

# **Polygraphs and 215 Wrongful Conviction Exonerations**

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## **Abstract**

Accelerated by the precision of DNA testing, the criminal justice system has seen an unprecedented number of exonerations from wrongful convictions. This article examines the role of polygraph examinations in 215 exonerations since 1939 and finds that the polygraph was an excellent guide to the truth in those cases. With such a record of success in real cases involving real people who were wrongly convicted of crimes they did not commit, the polygraph should be used more often, in the interest of justice, to prevent future wrongful convictions and correct those which have already occurred.

## **Introduction**

Since the 1989 exoneration of Gary Dotson of his rape conviction in Illinois through DNA testing, over eleven hundred people have been exonerated from their wrongful convictions. The best source for information about those cases since 1989 is the newly created National Registry of Exonerations,<sup>1</sup> a joint project of the University of Michigan and Northwestern University Law Schools. These exonerations have correctly shaken our faith in the ability of the criminal justice system to determine truth. In every one of those cases, the truth, as determined "beyond a reasonable doubt" by a judge or jury, was false.

Since the invention of the polygraph in the early 20th century, its reliability as a detector of truth or lies has been vigorously debated and studied. Given the lack of consensus that polygraph results are reliable, they are not permitted, with many exceptions, to be introduced as evidence of the truth in criminal trials in U.S. courts, except in New

Mexico and in some other states with qualifications and stipulations.

Nonetheless, polygraphs are used extensively by police, lawyers and others in their efforts to determine the truth of people's statements. Faith in the reliability of polygraphs has been enhanced by favorable studies and anecdotal evidence where other means have been available to ensure the accuracy of the tested truth. Also, many crimes have been solved by police who announced plans to use polygraphs on witnesses, and the prospect of such a test then sometimes produced a desired confession or changed testimony.

## **The Cases Summarized**

This paper addresses the reliability of polygraphs in predicting the truth which exonerations from wrongful convictions have exposed, before and especially since the advent of DNA testing. Two hundred fifteen (215) exonerations were found, primarily on the Internet, where polygraphs were used with

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<sup>1</sup> National Registry of Exonerations, a joint project of Northwestern University and University of Michigan Law Schools at [www.law.umich.edu/special/exoneration](http://www.law.umich.edu/special/exoneration).

defendants/exonerees, suspects or witnesses, before and after the wrongful convictions. Each of the 215 served an average of 13.5 years in prison for crimes s/he did not commit. For many, their children grew up and/or their parents died during that period, and their returns to society were very difficult. The suffering of those 215 was immeasurable,

yet unnecessary and avoidable. Not all of these cases are listed on the National Registry of Exonerations, but for those not listed, there is sufficient information for classifying them here as exonerations where the innocence of the defendant/exoneree has been affirmed. The 215 cases have been divided into the following six categories where polygraphs of:

<u>Category</u>	<u>Number</u>	<u>Percent</u>
1. Exonerees supported innocence.	93	43.3%
Before trial: 44 (20.5%)		
After trial: 49 (22.8%)		
2. Others supported exoneree innocence.	42	19.6%
Before trial: 24 (11.2%)		
After trial: 18 (8.4%)		
subtotals	135	62.9%
3. Exonerees had an uncertain result and use.	31	14.4%
Before trial: 31 (14.4%)		
After trial: 0 (0.0%)		
4. Others had an uncertain result and use.	18	8.4%
Before trial: 17 (7.9%)		
After trial: 1 (0.5%)		
subtotals	49	22.8%
5. Exonerees did not support innocence.	23	10.7%
Before trial: 23 (10.7%)		
After trial: 0 (0.0%)		
6. Others did not support exoneree innocence.	8	3.7%
Before trial: 6 (2.8%)		
After trial: 2 (0.9%)		
subtotals	31	14.4%

Of the 93 cases where polygraph examinations of defendants/exonerees supported innocence, 44 examinations were conducted before trial. In those cases, the prosecutors did not believe the validity of the results and obtained convictions from juries which almost always did not know of the results of the polygraph tests, because of the rules of evidence in most courts. For 31

other exonerees, all of whose polygraphs were taken before trial, the results were inconclusive or uncertain. It could be argued that even these results should have been considered by prosecutors as pointing away from the exoneree, given the presumption of innocence, and should have given prosecutors pause before proceeding to trial or attempts to obtain guilty pleas. Thus, in 75 (44+31)

instances, out of 215, the prosecutors should have paid more attention to the results of the defendants' polygraph examinations before trial. Such additional attention could have meant additional investigation, or a request for a second polygraph exam for the defendant/exoneree, or more polygraphs for witnesses. It also could have meant a considerable reduction in suffering by the wrongly convicted people and their families and friends.

For 49 exonerees, the polygraph tests affirming their innocence were administered after their wrongful convictions, almost always in prison. Such tests were often used to help assure investigators that they were on the right track.

In 68 (42+18+8) instances, polygraphs were given to others involved in the wrongful conviction cases, such as witnesses or informants. For 42 of those cases, the results supported innocence. Twenty-four of those 42 were administered before trial, but they were apparently ignored or discounted by prosecutors. In 18 cases the results were mixed or uncertain, and eight did not support the exonerees' innocence. All of those 26 (18 + 8) results came from examinations conducted before trial.

Thus, in 135 (93 + 42) or 62.9% of the 215 cases, polygraph results of exonerees and others clearly supported the exonerees' innocence. In another 49 cases, (31 exonerees + 18 witnesses/others), or 22.8%, the results were mixed, inconclusive or uncertain. Therefore, in 184 (135+49) cases (85.7%) the polygraphs reached a result inconsistent with the certainty of defendants/exonerees' guilt, or, to use the legal terminology, inconsistent with guilt beyond a reasonable doubt. In 23

cases, exonerees failed their polygraph examinations, and all before trial.

For the 147 (93 + 31 + 23) polygraphs only of exonerees, 93 passed and 23 failed, for a total of 116 with clear results. If the inconclusive/uncertain results are not considered, i.e. the 31, that gives the odds of 4.0:1 or an 80% chance (93/116) of getting a clear correct result for an innocent defendant claiming innocence. If the 31 inconclusives/uncertains are also included, and if the concept is accepted that the only polygraph failure is a clear "deception indicated" failure, the odds of obtaining an acceptable result are 5.4:1 or 84% ((93+31)/(93+31+23)).

For this article, the more conservative "clear" probability of 80% is used. This rate of accuracy is within the range of accuracy rates claimed<sup>2</sup> by the American Polygraph Association (APA). The APA also reports in its Model Policy on Paired Testing<sup>3</sup> that the 2003 National Research Council report, *The Polygraph and Lie Detection*,<sup>4</sup> found an 86% accuracy rate for polygraphs on single issue testing.

As is described below, there is substantial reason to believe that in many, if not most, of the 23 failed exoneree cases, the polygraphs were defective examinations. In other words, if those exams had been videotaped and administered professionally, according to accepted standards, many if not most defendants/exonerees would have passed their exams. To the extent that is true, the odds and percentage probabilities of obtaining a favorable result, as will be reported in future versions of this article, will improve when each such defective examination is identified.

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<sup>2</sup> American Polygraph Association, Summary, "Validity Research" at <http://www.polygraph.org/section/resources/polygraph-validity-research>

<sup>3</sup> American Polygraph Association, Model Policy on Paired Testing, at [http://www.polygraph.org/files/model\\_policy\\_for\\_paired\\_testing.pdf](http://www.polygraph.org/files/model_policy_for_paired_testing.pdf)

<sup>4</sup> National Research Council, *The Polygraph and Lie Detection* (2003), at [http://www.nap.edu/catalog.php?record\\_id=10420](http://www.nap.edu/catalog.php?record_id=10420)

A significant difficulty in the researching for this article was the quality of the information about the use of polygraphs, when such use was mentioned at all. Without the full records of polygraph examinations, it is very difficult to determine the quality of the actual exams themselves. Were the examiners properly trained? Were the pre-interviews fairly conducted and were the questions objectively prepared? Even when polygraph examinations were properly conducted, it was not always clear that the reporting of the results was accurate. Sometimes, the police would tell a suspect that s/he failed the polygraph in the hope of generating a confession, even when the examination was passed. This is what happened in the Peter Reilly<sup>5</sup> case, described below.

During the research for this article, the actual reports for defendant/exoneree polygraph exams were obtained for only three cases. The first was the one page report of the 1966 examination in New Jersey for Rubin "Hurricane" Carter. The second was also in New Jersey, for Byron Halsey, noted below, who also was said by the police to have failed his exam. The third was a two page report for Erick Daniels, who passed his polygraph in his North Carolina prison in 2003 at the age of 17 after his 2001 conviction for robbery at the age of 14. Each case is listed separately by name on a spreadsheet<sup>6</sup> and sorted by the role of the polygraph. Another spreadsheet<sup>7</sup> sorts the 215 cases by state. As more cases and more information about each case become known to the author, that information will also be updated and linked, and updated versions of this article will be posted<sup>8</sup> on the Internet. Also, it is hoped that readers of this article who have direct knowledge of one or more of these cases will forward to the author

any information and documents which can contribute to the accuracy of this article. Since the first version of this article was posted on the internet and sent to several individuals, the number of cases has grown from 166 cases to the current 215, and the accuracy of the categorizations has improved.

As there were multiple polygraph examinations administered in some of the 215 cases, the actual number of polygraph examinations was approximately 240. These 215 cases came from 34 states, plus the Federal Government, Puerto Rico and the District of Columbia, with the four largest numbers coming from Illinois (27), New York (26), Texas (23), and California (20).

Not included in this article were cases where a polygraph exam played a role, but was not completed. For example, in Illinois, an alternate suspect began to take a polygraph exam in the murder case where Alan Beaman was wrongly convicted in 1995. However, the exam was stopped and canceled due to the suspect's failure to comply with the polygraph examiner's procedural instructions. That non-completion of the polygraph session actually contributed to Beaman's eventual exoneration, but it was a long journey. Because the exam was not completed, it is not included among the 215 because this article is about the accuracy of completed polygraph examinations and not the other implications and uses of polygraphs.

### **The Cases - Examples**

The first known use of a polygraph in a wrongful conviction case was for Jere Snodgrass in 1939 in Michigan. He was accused of passing forged checks and was

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<sup>5</sup> Documents for Peter Reilly's case, and for all the other 214 exonerees whose cases were researched for this this article are linked at <http://www.bonpasseexonerationservices.com/about.html>

<sup>6</sup> The spreadsheet sorting the 215 cases by role of the polygraph is at <http://www.bonpasseexonerationservices.com/about.html>

<sup>7</sup> The spreadsheet sorting the 215 cases by state is at <http://www.bonpasseexonerationservices.com/about.html>

<sup>8</sup> Future updates of this article and spreadsheets will be posted at the same address: <http://www.bonpasseexonerationservices.com/about.html>.

arrested; the police arranged for a polygraph which he passed. Undeterred, the prosecutors moved ahead with his trial and conviction anyway. He was exonerated when the real robber came forward, after being convicted of other similar crimes.

The second use of a polygraph in a wrongful conviction case was in Colorado where Loren Hamby was convicted in 1939 of murdering a gas station attendant during a 1937 robbery. He was sentenced to life in prison, but he insisted that he was innocent. His mother had learned of the newly invented polygraph, and asked one of its co-inventors and prominent proponents, Leonarde Keeler, to give Loren a polygraph examination in prison. Keeler traveled from Chicago, so the undertaking was a large commitment. Hamby passed the polygraph exam. As often happens with such results, it wasn't the polygraph by itself, which persuaded the prosecutors and the courts of their mistake. Instead, after a period of time, the results helped persuade the chief prosecution witness to repudiate his testimony, and the repudiation was sufficiently credible to persuade the prosecutors. Hamby was released in 1946 and the Colorado legislature awarded him \$10,000 compensation in 1947.

Of the 215, the first case to reach the U.S. Supreme Court began in California where Paul Imbler sued his prosecutor, Richard Pachtman, for, among other claims, failing to disclose to Imbler's lawyers the results of his polygraph examination. That case made it to the U.S. Supreme Court as *Imbler vs. Pachtman* in 1975. However, the court affirmed the lower courts' dismissal of the case on the grounds of prosecutorial immunity. The Court explicitly noted Imbler's claim "of a lie detector test that had 'cleared' Imbler," but stated later that "but it would have been inadmissible at Imbler's trial and is thus not constitutionally required to be disclosed." Perhaps now, 38 years later, given the polygraph's relative success in determining the truth in exoneration cases, and given the requirement that prosecutors are required to provide to defense attorneys all evidence which might lead to evidence admissible in trials, the court would take a different view.

Another exoneree Supreme Court case was *Randall Dale Adams v. Texas* (448 U.S. 38, 1980), but that was about the constitutionality of the death penalty, rather than a challenge to his wrongful conviction. Thus, there was no mention of the polygraph examinations in his case. Fortunately, Adams' death sentence was vacated, so he was able to live to see his exoneration in 1989.

One case which almost made it to a Supreme Court decision was the case of *Pottawattamine County v. McGhee* which involved the issue of immunity from prosecution from prosecutorial misconduct in the wrongful convictions of Terry Harrington and Curtis McGhee in Iowa. However, the case was settled in 2009 for \$12 million just before the Supreme Court hearing. McGhee's and Harrington's cases are in the "polygraphs of others" category below. Coincidentally, a major incentive for settling the case on the prosecutor side of the argument was the risk that Supreme Court would overrule the strict immunity from liability for prosecutors rule from *Imbler vs. Pachtman*.

## The Cases by Role of Polygraph

Examples of each of the categories of the 215 cases are presented below.

### **Category: Polygraph of exoneree supports exoneree - before conviction**

The Peter Reilly case in Connecticut illustrated several uses of polygraphs in police investigations. When his mother was murdered in September, 1973, Reilly was given a polygraph and he passed it, according to post-conviction analyses. However, the police told him that he failed and used that alleged failure in their successful effort to obtain Reilly's confession, which turned out after Reilly's exoneration to be a false confession. The 17-year old Reilly reasoned that if a polygraph administered by the police, whom he respected, indicated that he murdered his mother, then he must have done it even if he didn't actually remember it.

False confessions are hard for laypeople to understand, but it's been estimated by the Innocence Project that approximately 25% of exonerees made false incriminating statements to police, or falsely

confessed or pled guilty to crimes they did not commit. Reilly's exoneration finally was achieved by careful investigation of the facts of the case, which indicated that he could not have killed his mother. As is the case with most exonerations, the real perpetrator was never found. Reilly's case fits the sub-category of exonerees passing polygraphs before they were convicted.

In two other cases in this category, defendant/exonerees were told that they failed polygraph examinations that they actually passed. After accepting the case of John Kogut of New York, Centurion Ministries concluded that he had passed his three polygraph exams, even though the police told Kogut that he had failed.

Similarly, in New Jersey in 1985, Byron Halsey was told by the polygraph examiner that he failed his polygraph test and was wrongly convicted of two murders in New Jersey. Halsey was not exonerated until 2007. Since then, he has sued his polygraph examiner and others and Professor Charles Honts was asked by Halsey's attorneys to evaluate Halsey's polygraph examination. Honts found the polygraph to be substandard, and wrote in his 2012 letter,

"In summary concerning the CQT portion of the examination, it is my opinion that there were serious problems with the design and implementation of the Halsey polygraph examination. One of the two comparison questions was at best weak, and was likely inappropriate. The amount of obtained data was less than that required by professional standards. The data that were obtained are inconclusive about Mr. Halsey's credibility when he answered the relevant questions in both series....

"... my evaluation of the entire Halsey polygraph examination indicates that Mr. Halsey did not fail either of the comparison question test series and that the CIT [Concealed Information Test] produced a strong truthful result. It is my opinion that rather than failing this polygraph examination Mr. Halsey **actually passed** the examination and

produced a truthful result." (emphasis added here.)

In the California child abuse case involving husband and wife Scott and Brenda Kniffen, they both passed polygraph tests before their trials. If the accuracy of polygraphs is assumed to be 80%, as calculated previously for clear results (i.e. excluding the inconclusives), and the corresponding risk of incorrect clear result is 20%, then the likelihood of guilt of two people who both claim innocence and who pass polygraph tests is 4.0% (20% x 20%).

A similar result applies in the Indiana murder case of Jerry Watkins where he and his wife passed polygraph tests before his trial. She was his alibi witness. A 4.0% likelihood of guilt does not seem close to guilt beyond a reasonable doubt, but the prosecutors sought and obtained their wrongful convictions nonetheless. Watkins' exoneration came after the credibility of the prosecution's jailhouse snitch was undermined and when the real perpetrators were apprehended and convicted. The same logic about multiple examinations applies when two polygraph examinations are given to a person and the result is the same, as was the case for Jerry Pacek in Pennsylvania in 1959. Only 13 years old, Pacek was prosecuted and convicted of murder despite having passed both examinations.

#### **Category: Polygraph of exoneree supports exoneree - after conviction**

The Dotson and Hamby cases, described earlier, both fit the category where the polygraph results of the exoneree supported innocence, and the sub-category where the polygraph exam was given after conviction.

A more recent case was that of Marty Tankleff, who was convicted of murdering both of his parents in September, 1988, on the first day of his senior year in high school in Belle Terre, New York. His conviction was due primarily to his confession, which was obtained under duress, and which was later determined to be a false confession. After years of failed appeals, he sought the services of private investigator Jay Salpeter, who agreed to work on Marty's case after he

passed an in-prison polygraph exam. Salpeter's investigation uncovered the likely murderer's of Tankleff's parents and Salpeter and Tankleff's attorneys uncovered substantial evidence of corruption at his trial. Tankleff was exonerated in 2008.

Centurion Ministries and the Innocence Project often ask their clients or prospective clients to take polygraphs for the same reason. Richard Miles, convicted of murder in Texas, took such a polygraph for the Centurion Ministries investigators. His polygraphist was Eric Holden of Richardson, Texas who also polygraphed exoneree Rickey Dale Thomas.

The Greg Taylor case in North Carolina was another where an attorney had a client polygraphed during the post-conviction appeal process, in order to ensure that the client was telling the truth. In Taylor's case, he denied any role in the murder for which he was convicted in 1993. What's not included in the tabulated results here is that Taylor volunteered DNA samples and he offered to take a polygraph immediately after he became a suspect, but the offer was declined. If a suspect volunteers for a polygraph, the police should take one or both of two actions. First, they should reconsider their suspicion of the volunteer and/or their theory about his/her culpability. Second, if they continue to suspect the volunteer, they should give him/her a polygraph exam or arrange to have one conducted by a neutral third party. In the event of such volunteering by defendant/exonerees, it's unconscionable to reject both options and continue to prosecute a suspect.

Before the 1997 murder convictions of Christopher Scott and Claude Simmons in Texas, the actual murderer, Alonzo Hardy, had admitted his role to at least one person. However, Hardy's admissions were not allowed into evidence at the trial. Students at the University of Texas at Arlington Innocence Project took on the case and obtained positive polygraph results from Scott and Simmons. Then, they interviewed Hardy, who was in prison for an unrelated conviction, and persuaded him to renew his earlier admission of guilt in the case. Then they persuaded him to take a polygraph test to validate that

admission. He also passed his test. This was one of only two cases, of the 215, where the actual perpetrator took a post-conviction polygraph to verify an admission of his own guilt. In the other, also in Texas, Martin Kimsey found the man who had committed the robberies for which he was wrongly convicted. James Garret was already in prison for other robberies and he admitted to the police his role in the 'Kimsey' robbery. Both Garret and Kimsey passed polygraph examinations in support of their claims, and Kimsey was exonerated.

**Category: Polygraph of other person supports exoneree**

This category includes two types of results. The first is where another person, often a witness, speaks in support of the exoneree's innocence and passes a polygraph. The second type is where a witness, who is sometimes an inmate informant, provides incriminating information and fails a polygraph.

Ellen Reasonover's exoneration in 1999 from her 1983 murder conviction is an example of the first sub-category. A prison inmate named Eddie McClenton came forward to state that the real murderer had confessed to him. Centurion Ministries was working on this case and obtained a polygraph confirmation of McClenton's statements.

An example of the second sub-category was in the Sonia Jacobs case, where she was sentenced to death in 1976 in Florida for the murder of a policeman. She did not pull the trigger but was with others, and one of the others did pull the trigger. The only person in the group with gunpowder residue on his clothing was Walter Rhodes, who testified against Jacobs and Jesse Tafero, the father of Jacob's daughter. The case later unraveled when it was discovered that Rhodes had failed a polygraph exam, but that failure had not been disclosed to Jacobs' and Tafero's attorneys before trial. The prosecutor had justified the plea bargain for Rhodes by falsely affirming that he had passed the polygraph. By the time Jacobs was finally released in 1992, Tafero had been executed. (The mishaps of his bungled electrocution led to the introduction of lethal injection for the Florida death chamber.) If the police had followed the

guidance of their own polygraph exam, the wrongful convictions, and the execution of Tafero, would not likely have occurred. Thus, the Jacobs case is in the category where the polygraph examinations of others, i.e. not the exoneree, accurately assessed at least one part of the case, i.e. that the witness pointing to Jacobs, failed the polygraph exam. The case of Sonia Jacobs was one of the seven featured in the play, *The Exonerated*.

The 1975 cases of Clarence Chance and Benny Powell are also examples of where the polygraph correctly challenged the incriminating witness. Here, the allegations of an incriminating informant were apparently doubted after he failed a polygraph exam. He was therefore given a second exam and he failed that, too. The prosecution withheld from the defense the results of the informant's polygraph failures and Chance and Powell remained in prison until 1992.

**Category: Polygraph of exoneree with uncertain result**

In New York, Jeff Deskovic was polygraphed during his interrogation for murdering in 1989 a schoolmate girl. In 1990, Deskovic requested a polygraph to alleviate suspicion which is what many of the wrongly convicted defendants/exonerees did when faced with the charges against them. As with many other cases, the police used the occasion to obtain a confession by telling Deskovic that he failed the polygraph and convincing him that the polygraph was correct. Actually, he had failed only one question during the multiple examinations, and the confession was determined to be a false confession. Thus, the Deskovic case is classified in the category for exonerees where the results of polygraphs were unclear.

In 2011, polygraph expert Charles Honts evaluated the quality of the Deskovic polygraph in an opinion given in support of Deskovic's civil lawsuit against the polygraph examiner and other defendants for his wrongful conviction. Honts criticized polygraph examiner Daniel Stephens for using the discredited AEP (Arther's Examination Procedure). This procedure was discredited even in 1990. Honts found the use of this procedure odd, as Stephens was trained in the

more accurate CQT (Comparison Question Test) methods. Honts concluded,

"Issues of technique validity aside, there were serious problems with the technical aspects of the examination conducted by Mr. Stephens. In total those problems are so out of the range of normal practice for the conduct of a valid polygraph examination as to be considered outrageous and contrary to minimally accepted practice in 1990 and before...."

"Based upon Stephen's polygraph training and experience by 1990 and the undisputed conditions of the polygraph: at least five hours in length, leaving at least some of the sensors on Mr. Deskovic for an extended period of time, failing to use a valid polygraph technique with numerical scoring, and providing Mr. Deskovic coffee and no food for at least six hours, are so out of the normal range for the normal procedures in conducting an actual polygraph examination as to be considered professionally and scientifically outrageous, and in my opinion, the conditions of this examination were simply abusive."

"This interaction between Stephens and Deskovic is not consistent with a deception detection CQT, rather this examination is consistent with a guilt presumptive interrogation where the polygraph was used as an evidence ploy to elicit a confession. Moreover, if Mr. Deskovic's testimony concerning the aggressive nature of the questioning, the false reporting of incriminating statements, and the threats and promises made by the Peekskill Police are credited (I make no assessment regarding credibility) the conduct of Stephens would be even more outrageous with regard to accepted practice in 1990."

All of the results in this category were for polygraphs taken by the defendant/exonerees before trial. In Colorado in 1987, Tim Masters was given a polygraph examination by the police and it was



inconclusive. After his conviction, a polygraph was arranged by his attorneys and he failed. However, because polygraphs administered before conviction are more important for this article than those performed afterwards, other factors being equal, the Masters case is classified in this article as “exoneree polygraph uncertain.” The Masters case was the only known instance where an exoneree failed a post-conviction polygraph examination.

Another example of the classification issues for this article was the case of Lenell Geter in Texas. He was wrongly convicted of armed robbery in 1982. In one press account, the prosecutor stated that Geter had failed a pre-trial polygraph, but in another, his attorney said that the polygraph was inconclusive. After his release in 1984, Geter took two polygraph examinations in New York, administered by Nat Laurendi, and passed them both. The classification here is “exoneree uncertain,” before trial.

In the case of Anthony Caravella in Florida, who was 15 years old at the time of his polygraph, the polygraph examiner, Tony Fantigrassi, reported that Caravella was truthful in two polygraph responses which acknowledged participation in a rape and murder. First, Caravella was stated to be deceptive when he denied having “any sex with the old lady at any time” and truthful when he answered “NO” to the question, “Have you lied to me when you say that you beat and stabbed the old lady.” However, Fantigrassi reported that “unfortunately,” Caravella’s answer to a third question was “inconclusive,” and Fantigrassi recommended, “Further testing and/or interrogation may be needed to reach a conclusion.” That third question was “Have you lied when you say you, Steve [Chappell], Don and the other boy beat and stabbed the old lady last Nov. 5th?” The actual “unfortunate” part of this case was that he and the Broward County Police Dept. did not follow up on the soft recommendation for further testing. What should have reinforced that recommendation was Fantigrassi’s polygraph examination on the same day, January 4, 1984, of Ray Stephen Chappell whom Caravella had named in his confession as a participant in the crime. Chappell was

determined by Fantigrassi to be truthful in his denial of involvement in the crime.

**Category: Polygraph of other person(s) with uncertain result**

In 1990, Antoine Goff and John Tennison were convicted of murder in California primarily because of the testimony of two prosecution eyewitnesses. During the investigation, one eyewitness, Pauline Maluina, who was 14 at the time of the murder, had recanted her earlier statements and was given a polygraph examination which was said to be inconclusive. Afterwards, the witness was brought together with a cooperating witness to discuss their prospective testimony, and the witness also talked with the prosecutor. At trial, she testified with her pre-recantation version of events, and the polygraph and recantation were never brought to the attention of Goff’s and Tennison’s attorneys.

**Category: Polygraph of exoneree with reported failure**

There were 23 cases classified as reported polygraph failures by exonerees, and all of them were prior to conviction, and all were by police polygraph examiners. It is not known if private polygraphs were arranged for any of these exonerees by their attorneys, which may have shown deception and which the attorneys may not have disclosed. However, as most, if not all, of the 23 were indigent, and their counsel publicly funded, it’s unlikely that private polygraphs were arranged, but it’s possible.

The best known such failure was the 1966 examination by Sgt. John J. McGuire of Rubin “Hurricane” Carter. The 1966 report stated that McGuire used “standard polygraph procedure” and then stated...

“RESULTS: Subject answered all pertinent questions.

Q. Regarding the shooting at the Lafayette Grill, do you intend to answer truthfully each question about that?

A. Yes.

Q. Did you shoot any of those people last night at the Lafayette Grill?

A. No.

Q. Were you present last night at the Lafayette Grill when those people were shot?

A. No.

Q. Was your car used in that shooting last night at the Lafayette Grill?

A. No.

Q. Are you deliberately holding back information about that shooting last night at the Lafayette Grill?

A. No.

Q. Before the shooting occurred at the Lafayette Grill did you know it was going to happen?

A. No.

CONCLUSIONS: After a careful analysis of the polygraph records of this subject it is the opinion of the examiner that this subject was attempting deception to all the pertinent questions. And was involved in this crime. [sic] After the examination and confronted with the examiner's opinion, the Subject denied any participation in the crime."

This exam used an R I (Relevant/Irrelevant) format which is now almost never used in criminal investigations because of its high error rate.

One of the best known cases of polygraph failures for an exoneree was the Ohio case of Floyd Fay. He was accused of murder and the prosecutor offered to dismiss the charges if Fay would pass a polygraph exam. Fay agreed to take a polygraph and failed it, according to the police. According to one source, he also failed a second polygraph. By Ohio procedures, his written agreement with the prosecutor made the evidence about the first failed polygraph admissible at his trial in 1978, and he was convicted. Two years later, he was exonerated when his attorney and others uncovered evidence about the real killers, and they were prosecuted. Fay became an articulate spokesperson against the use of polygraphs in criminal trials and his case was commented upon in several journals by polygraph opponents. Several polygraph experts have reviewed Fay's first exam and determined that he was either truthful or the exam was inconclusive. Similarly, several experts have seen the charts

for Fay's second exam and believe that Fay used countermeasures. As his conviction was for a capital offense, Fay also publicly opposed the re-introduction of the death penalty in Ohio after the 1972 U.S. Supreme Court case, *Furman v. Georgia*, which temporarily halted executions in the U.S.

One case in this category of failed polygraphs involved the lowest level crime of the 215 cases: embezzlement of the amount of a nightly bank deposit from a hair salon. In 2005, Lisa Hansen left a deposit at a bank in Grand Rapids, Michigan, but the bank said it wasn't received. Hansen denied stealing the money, but she was fired by her employer. She took a police polygraph, in the hope of proving her innocence, which determined that she was "deceptive" and was later found guilty of embezzlement. According to the National Registry of Exonerations summary of Hansen's case, "On the advice of her attorney, she elected to plead guilty, but the judge rejected her plea, and Hansen entered a diversion program which cost her \$400 and required 40 hours of community service. She completed the program and charges were dismissed in April 2006." In August of 2006, a bank employee found the missing envelope whereupon the bank apologized and reached an out-of-court compensation settlement with Hansen. Again, the claimed polygraph failure was obviously incorrect.

New Jersey's third exoneree polygraph failure (after Carter and Halsey) came with one of the most recent polygraph examinations. In 2006, Emmanuel Mervilus was arrested in New Jersey for armed robbery and aggravated assault. He volunteered to take a polygraph in order to prove his innocence, and agreed that the results could be used at a subsequent trial, if any. When told that he failed the exam, Mervilus asked for a second exam, but the request was declined. Lieutenant John Kaminskis of the Union County Prosecutor's Office testified at Mervilus's trial about the accuracy of polygraphs and Mervilus' failure. A New Jersey court reversed Mervilus's conviction primarily on the grounds that the polygraph results were relied upon excessively in the trial. The court noted that Kaminskis "testified that he had never encountered a situation in which he had opined that 'someone was . . . showing signs of deception,

and [it later] came out that they were truthful.” In February, 2013, Mervilus was found not guilty in a retrial. As Mervilus had originally volunteered to take a polygraph and confidently agreed that the results could be used at a trial, and then requested a second polygraph examination, the “not guilty” verdict is deemed here to be an exoneration.

The most devastating exoneree pre-trial polygraph failure came for James L. Dean who was one of the six defendants in the case of the murder of Helen Wilson of Beatrice, Nebraska. The “Beatrice Six,” as they became known, served a total of 87 years in prison for a murder than none of them was actually involved in. The failed polygraph of James Dean was combined by the police with other techniques to secure his false confession and guilty pleas from him and four of the others in 1989. For this article, Dean is classified as a polygraph failure, but there were two other polygraphs of defendant/exonerees in this case. Kathleen Gonzalez’s polygraph seems to have had an uncertain result and Debra Shelden passed her polygraph. The other three, Joseph White, Ada JoAnn Taylor and Joseph Winslow are classified with “uncertain polygraphs of others” because of the mixed results of the polygraphs of Dean, Gonzalez and Shelden. Two of the six, Ada JoAnn Taylor and James L. Dean passed polygraphs during the post-conviction re-investigation in 2008 or 2009. However, the pre-trial polygraph results trump the post-conviction results for the purposes of this article. Only one of the Beatrice Six, Joseph White, went to trial and he was convicted in 1989 on the testimony of two of the Six, who, by that time likely believed their own lies. He was still in prison by the time of his DNA-related exoneration in 2008. The others were released earlier, by virtue of the reduced sentences from their guilty pleas.

It is likely that several, if not most, of the unevaluated 23 “exoneree failure” polygraphs will not withstand careful scrutiny by qualified polygraphists. For example, it was widely reported that three of the “Ford Heights Four” failed their polygraph examinations. If the “non-confirmation of guilt or deception” rate of polygraphs is about 80%, as this article confirms, and, conversely the chance of erroneous determination of guilt

is 20%, then it is highly unlikely ( $8/1000$  or  $.008$  or  $.8\%$ , calculated as  $.20 \times .20 \times .20$ ) that three exonerees in the same case failed exams which were bona fide, properly conducted exams when they denied participation in the crimes for which they were convicted. Further, there was no evidence from the media accounts of the 23 that any special effort was made to support the original polygraph conclusions. For example, there were no reported requests by prosecutors or defense attorneys to give second polygraph examinations to them before trial, or to subject any of the tests to a Quality Control Review. Another potential reason for the presumed weakness of the failure results for the 23 unreviewed polygraphs is that several of the exonerees were likely ill-prepared for their exams and tired.

This discussion of polygraph failures by exonerees did not clearly find that police intentionally distorted any of the 23 polygraph results to produce the failures. That such a distortion is possible was documented in the case of Timothy Brown, who was convicted in Florida in 1993 of murdering a policeman which occurred when he was 14, and to which he falsely confessed. In a 2002 hearing on a Motion for retrial for Timothy Brown, Broward County polygraph examiner Richard Hoffman admitted that his polygraph of an alternate suspect was faked. According to an Associated Press story, Hoffman “testified he was ordered to perform the lie detector test as a ruse, didn’t ask required control questions and wrote a misleading report on test subject Andrew Johnson.” The Timothy Brown case is not included in the totals for this article because the test was not a real test and therefore not a valid measurement of the accuracy of polygraphs.

The research for this article was restricted primarily to internet-available information. Sometimes only one news article or web address made a difference in the classification. To illustrate this point, consider the John Kogut, Dennis Halstead and John Restivo cases, where John Kogut was given three polygraph examinations by the police. The police told him that he failed them all, so he began to question his own sense of reality and gave a false confession. That confession, in turn, supported the

wrongful convictions of Halstead and Restivo. According to the Centurion Ministries summary of the case, John Kogut actually passed his polygraph exams, but that was the only account of the case on the internet which clarifies that point, and that made all the difference for this study for not just one, but three cases. It is anticipated that several of the reported polygraph examination failures were actually instances of non-deception. It is also anticipated that other classifications for this article will change as more information is obtained about each case.

As sometimes happened in the analysis of these exoneree polygraph cases, there was more than one polygraph and therefore the case could have involved more than one classification, but the research design allowed for only one category for each case. When that happened, the classification closest to the exoneree was primary. In "Hurricane" Carter's case, there were two other polygraphs. One was of Carter's co-defendant, John Artis, who also was reported to have failed his polygraph. The third polygraph was a given to a witness named Arthur Bello who was in the Lafayette Grill on the night of the murders and who said that Carter was not inside at the time. Before the second trial of Rubin Carter and John Artis in 1976, Bello was given a polygraph examination by Professor Leonard Harrelson and Bello passed. According to the 1987 Third Circuit U.S. Court of Appeals opinion, the chief detective on the case said that Professor Harrelson's conclusion was "impossible" and then simply ignored the exculpatory result.

The Anthony Graves case in Texas is another case with multiple polygraphs where the polygraph of the exoneree dominated the category classification. Graves failed his polygraph, and that's how the case is classified for this article. However, the actual murderer (as determined later), Robert Carter, also failed his polygraph. Without the exoneree polygraph, the case would have been classified as one where a polygraph of another person supported the exoneree's claim of innocence. As noted above, the quality of Graves' polygraph remains to be examined.

One case requiring clarification was that of Tim Masters who failed, as noted above, a post-conviction polygraph administered at the request of his attorneys. In other words, there has been only one known post-conviction polygraph examination of an exoneree that was inconsistent with his innocence. This cannot be overstated - one hundred percent (100%) of the failed polygraphs of exonerees in this category occurred before trial, with polygraphs performed by the police. If, for the purpose of this analysis, Tim Masters' second polygraph is considered, then 95% of the reported failures were conducted by police and occurred before trial.

**Category: Polygraph of other person with result not supporting exoneree**

In 1994, Tiffany Pritchett was charged in Pennsylvania with murder when her co-defendant, Dameon Isbell, claimed that she, and not he, shot a store attendant during a robbery. Isbell passed a polygraph test which prompted the police to offer to polygraph Pritchett during her trial. After a four-hour interrogation session, which was not recorded and during which the police took no notes, Pritchett allegedly confessed, but there was nothing in writing and no signature. It was Isbell's testimony and Pritchett's alleged false confession which convicted her. She won a new trial, but was released in 2006 after pleading the equivalent of an "Alford plea" in lieu of that new trial. As her case was advocated by the Innocence Institute at Point Park in Pittsburgh, Pritchett is deemed an exoneree here. Isbell was never charged with the murder.

In New York, Lynn DeJac had been convicted in 1994 of strangling her 13-year old daughter and was sentenced to 25 years in prison. Her boyfriend, Dennis Donohue, was initially a suspect in the crime, but he passed a polygraph test and became the primary prosecution witness against DeJac. After DNA testing of the daughter's rape kit pointed toward Donohue, and after a determination that she died of cocaine poisoning, DeJac was released in 2008. That same year, Donohue was convicted of a 1993 strangulation murder in another case.

The results of the 215 cases involving exonerees and polygraphs show that polygraphs assist in the determination of the truth most of the time. The percentages depend upon how the “inconclusive” tests are used, but the percentage of 80% for a clear correct result is used for the purpose of this discussion. Conversely, there would be a 20% chance of failure. If a person claims to be telling the truth and fails a polygraph, then such a person should be given the opportunity to take another, because the probability of an innocent person failing two tests is 4.0% (.20 x .20). For similar reasons, if a polygraph examination for a person claiming innocence reaches an inconclusive result, that person should be offered the opportunity to take another examination.

During the research for this article, only one case, but not involving a wrongful conviction, was found where a person took two polygraphs with different results. In Arkansas, Ed Owens was accused of child sexual abuse and took a polygraph which found that he was deceptive in his denials. Then he took another polygraph which found no deception. The case was dismissed prior to trial.

The largest number of polygraphs taken by any individual in the cases researched for this article was five, by Earl Mann in the Clarence Elkins case. In 1999, Elkins was convicted in Ohio of murdering Judith Johnson, and of attempted murder and rape of her six-year-old granddaughter. While wrongful convictions are among the unluckiest events one could imagine, it sometimes happens that such people get lucky. For Elkins, the luck came when the alternate suspect, Earl Mann, was sentenced to Elkins’ prison for another crime and he smoked cigarettes. Elkins collected a discarded butt and sent it to his attorney and the DNA tests showed a perfect match to the crimes for which Elkins was convicted. Still the prosecutor was not sure that the Elkins conviction was wrongful, so she offered polygraph tests to both men. She was still

confident that Mann would pass and Elkins would decline to take a polygraph, or that he would fail if he did. So convinced were the police that Mann was not involved in the Johnson murder that when he failed the first polygraph test, they gave him another, and then another, and another, and another for a total of five failures over 10 hours over three days. At a 20% chance of a false reading, the chance that Mann was innocent after failing five tests is .032% (.205). Elkins was released shortly afterwards, in 2005, without the prosecutor even needing to have a polygraph exam for him. The extent to which the prosecutor relied upon Mann’s polygraph results vis a vis the DNA tests is not known. The point here is that the polygraph examinations were accurate about Mann’s deception.

## **Conclusion**

In the cases of 215 exonerees, polygraphs examinations pointed toward the correct result more than 80% of the time. This is accurate enough to warrant careful consideration of their use as evidence in criminal trials, as is now the practice in New Mexico. Even without this acceptance as trial evidence, this accuracy level is sufficient for investigators and lawyers to use the results of polygraph examinations to more aggressively search for and uncover the truth. One way to further that search for truth is to give more polygraph examinations.

As additional information surfaces about these 215 cases, and especially the claimed 23 polygraph failures by exonerees, and 31 uncertain results for exoneree polygraphs, it is expected that the reliability percentage will increase. Updates of this article will be posted online.<sup>8</sup>

## **Recommendations**

The positive results of this study should send a message to police, prosecutors, defense attorneys, polygraph examiners and the general public that properly administered

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<sup>8</sup> Future updates of this article and spreadsheets will be posted at the same address: <http://www.bonpasseexonerationservices.com/about.html>.

polygraphs are useful to the pursuit of truth and, therefore, justice. These results also support the following recommendations:

1. Polygraphs should be encouraged for defendants claiming innocence and for witnesses whose testimony supports that innocence as well as for witnesses whose expected testimony points toward guilt.

2. Investigative polygraphs should be administered by certified polygraph examiners and be recorded on audio/video from beginning to end, and be available for Quality Control Reviews.

3. If an initial polygraph indicates that a suspect or defendant is deceptive, or the examination is inconclusive, AND the person insists on innocence, then the suspect should be offered the opportunity to have a second polygraph. A similar offer should be made for initial polygraphs of witnesses or informants, and they should be available for Quality Control Reviews.

4. Police, prosecutors and defense attorneys should pay more attention to the results of polygraphs. Every polygraph examination result which is partially or completely inconsistent with police and prosecutors' theories of a case should give police and prosecutors pause and should prompt a request for a second polygraph test by another examiner. As noted in this article, such inconsistency can work in two ways. First, such inconsistency would appear when a witness or suspect is found to be truthful when contradicting the police theory of a case, or when the polygraph results are inconclusive. Second, the inconsistency can appear when a witness who supports the police theory is found to be deceptive or the examination result is inconclusive.

The 1987 cases of Gordon Steidl and Herbert Whitlock illustrate the importance of this recommendation for re-testing. These co-defendants were convicted in substantial part upon the testimony of Derrell Herrington. During the investigation, Herrington failed a

polygraph, so the cases are classified as "polygraphs supporting exonerees." The polygraph examiner recommended a second test, but the investigators ignored the examination failure and the recommendation; and proceeded to trial with Herrington's testimony. The fact of his polygraph failure was not made known to defense attorneys

Given the powerful odds noted above of the accuracy of results when two tests are given, it should be considered unethical and unprofessional to proceed in a case with a theory contrary to a polygraph result without a second polygraph, and/or without thorough and open re-evaluation of a prosecution or defense. When prosecutors proceed to trial and a conviction in spite of a claim of innocence supported by a doubly passed polygraph, they bear a special burden to justify their actions.

5. Claims of innocence by inmates who have passed, or at least not failed, polygraph examinations should be given more careful consideration. In addition, all inmates who claim innocence (See [www.registryofclaimsof innocence.org](http://www.registryofclaimsof innocence.org)) should be offered the opportunity to take a polygraph exam. While searching for exonerees and their cases which involved polygraphs, 40 cases were found where current inmates have passed polygraphs, but their claims of innocence languish. For another 20, the polygraphs of others support the claimants' innocence. Most of those polygraphs were conducted prior to trials, but the inmates were convicted nonetheless, just as were the 44 exonerees identified in this article. A few of the 40 current inmates have passed their polygraphs while in prison, such as Brian Chevalier<sup>9</sup> in New Hampshire in 2010. If the validity of his polygraph exam is not believed, then he should be given the opportunity to take another polygraph exam. Eight more inmates were identified who have taken polygraphs while in prison which have produced inconclusive results. As argued above, such a result is contrary to the expectation that every person convicted of a crime beyond a

<sup>9</sup> Documents about Brian Chevalier's case are at <http://www.bonpasseexonerationservices.com/documents/0BrianChevaliercombo.pdf>.

reasonable doubt should be found by a polygraph to be deceptive when denying culpability for that crime. When a polygraph does not find clear deception, police and prosecutors should pay attention, and a second test should be offered. Also, where two people have offered different versions of the same event and one is clearly lying, the American Polygraph Association Model Policy for Paired Testing<sup>3</sup> could be used.

In the New Hampshire State Prison, Chad Evans<sup>10</sup> took a polygraph exam in April 2012 and the results were found to be inconclusive because of flaws in the conduct of the examination. Evans is a client of the writer of this article and he has requested a second test, to be financed by his own supporters. The prison warden and his superiors have, so far, denied him such a test. In the research for this article, only one case was found where a prison refused to permit a polygraph exam. That was the case of Alonzo Watts<sup>11</sup>, who was convicted of murder in Pennsylvania. In 2006, a Centurion Ministries volunteer and an investigative reporter were actively working on his case and Watts had agreed to take a polygraph exam, but the prison denied the request. Watts died in prison that year, before he and his supporters had a chance to persuade the prison warden, perhaps via the governor or a court order, to permit the polygraph exam.

6. In 2012, Rob Warden and Ron Frederickson of the Center on Wrongful Convictions recommended that any confessions which police claim to have received after telling a polygraph examinee that s/he failed should not be admissible in court. That recommendation is supported here, unless the entire polygraph interview and examination is video and audio recorded and subject to judicial review. Further, as

recommended above, when a suspect fails a polygraph examination or whose examination is "inconclusive," s/he should be offered the opportunity to have a second examination by another polygraph examiner. Of course, all suspects must be advised of their rights to consult an attorney.

7. Every polygraph of a person convicted beyond a reasonable doubt that does not show that person to be deceptive when denying responsibility for the crime should be given a Quality Control Review. The American Polygraph Association (APA), or American Association of Police Polygraphists, or other group or individuals should fully investigate the 23 cases where exonerees were said to fail, or did fail polygraphs, and the 8 cases where the polygraphs of others were clearly inconsistent with the exonerees' innocence. From that investigation should come a determination of how many of the 31 (23 + 8) unexplained failures of polygraph examinations of exonerees and witnesses were due to polygraph examiner failure and how many were due to the inherent imprecision of the device and examination process.

8. The American Polygraph Association could offer to dedicate itself and its members to exonerating the wrongly convicted and to preventing future wrongful convictions. Polygraph examiners participated in the 1950's and early 1960's in Erle Stanley Gardner's "Court of Last Resort"<sup>12</sup> which evaluated claims of innocence, and which sometimes resulted in exoneration or commutation of sentences. In the 1970's the APA had a Case Review Committee which provided some polygraph assistance to claimants of innocence. The Committee conducted two polygraphs of Louis Greco in 1978 and found him to be truthful in the second examination. He passed one or two

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<sup>3</sup> American Polygraph Association, Model Policy on Paired Testing, at [http://www.polygraph.org/files/model\\_policy\\_for\\_paired\\_testing.pdf](http://www.polygraph.org/files/model_policy_for_paired_testing.pdf)

<sup>10</sup> The website for Chad Evans is at [www.chadevanswronglyconvicted.org](http://www.chadevanswronglyconvicted.org)

<sup>11</sup> Information about the Alonzo Watts case and efforts to take a polygraph examination are at <http://www.bonpasseexonerationservices.com/documents/0AlonzoWattscombo.pdf>

<sup>12</sup> "Court of Last Resort" Wikipedia, at [http://en.wikipedia.org/wiki/The\\_Court\\_of\\_Last\\_Resort](http://en.wikipedia.org/wiki/The_Court_of_Last_Resort)

others, too. His alibi, that he was in Florida at the time Edward Deegan was murdered in Massachusetts, was clear enough to make the polygraph results persuasive. However, the prosecutors ignored the polygraphs, which led to 30+ years of misery for the four men convicted of murdering Deegan. Two of the men died in prison. Some State chapters of the APA did similar work into the 1990's, formally or informally. The recommendation here is that the APA recommit itself to this work of exonerating the wrongly convicted and preventing wrongful convictions. The leading agent of the innocence movement since 1989 has been DNA, but DNA is present in only

about 5% of all crimes or major crimes. Similarly, fingerprints are present in about 5% of cases. On the other hand, at least one living human being is present in every single crime, at least when it begins, and therefore, the potential for polygraphs to play a larger role in this work on wrongful convictions is large.

9. The data for this article should continue to be evaluated and updated and posted on the Internet, and the article should be periodically updated. To assist this ongoing effort, please send information about polygraphs used in exoneration cases to the author.<sup>13</sup>

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