATE OF YOUR LAST CONVICTION FOR A SEXUAL OFFENSE.

YOU WILL BE ASKED TO TAKE A POLYGRAPH EXAMINATION TO VERIFY THE COMPLETE TRUTHFULNESS OF YOUR ANSWERS ON THIS FORM. YOU SHOULD BE VERY CAREFUL NOT TO WITH-HOLD OR FALSIFY ANYTHING ABOUT YOUR SEXUAL HISTORY. YOU WILL NOT BE CONSIDERED TO HAVE SUCCESSFULLY COMPLETED YOUR SEXUAL HISTORY UNTIL YOU HAVE PASSED THE POLYGRAPH.

YOU WILL BE ASKED QUESTIONS ABOUT VICTIMS OF SEXUAL OFFENSES THAT YOU HAVE COMMITTED. YOU WILL NOT BE ASKED TO GIVE IDENTIFYING INFORMATION ABOUT THESE VICTIMS. SHOULD YOU REPORT IDENTIFYING INFORMATION ABOUT THESE VICTIMS ANYWAY, THIS INFORMATION WILL BE REPORTED TO CHILD PROTECTIVE SERVICES AS REQUIRED BY STATE LAW.

SEXUAL CONTACT WITH CHILDREN

All questions relate to behavior that occurred prior to the date of conviction for your last offense and do not include that offense or subsequent offenses.

How many children did you have some form of sexual contact with **prior to the date of conviction for your last offense?** _____ (A child is someone under the age of 18 who was also at least three years younger than you at the time of the sexual contact.)

Please fill in the following information about these child victims.

Use additional sheets whenever necessary.

**** Use "F" for family (Family would include children of live-in girlfriends or boyfriends),**

"A" for acquaintance, or "S" for stranger.

Victim's Age at First Sexual Contact _____
Victim's Gender _____
Your Age at First Sexual Contact Mo. / Yr. Of First Sexual Contact _____
Mo. / Yr. Of Last Sexual Contact _____
Frequency per Week _____
Relationship to Victim** _____
Type of Sex Acts Type of Force Used _____

Victim's Age at First Sexual Contact _____
Victim's Gender _____
Your Age at First Sexual Contact Mo. / Yr. Of First Sexual Contact _____
Mo. / Yr. Of Last Sexual Contact _____
Frequency per Week _____
Relationship to Victim** _____
Type of Sex Acts Type of Force Used _____

Prior to the date of your last conviction, how many children did you groom for sexual activities, (e.g., entice, persuade or manipulate)? _____

Describe what you said or did and include a description of any rewards or gifts you gave to victims.

Prior to the date of your last conviction, how many children did you threaten in order to get them to agree to sexual activities? _____

Describe what you said or did.

Prior to the date of your last conviction, how many children did you physically force into sexual activity? _____

Describe what you did.

Prior to the date of your last conviction, how many children did you force into sexual activity by using a weapon? _____

Describe the weapon(s) and what you said or did.

Prior to the date of your last conviction, did you ever belong to NAMBLA or any group that approves of sex between adults and children? _____

If so, which one(s)?

Prior to the date of your last conviction, how many times did you buy child pornography?

Prior to the date of your last conviction, how many times did you sell or trade child pornography?

Prior to the date of your last conviction, how many times did you make child pornography, e.g., take pictures, videotapes, films, etc., of nude children or children engaged in sex acts?

Prior to the date of your last conviction, how many times did you have sexual contact with children at any type of nudist club or other facility where you did not have to wear clothes?

Prior to the date of your last conviction, how many times were you involved with sex rings, e.g., groups of adults who traded or used children for sexual purposes? _____

Describe what happened and the ages and gender of the children involved.

Prior to the date of your last conviction, how many times did you have sexual contact with children when other adults were present? _____

Describe what happened and the ages and gender of the children involved.

Prior to the date of your last conviction, how many times did you watch other adults have sexual contact with children? _____

Describe what happened and the ages and gender of the children involved.

Prior to the date of your last conviction, how many times did you have sexual contact with children in countries other than the USA? _____

OTHER SEXUALLY DEVIANT BEHAVIOR

SEX WITH ANIMALS

Prior to the date of your last conviction, how many times did you have sexual contact with animals?

Please fill in the following:

Type of Animal

Number of Contacts

Your Age at the Time of First Contact

FETISH BURGLARY

Prior to the date of your last conviction, how many times did you steal an item of clothing for sexual purposes from someone or from someone's home?

What clothing did you steal from individuals (not including shoplifting)?

Where did you steal it from (for example, bedroom)?

Why?

Prior to the date of your last conviction, how many times did you burn, cut or mutilate stolen clothing? _____

Describe what you did to the clothing?

Prior to the date of your last conviction, how many times did you masturbate using stolen clothing?

Prior to the date of your last conviction, when was the last time you masturbated using stolen clothing?

OBSCENE PHONE CALLS

Prior to the date of your last conviction, how old were you when you made your first obscene phone call (includes e-mail, heavy breathing, talking "dirty," etc.).

Prior to the date of your last conviction, how many obscene phone calls did you make? _____

What did you say or do when the person answered the phone?

How did you select the people you called?

List the number of obscene phone calls you made to each of the following victims prior to the date of your last conviction. ____ boys ____ girls.

PEEPING TOM ACTIVITIES

Prior to the date of your last conviction, how old were you when you first engaged in "peeping Tom" activities e.g., tried to spy on someone by looking in a window, shower, open door, bedroom, bathroom, urinal, etc. _____

What did you do?

What did you want to see?

Prior to the date of your last conviction, when was the last time you engaged in "Peeping Tom" activities? _____

List the number of times you peeped on each of the following victims prior to the date of your last conviction ___ boys ___ girls.

EXHIBITIONISM

How old were you when you first sexually exposed yourself to others so that someone other than a spouse or significant other could see your private parts, (i.e., dropped your pants, left your bathrobe open, left the bathroom or bedroom door ajar, left the curtains or shower curtain open, etc.). This refers to incidents that occurred prior to the date of your last conviction. _____

What did you do?

Who were you hoping would see you?

Prior to the date of your last conviction, when was the last time you sexually exposed yourself to someone?

Prior to the date of your last conviction, how many times did you sexually expose yourself to adults?

Prior to the date of your last conviction, how many times did you sexually expose yourself to children? _____

PUBLIC MASTURBATION

Check each place listed below where you have masturbated. This refers to incidents that occurred prior to the date of your last conviction.

- | | |
|---|---|
| <input type="checkbox"/> In the Neighborhood | <input type="checkbox"/> Day Care Centers |
| <input type="checkbox"/> Amusement Parks | <input type="checkbox"/> Arcades |
| <input type="checkbox"/> Stores | <input type="checkbox"/> Teenage Hang-Outs |
| <input type="checkbox"/> Movie Theaters | <input type="checkbox"/> Near Schools |
| <input type="checkbox"/> Fast Food Restaurants | <input type="checkbox"/> In Schools |
| <input type="checkbox"/> Vehicles | <input type="checkbox"/> Zoos |
| <input type="checkbox"/> Public Restroom | <input type="checkbox"/> Parks |
| <input type="checkbox"/> Vacation Resorts | <input type="checkbox"/> Grocery Stores |
| <input type="checkbox"/> Baby-sitting | <input type="checkbox"/> Boy-Girl Scouts or 4-H |
| <input type="checkbox"/> Shopping Malls | <input type="checkbox"/> Children's Camps (includes Day camp) |
| <input type="checkbox"/> Nursing Homes | <input type="checkbox"/> Handicap Facilities |
| <input type="checkbox"/> Summer Camps | <input type="checkbox"/> Public Transportation |
| <input type="checkbox"/> K-mart or Other Discount, Hardware
or Department Stores | <input type="checkbox"/> Other |

BRUSHING AGAINST OR BUMPING INTO PEOPLE SEXUALLY

How old were you when you first intentionally bumped into or brushed against someone in a sexual way prior to the date of your last conviction.

Prior to the date of your last conviction, how many times did you do this?
_____ per day

Prior to the date of your last conviction, how many victims in each of the following groups did you have? _____

_____ adult females
_____ adult males

_____ teenage females
_____ teenage males

_____ girls under age 12
_____ boys under age 12

When did you masturbate after this? _____

Where did you masturbate after this? _____

SEX WITH ADULTS WITHOUT THEIR CONSENT

Forced sex includes all of the following:

- 1) Incidents where a person said "no," to having sex with you (whether or not you think he or she really wanted to have sex with you despite saying "no")
- 2) Incidents where you placed any kind of weapon within sight of the person (including ropes and ligatures) even if you did not directly threaten to use them
- 3) Include all incidents where you blocked someone's exit or otherwise interfered with his or her ability to leave (for example, taking a victim somewhere alone in a car where the person did not agree to go)
- 4) Include all incidents where you implied a threat (such as curling your hand into a fist in sight of someone you had previously beaten up when she/he refused to do what you wanted)

In short, include all incidents where a person did not actively agree to sexual activity of his or her own free will without threats, show of force or actual physical force of any kind prior to the date of your last conviction.

Number of times you forced sex with adults prior to the date of your last conviction?

Please fill out the following information about these adult victims for acts that occurred prior to the date of your last conviction?

Sex of Victim	Age of Victim	Your Age
	Type of Sex Acts	Type of Force or Threat

Prior to the date of your last conviction, how many times did you have sexual contact with someone whom you believed was drunk? _____

Please describe.

Prior to the date of your last conviction, how many times did you have sexual contact with someone who was unconscious? _____

Please describe.

Prior to the date of your last conviction, how many times did you have sexual contact with someone who was sleeping? _____

Please describe.

Prior to the date of your last conviction, how many times did you have sexual contact with bedridden or nursing home patients? _____

Please describe.

Prior to the date of your last conviction, how many times did you have sexual contact with hospital patients? _____

Please describe.

Prior to the date of your last conviction, how many times did you have sexual contact with someone who was handicapped? _____

Please describe.

Prior to the date of your last conviction, how many times did you have sexual contact with your employee(s)? _____

Please describe.

SEX AND PAIN

Prior to the date of your last conviction, how many times did you torture animals?

Describe what you did to the animals.

Prior to the date of your last conviction, how many times did you have sex with dead animals?

Describe what kind of sex acts you performed on dead animals?

Did you kill the animals before you had sex with them? _____

If so, describe how.

How old were you when you first caused pain or deliberately hurt a person during a sexual act that occurred before the date of your last conviction? _____

What did you do?

How many times did you cause pain or hurt a person during sex that occurred prior to the date of your last conviction? _____

Prior to the date of your last conviction, how many times did you beat up a person before, during or after sex? _____

Describe the injuries you inflicted.

Prior to the date of your last conviction, how many times did you tie someone up against his or her will? _____

Describe what you did.

Describe in detail the ropes, chains, handcuffs, tape or other restraints used.

Prior to the date of your last conviction, how many times did you torture someone? _____

Please describe.

Prior to the date of your last conviction, what was the worst thing you ever did to another person in order to hurt them or inflict pain?

Prior to the date of your last conviction, did you ever kill someone during or after sex? _____

Describe what you did?

Prior to the date of your last conviction, did you ever have sex with a dead person? _____

If so, describe what you did.

SEXUAL FANTASIES, THOUGHTS AND IMAGES

What is the most exciting sexual thought or fantasy that you have daydreamed about, but never acted out? This refers to fantasies that you had before the date of your last conviction?

When did you masturbate after this?

Where did you masturbate after this?

Prior to the date of your last conviction, how many times did you masturbate to thoughts, images or fantasies of holding someone captive and/or torturing him or her? _____

Describe the thoughts or fantasies?

Prior to the date of your last conviction, how many times did you masturbate to thoughts, images or fantasies of cutting off someone's air supply, or choking or strangling them? _____

Describe the thoughts or fantasies.

Prior to the date of your last conviction, how many times did you masturbate to thoughts, images, and fantasies of killing someone? _____

Describe the thoughts or fantasies.

POLYGRAPH DISCLOSURE QUESTIONNAIRE

OTHER

Please describe any and all other sexually deviant or sexually, inappropriate behavior that you have engaged in which has not been covered by this questionnaire. This refers to activity that occurred before the date of your last conviction.

**STATE of Kansas, Appellee,
v.
Roy A. LUMLEY, Appellant.**

No. 78,447.

Supreme Court of Kansas.

April 16, 1999.

Syllabus by the Court

*1 1. Probation from serving a sentence is an act of grace by the sentencing judge and, unless otherwise required by law, is granted as a privilege and not as a matter of right. The procedure to be followed when a judge acts upon a defendant's violation of a condition of probation is set out in K.S.A. 22-3716.

2. Implicit in our statutory provisions for probation is the understanding that, unless required by law, the court need not grant probation, but if it does so, the probationer is entitled to retain his or her liberty as long as he or she abides by the conditions on which probation is granted.

3. To sustain an order revoking probation on the ground that a probationer has committed a violation of the conditions of probation, it is not necessary that the commission of the violation be established by proof beyond a reasonable doubt. Rather, a preponderance of the evidence is sufficient.

4. Probation revocation hearings are not criminal trials, and there are significant differences as to a defendant's rights and the admission of evidence in a criminal trial and a revocation hearing.

5. For the offense a probationer was convicted of, there is no privilege against self-incrimination available to the probationer, and there is no valid claim of privilege against self-incrimination on the ground that information

sought through a polygraph examination might be used in a subsequent probation revocation proceeding.

6. A condition of probation will not be held invalid unless it (1) has no reasonable relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality. Conversely, a condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality.

7. Under certain circumstances, using the results of a defendant's polygraph examination as a condition of probation is valid.

Review of the judgment of the Court of Appeals in 25 Kan.App.2d 366, 963 P.2d 1238 (1998). Appeal from Sedgwick district court; David W. Kennedy, judge. Judgment of the Court of Appeals affirming the district court is affirmed. Judgment of the district court is affirmed.

Craig Durham, assistant appellate defender, argued the cause, and Randall L. Hodgkinson, assistant appellate defender, and Jessica R. Kunen, chief appellate defender, were with him on the briefs for appellant.

Michelle M. Sehee, assistant district attorney, argued the cause, and Debra S. Peterson, assistant district attorney, Nola Foulston, district attorney, and Carla J. Stovall, attorney general, were on the brief for appellee.

LOCKETT, J.:

Defendant appeals the district court's "resentencing" him to imprisonment for failing to pass a polygraph test. Defendant argues that although the district court has jurisdiction to order polygraph testing as a condition of probation, the court could not use the results of the polygraph test to revoke defendant's probation.

*2 On April 4, 1996, Roy A. Lumley pled guilty to three counts of aggravated indecent liberties and one count of criminal sodomy of his minor daughters. At the June 11, 1996, sentencing, Lumley requested a dispositional departure of probation. To support his request for a departure, Lumley's attorney submitted the report of Comprehensive Community Care of Sedgwick County, which recommended that Lumley continue in a community-based sexual offender treatment program under close supervision of community corrections. Lumley's supervision during the treatment program included a requirement that he submit to polygraph examinations. The State did not oppose Lumley's requested departure.

The district judge imposed a sentence of 102 months' imprisonment, then concluded that the reports and evaluations submitted provided substantial and compelling reasons for granting the departure requested by Lumley. The judge placed Lumley on 60 months' probation. The district judge stated as a condition of probation:

"Mr. Lumley will submit to a polygraph examination not less often than every six months at his expense. He'll not have any contact with any child less than 16 years of age, period. He'll not have contact with his daughters until arrangements are made between his counselor and their counselor....

....
"Mr. Lumley will provide releases for any and all treatment he is receiving or has received in the past, any and all medical

treatment that he has received in the past and will receive in the future."

On December 23, 1996, a warrant was issued for Lumley's arrest. The warrant was based on a sworn allegation that Lumley's answer to a polygraph examiner's question was untruthful regarding contact with a child less than 16 years of age.

At the January 28, 1997, hearing on the probation violation, Lumley's attorney moved to quash the arrest warrant as facially invalid and violative of Lumley's due process rights. Lumley's attorney asserted that the polygraph results were not admissible into evidence without a prior stipulation to admissibility, and that Lumley had not stipulated to the introduction of the polygraph examination results.

The judge responded:

"THE COURT: So if you're telling me he's not willing to have a polygraph [examination] be part of his probation--which is what I'm hearing you say--I'll say fine and there won't be any probation and we'll give him credit for time served and I'll send him to the Secretary [of Corrections].

"MR. LEHR: Umm, your Honor, I'm not saying that this court does not have the power to enter as a condition of probation a requirement that Mr. Lumley undergo a polygraph test to insure his compliance with the conditions of probation. However, I have been unable to find any case in the United States that allows for the introduction of that test at a probation violation hearing.

"THE COURT: Where it was a condition of probation?

"MR. LEHR: As a condition to be used as part of his therapy, not as a basis for additional evidence against him to be introduced to send him back to prison.

*3 "THE COURT: Oh, I'll overrule that objection.

"MR. LEHR: That's where my objection comes in.

"THE COURT: Okay, I'll find that Mr. Lumley is not willing, was not willing to have a polygraph [examination] be part of his conditions of probation. The court was not made aware of that. That's a fraud on the court. Therefore, we'll go back to ground zero and we'll start over with sentencing again."

The judge then indicated that without the polygraph examinations and the admission of the results of the examination as a condition of probation, the probation program recommended by community corrections could not be maintained. The judge found that Lumley, by claiming he had not stipulated to the admission of the results of the polygraph examination, had perpetrated a fraud on the court. Based on the fraud, the judge "resentenced" Lumley to the prison term originally imposed and committed Lumley to the Secretary of Corrections.

Lumley filed a notice of appeal claiming that the district court lacked jurisdiction to resentence him. The Court of Appeals affirmed Lumley's sentencing in *State v. Lumley*, 25 Kan.App.2d 366, 963 P.2d 1238 (1998).

The Court of Appeals found that the district court's statement that it would "start over with sentencing again" if Lumley did not stipulate to the admission of the polygraph results was not controlling. It noted that "[t]he substance of the [judge's] action, rather than the label, controls our review." 25 Kan.App.2d at 369, 963 P.2d 1238. The Court of Appeals found that the judge's "resentencing" of Lumley was actually a revocation of his probation.

In reaching this determination, the Court of Appeals relied on *Andrews v. State*, 11 Kan.App.2d 322, 720 P.2d 227 (1986). In *Andrews*, the district court revoked the defendant's probation, set aside the defendant's original sentence, and then imposed a higher sentence based on the fact that probation had been granted based upon *Andrews'* misrepresentations of his criminal history to the court. The Court of Appeals held that the district court had no authority to set aside *Andrews'* original sentence and impose a new increased sentence. The *Andrews* court construed the district court's setting aside *Andrews'* sentence as a probation revocation. It observed that based upon fraudulent concealment of facts and circumstances existing at the time probation was granted, the defendant's probation could be summarily revoked. 11 Kan.App.2d at 323, 720 P.2d 227 (quoting *Swope v. Musser*, 223 Kan. 133, 573 P.2d 587 [1977]).

The Court of Appeals noted that Lumley's case is factually similar to the *Andrews* case. The Court of Appeals asserted that the district court merely mischaracterized its action as a "resentencing," and the substance of the district court's action was actually a revocation of Lumley's probation. The Court of Appeals observed: " '[W]hen a defendant is granted probation in reliance upon misrepresentations made to the court by or on behalf of the defendant, the probation may be summarily revoked without evidence that the terms or conditions of probation have been violated.' " *Lumley*, 25 Kan.App.2d at 369, 963 P.2d 1238 (quoting *Andrews*, 11 Kan.App.2d at 323, 720 P.2d 227). It found that Lumley had misrepresented his intentions when he accepted the district court's grant of probation; therefore, his probation could be summarily revoked without further evidence of a violation.

*4 The Court of Appeals focused upon Lumley's misrepresentation to the district judge and did not determine whether a probationer's failure of the polygraph test was sufficient for revoking his or her probation. This court granted Lumley's petition for review.

PROBATION

Probation from serving a sentence is an act of grace by the sentencing judge and, unless otherwise required by law, is granted as a privilege and not as a matter of right. *State v. Yura*, 250 Kan. 198, Syl. ¶ 2, 825 P.2d 523 (1992). The procedure to be followed when a judge acts upon a defendant's violation of a condition of probation is set out in K.S.A. 22-3716. *State v. Freeman*, 249 Kan. 768, Syl. ¶ 1, 822 P.2d 68 (1991). Implicit in our statutory provisions for probation is the understanding that unless required by law the court need not grant probation, but if it does so, the probationer is entitled to retain his or her liberty as long as he or she abides by the conditions on which probation is granted. *Musser*, 223 Kan. 133, Syl. ¶ 1, 573 P.2d 587. To sustain an order revoking probation on the ground that a probationer has committed a violation of the conditions of probation, it is not necessary that the commission of the violation be established by proof beyond a reasonable doubt. Rather, a preponderance of

the evidence is sufficient. *State v. Rasler*, 216 Kan. 292, 294-95, 532 P.2d 1077 (1975).

A review of the record reveals that the district judge granted Lumley probation in reliance upon Lumley's representation that he would continue in the community-based sexual offender treatment program, which included submitting to polygraph testing. Implicit in Lumley's acceptance of the benefit of probation rather than a sentence of imprisonment was the agreement that the polygraph results would be available to the judge to determine that Lumley had complied with the conditions of his probation.

RELIABILITY

The reliability of polygraph test results is also raised by Lumley. We briefly address the reliability and then admissibility of polygraph testing results in probation revocation hearings.

The United States Supreme Court recently considered the admissibility of polygraph evidence under the Daubert test, the federal standard for the admissibility of scientific evidence. The Court stated: "Although the degree of reliability of polygraph evidence may depend upon a variety of identifiable factors, there is simply no way to know in a particular case whether a polygraph examiner's conclusion is accurate, because certain doubts and uncertainties plague even the best polygraph exams." *United States v. Scheffer*, 523 U.S. 303, ----, 118 S.Ct. 1261, 140 L.Ed.2d 413, 421 (1998).

The longstanding rule in Kansas is that absent a stipulation of the parties, the results of a polygraph examination are too unreliable to be admissible at trial. *State v. Ulland*, 24 Kan.App.2d 249, 258-59, 943 P.2d 947, rev. denied 263 Kan. ---- (1997). The prohibition is based on the reliability of the results in accurately measuring truthfulness or deceptiveness and the unique role of the jury as truthfinders in court. See *State v. Webber*, 260 Kan. 263, 276, 918 P.2d 609 (1996), cert. denied 519 U.S. 1090, 117 S.Ct. 764, 136 L.Ed.2d 711 (1997). To obtain probation, Lumley agreed that the results of the polygraph examination would be used to ensure compliance with the conditions of

probation. For an in depth discussion of the use of polygraph examinations in Kansas, see *State v. Wakefield*, 267 Kan. ----, --- P.2d ---- (1999) (Case No. 80,320, filed April 16, 1999).

ADMISSION OF POLYGRAPH RESULTS AS A CONDITION OF PROBATION

***5** Does the use of results of a probationer's polygraph examination to monitor the probationer's conduct violate the Fifth Amendment?

In *Minnesota v. Murphy*, 465 U.S. 420, 104 S.Ct. 1136, 79 L.Ed.2d 409, reh. denied 466 U.S. 945, 104 S.Ct. 1932, 80 L.Ed.2d 477 (1984), the United States Supreme Court addressed the federal Constitution's Fifth Amendment privilege against self-incrimination in the context of a probation. In 1980, Murphy pled guilty to a sex-related charge in a Minnesota court, was given a suspended prison sentence, and was placed on probation. The terms of his probation required him to participate in a treatment program for sexual offenders, to report to his probation officer periodically, and to be truthful with the officer "in all matters." During the course of a meeting with his probation officer, who had previously received information from a treatment counselor that Murphy had admitted to a 1974 rape and murder, Murphy, upon questioning, admitted that he had committed the rape and murder. After being indicted for the murder, Murphy sought to suppress the confession made to the probation officer on the ground that it was obtained in violation of the Fifth and Fourteenth Amendments to the Constitution. The Minnesota trial court found that Murphy was not "in custody" at the time of the confession and that the confession was neither compelled nor involuntary despite the absence of Miranda warnings. The Minnesota Supreme Court reversed, holding that, notwithstanding the lack of custody in the usual sense, Murphy's failure to claim the Fifth Amendment privilege against self-incrimination when he was questioned was not fatal to his claim. Due to the nature of his meeting with the probation officer, Murphy was under court order to respond truthfully, and the probation officer had substantial reason to believe that respondent's answers were likely to be

incriminating. The United States Supreme Court accepted certiorari.

The Murphy Court observed that the Fifth and Fourteenth Amendments did not prohibit the introduction into evidence of Murphy's admissions to the probation officer in probationer's subsequent murder prosecution. It pointed out that the general obligation to appear before a probation officer and answer questions truthfully did not, in itself, convert Murphy's otherwise voluntary statements into compelled ones. It noted that a witness confronted with questions that the government should reasonably expect to elicit incriminating evidence ordinarily must assert the Fifth Amendment privilege, rather than answer, if the witness desires not to incriminate himself or herself. If the witness chooses to answer rather than to assert the privilege, his or her choice is considered to be voluntary since the witness was free to claim the privilege and would suffer no penalty as a result of his or her decision to do so.

*6 The Murphy Court stated that Murphy could not claim the benefit of the "in custody" exception to the general rule that the Fifth Amendment privilege is not self-executing. 465 U.S. at 430. It was clear that Murphy was not in custody for purposes of receiving Miranda protection since there was no formal arrest or restraint on freedom of movement of the degree associated with formal arrest.

The Court observed that a reasonably perceived threat of revocation of probation does not render the privilege self-executing. The legal compulsion to attend the meeting with the probation officer and to answer truthfully the questions of the officer who anticipated incriminating answers is indistinguishable from that felt by any witness who is required to appear and give testimony, and was insufficient to excuse Murphy's failure to exercise the privilege in a timely manner. The Court stated that whether a subjective or objective test was applied, there was no reasonable basis for concluding that Minnesota attempted to attach an impermissible penalty to the exercise of the privilege. The Court held, however, that a defendant who has been convicted and placed on probation does not lose the protection of the constitutional privilege against self-

incrimination. For this reason, the State may not revoke, or threaten to revoke, probation for a valid invocation of the privilege. 465 U.S. at 435.

Murphy makes it clear that the State cannot make waiver of the privilege against self-incrimination regarding a separate crime a condition of probation. See *State v. Gleason*, 154 Vt. 205, 212, 576 A.2d 1246 (1990). However, a probationer may be required to answer questions concerning matters relevant to probation that pose "no realistic threat of incrimination in a separate criminal proceeding." *Murphy*, 465 U.S. at 435 n. 7. To the extent the probationer has lost the privilege against self-incrimination on offenses for which he or she has been convicted, the probationer must answer, even if his or her answers may be evidence of probation violations and result in revocation. *Arizona v. Eccles*, 179 Ariz. 226, 228, 877 P.2d 799 (1994).

In this case, there was no violation of Lumley's Fifth Amendment protections against self-incrimination. The polygraph question and answer which led to Lumley's revocation referred solely to Lumley's condition of probation that he not be alone with children during the term of his probation. Answering the question truthfully would not have exposed Lumley to prosecution for another crime.

The courts of other jurisdictions are virtually unanimous in approving the requirement of polygraph examinations as a condition of probation. See generally Annot., *Propriety of Conditioning Probation on Defendant's Submission to Polygraph or other Lie Detector Testing*, 86 A.L.R.4th 709 (1991). Where the jurisdictions disagree, however, is in whether the polygraph examination results are admissible against the probationer in a probation revocation hearing. Compare *People v. Miller*, 208 Cal.App.3d 1311, 256 Cal.Rptr. 587 (1989) (holding that an order of probation requiring probationer to submit to polygraph testing was not error where the results were not to be used as evidence of a probation violation but to determine whether changes would be necessary in the administration of the probationer's case plan) with *State v. Travis*, 125 Idaho 1, 867 P.2d 234 (1994)

(holding that evidence of polygraph results was admissible in a probation revocation hearing as a factor that the court could consider in concluding it was appropriate to revoke the probation of a probationer).

***7** In *Travis*, the Idaho court approved the use of polygraph results as one factor in the trial court's determination to revoke *Travis*' probation. The *Travis* court noted that the trial court carefully limited its consideration of the polygraph examination. First, the trial court had weighed the evidence and had determined that the results provided an indication that "things may not seem as they are." 125 Idaho at 4, 867 P.2d 234. Second, the trial court had not relied exclusively on the polygraph results in revoking probation. The trial court also had considered *Travis*' resistance to supervision and his uncooperativeness.

The *Travis* court also considered the effect of *Travis*' agreement to submit to a polygraph examination as a condition of probation on the admissibility of the results in the revocation proceeding. The court stated: "While *Travis*' agreement to this condition of his probation might not be sufficient to establish admissibility of the examination results in all circumstances, in the context of a probation revocation proceeding, *Travis*'s agreement is another factor militating in favor of allowing the trial court to exercise its discretion in considering the results of the examination." 125 Idaho at 5, 867 P.2d 234.

In *Patton v. State*, 580 N.E.2d 693 (Ind.App.1992), the Indiana court struck down a probation condition which required *Patton* to stipulate in advance to the admission in any court proceeding of polygraph results obtained from tests ordered as a condition of his probation. The probation condition in *Patton* was overbroad in that it required *Patton* to stipulate to the admission of polygraph results in any subsequent court proceeding, not just probation revocation hearings. The court stated:

"In theory, a defendant who makes the decision to waive or stipulate to the examination's admissibility does so after weighing the questionable accuracy of the examination against the possible benefit to be gained from the examination's admission. Here, however, that decision was made by the

court, not *Patton*. We hold it is inappropriate for a trial court to coerce a defendant to agree to the admissibility of evidence that otherwise would be inadmissible because it has not been found scientifically reliable. Thus, the rehabilitative benefits of the polygraph examination condition must be obtained without the examination results being admissible in any subsequent court proceeding.

"We emphasize we are limiting only the unrestricted admissibility of the polygraph examination results in any subsequent court proceeding, including a trial on a pending or subsequent charge. We impose no impediment upon the use of polygraph examinations as a rehabilitative tool much like the probation condition that a probationer be truthful in responding to questions asked by his or her probation supervisor." 580 N.E.2d at 699.

***8** Probation revocation hearings are not criminal trials, and there are significant differences as to a defendant's rights and the admission of evidence in a criminal trial and a revocation hearing. We hold that for the offense a probationer was convicted, there is no privilege against self-incrimination available to the probationer, and there is no valid claim of privilege against self-incrimination on the ground that information sought through a polygraph examination might be used in a subsequent probation revocation proceeding.

A condition of probation will not be held invalid unless it (1) has no reasonable relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality. Conversely, a condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality. *People v. Lent*, 15 Cal. 3rd 481, 486, 124 Cal.Rptr. 905, 541 P.2d 545 (1975). Proof beyond a reasonable doubt is not required to establish a violation of a condition of probation. Rather, a preponderance of the evidence is sufficient. *Rasler*, 216 Kan. at 295, 532 P.2d 1077.

Lumley pled guilty to a sex crime committed upon young females. One condition of probation was that he not be alone with young females. As indicated at sentencing, compliance with that condition is difficult to enforce. The polygraph condition helped to monitor compliance and was therefore reasonably related to the defendant's criminal offense. Because this condition was aimed at deterring and discovering criminal conduct most likely to occur during unsupervised contact with young females, the condition was reasonably related to future criminality. The relaxed standard of proof and the fact that a

probation revocation decision is a judicial decision rather than a jury decision are additional factors that strongly support a determination that polygraph test results are sufficiently reliable to be considered evidence in probation revocation hearings.

Applying the stated rules for probation and revocation of probation to the instant case, we conclude the polygraph condition was valid.

Affirmed.

END OF DOCUMENT