Post Conviction Polygraphs for Sex Offenders

By John Haralson
Reclamation Ministry

There are no devices that can detect a lie. None! Voice stress tests, brain scans, and polygraphs all measure some bodily function but not a person’s conscience. And there aren’t any specific body language cues people exhibit when they’re lying, either. Anyone who claims that is either a snake oil salesman or a liar!

---

Polygraphs currently are an integral part of the sex offender containment model. There are several types of tests an individual will take while under parole or probation supervision.

### One Time Polygraph Tests

**Instant Offense Disclosure Test:**

Administered once or until passed. If an individual isn’t in denial about his offense, is being accountable and taking responsibility for his actions, the test may be bypassed.

**Sexual History Disclosure Test:**

Administered once or until passed, this test is given early in treatment after an offender comes out of denial and is willing to accept responsibility for his behavior. It covers deviant and criminal sexual behaviors that were part of the offender’s past prior to the date of the instant offense conviction. Information obtained from this polygraph does not lead to new convictions. The names and locations of past victims are not disclosed. Completion of a sexual history assists the treatment provider in creating or modifying an offender’s treatment plan, and it allows for the assessment of the offender’s risk to re-offend.

### Recurring Polygraph Tests

These tests are generally administered every six months to a year. However, your parole/probation officer or your treatment provider can request that you take one at any time. Tennessee and perhaps other states are starting to question the legality and use of polygraphs especially when ordered by parole and probation personnel.

**Maintenance Test:**

This test is administered at least once a year while the offender is under supervision. It covers supervision and treatment compliance. Some questions that might be asked are:
Have you violated any terms of probation?
Have you violated any agreements with treatment?
Have you withheld any information from your counselor or PO?

Monitoring Test:
This test is given at least once a year to determine if the offender has committed a new sexual crime while under supervision. Here are some questions that might be asked:

Have you had any sexual contact with a minor?
Have you been alone at any time with a minor?
Are you currently grooming a minor?
Have you viewed any pornography?

Here Are Some Things You Need to Know About the Polygraph

Some say John A. Larson, a police officer in the Berkeley, California, police department, invented the modern day polygraph in 1921. Others argue it was a Harvard psychologist who invented it because of the documented work he did prior to 1921 with a device he called the “lie detector”. The psychologist’s name was William M. Marston, the same guy who (under the pen name of Charles Moulton) invented the cartoon character Wonder Woman and her “lasso of truth.”

That fact is probably an embarrassment for the American Polygraph Association and other “professional” polygraph organizations, so they tend to downplay him or not even give him credit at all for his contributions to the development of the device. (Isn’t that lying by omission?)

Dr. Marston looked for ways to capitalize on his invention, and some were a bit sensational to say the least – almost carnival like. Serious students of polygraphy shunned him. When he published a book in the late 1930’s entitled The Lie Detector Test, it received a less than flattering review from a highly respected criminologist of the day, Professor Fred Inbau. In his review of the book, the Professor stated, “It can only bring ridicule upon the subject matter and disrespect for its author.” Despite all the hoopla, I

tend to agree that Marston was the inventor because of his paper published in 1917 that argued deception could be detected by measuring systolic blood pressure and the influence that paper had on John Larson. Larson actually took Marston’s idea and expanded on it. But the confusion over the inventor of the polygraph is not the only controversy surrounding this device.

More Hoopla

"Poly" is a prefix meaning many. The polygraph gets its name because it measures several different involuntary body responses (blood pressure, pulse rate, and respiration) simultaneously as individuals are questioned. Unless he is a sociopath, when a person lies, his body experiences stress and anxiety. There are marked changes in blood pressure, breathing, pulse rate, and respiration.

Lying is not the only reason a person’s blood pressure can go up, though. Whatever the reason, these changes are recorded on a graph which the examiner supposedly evaluates once the test is completed. Magically, from that information and other data gathered during the test, he determines whether you’re telling the truth.

There are different polygraph test methods. One is the Guilty Knowledge Test (GKT) that attempts to determine if the subject knows something about a crime only a guilty person would know. The Direct Lie Test (DLT) is another one that asks the subject to deliberately lie before being asked a relevant question for response comparison. But the one most commonly administered to sex offenders in treatment is the Control Question Test or CQT. And wouldn’t you know: the CQT is one of the least reliable methods of the tests.

In the CQT there are relevant, irrelevant, and control questions. The relevant questions are what the test is all about, the issue for which the person is being tested. They are supposed to be specific and direct. An example of a relevant question might be, “Since your last polygraph, have you had sexual contact with any one under the age of 18?”

---

2 Skeptic’s Dictionary, www.skeptic.com/polygraph, “The reason the polygraph is not a lie detector is that what it measures—changes in heartbeat, blood pressure, and respiration—can be caused by many things. Nervousness, anger, sadness, embarrassment, and fear can all be causal factors in altering one’s heart rate, blood pressure, or respiration rate. Having to go to the bathroom can also be causative. There are also a number of medical conditions such as colds, headaches, constipation, or neurological and muscular problems which can cause the physiological changes measured by the polygraph.”

3 USA TODAY, Lie detectors are likely lying themselves, Andrew Kantor, 2004
“Is your name John?” or “Is today Tuesday?” are examples of irrelevant questions. They have no direct impact on the results or outcome of the test.

The control questions are deliberately broad and vague. These questions are related to the issue but structured to make it difficult to provide an honest “yes” or “no” reply. In theory, the examiner hopes the examinee will lie to these or at the very least feel a lot of anxiety over them to register a deceitful response pattern. Examples might be, “Have you masturbated to a fantasy that would concern your therapist in the last twelve months?” or “Have you withheld any information from your probation officer over the past several months?”

When all is said and done, the examiner can compare the responses to the control questions with the relevant ones. If the relevant responses are higher than the control question responses, the examinee’s responses will be considered deceitful. What can cause a person to fail a test is if they can honestly answer “yes” or “no” to the control questions.

Two examples of questions for the CQT are provided below. The first example is for someone suspected of committing a robbery. The second could be a series of questions for a sex offender’s re-offense (or monitoring) polygraph:

**Example One (Robbery Suspect)**

1. **Irrelevant** Are you sitting down?
2. **Irrelevant** Were you born in California?
3. **Relevant** Did you rob the EZ Mart last night?
4. **Irrelevant** Do you live in Texas?
5. **Relevant** Did you use a gun in the robbery of the EZ Mart last night?
6. **Control** Have you ever stolen anything?
7. **Relevant** Did you take money from the cash register at the EZ Mart last night?
8. **Relevant** Did you drive the getaway car at the EZ Mart robbery last night?
9. **Control** Have you ever cheated anyone?
10. **Irrelevant** Is your name Tom?

**Example Two (Sex Offender Re-offense)**

1. **Irrelevant** Is your name John?
2. **Control** Do you intend to answer every question today truthfully?
3. **Relevant** Since your last polygraph, have you been alone with a minor?
4. **Irrelevant** Do you live in Texas?
5. **Relevant** Since your last polygraph, has a minor touched you in a sexual way?
6. **Control** Have you ever withheld information from your probation officer?
7. **Irrelevant** Is today Monday?
8. **Relevant** Since your last polygraph, have you touched a minor in a sexual way?
9. **Control** Since the age of 19, have you ever lied to get out of trouble?
10. **Irrelevant** Do you drive a green Toyota?
Overall Exam Phases

The overall examination consists of three phases: (1) pre-test interview (2) the actual polygraph test and (3) post-test analysis.

Pre-test Interview Phase

Sitting in a small, unadorned room designed to minimize distractions, the pre-test phase of the examination begins by addressing a few details like obtaining a written consent. You really have no choice but to sign one to remain compliant in treatment. The examiner and you will go over and refine questions for the test. But this is by no means teamwork. You are being manipulated and observed the whole time. One of the primary goals of the interview is “to provoke and observe various behaviors indicative of the examinee’s deception or honesty.” That’s taken right out of the Polygraph Handbook. As the examiner and you go over the relevant and control questions, he watches for any signs in your interaction with him he considers indicative of deceit. These signs might be broken eye contact, hesitation, fidgeting, or conflicting gestures i.e. your head nods “yes” while you’re saying “no.” The problem is there are no consistent non-verbal cues associated with lying. People can lie to you while looking you straight in the eye. And a person squirming in his seat is not a valid sign he’s lying. He may need to go to the bathroom. Despite this, I’ve heard that some examiners have based their opinion of your honesty solely on the observations made during the interview. In other words, it doesn’t matter how you fare during the rest of the test; he has already made his mind up you’re being deceitful!

Once the questions have been developed, he’ll go over all of them with you one more time before the physical exam begins. If there are no more changes or objections, he will strap you in the polygraph to complete the second primary goal of the interview: convince you that the polygraph is a highly effective, accurate, and infallible device. To do that, he uses pure trickery, the favorite being the Reid “pick-a-card” method. You pick a card, and he tells what it is “using the polygraph.” What the subject doesn’t know is the deck is either stacked or marked so that the

---

Unprecedented 6

examiner will always pick the right card.5 Another trick is the Raskin “pick-a-number” method in which he deceitfully explains that he is “determining what your polygraphic response looks like when you lie.”6

---

**Polygraph Test Phase**

Strapped in a seat with a wire across your chest and stomach, a blood pressure cuff around your arm, and sensors on your fingers, you’re told to relax – (Yeah, RIGHT). “Look straight ahead, answer only “yes” or “no” and sit completely still. The test is about to begin,” barks the examiner. And he starts asking the questions agreed to in the pre-test phase. There is a pause after each question, and, if an older device is being used, you can hear the needles on the polygraph jump up and down across the graph paper. When all the questions have been asked for the first of several times, the examiner states the test has ended, and you’re told not to move. You’re not through yet. A ploy examiners often use is to say that something seems to be bothering you with one of the questions. He’ll ask if there is anything you need to discuss with him. He’ll act real concerned. Believe me, he’s not. He’s just fishing for information. Don’t fall for it.

You’ll go through the questions at least two more times, up to five times if responses appear to be conflicting. The order in which the questions are asked may change. When this phase of the exam is ended, all the wires and straps are removed and the examiner begins his “analysis” of the data collected on the charts.

---

**Post-test Analysis Phase**

The examiner reviews all the charts and renders an opinion. He may leave the room with his charts and come back with his conclusion, or he may go over the charts with you sitting there. There are only three opinions

---

6 *A Tremor in the Blood*, David T. Lykken, Perseus Books. 1998, p. 100 - “...The subject is asked to pick a number, say, from 1 to 7. That number is then written large on a piece of paper and hung on the wall where both the subject and examiner can see it. As in the card test, the subject is told to reply ... “No” to each question of the form, “Did you choose number X?” The subject is also told that the purpose of this procedure is to calibrate the polygraph, “so that I can determine what your polygraph responses look like when you are lying and when you are telling the truth.” The ability of the procedure to inspire confidence in the subject depends on this latter statement, which, of course, is untrue and misleading. Selecting the number, revealing the choice to the examiner, seeing it prominently displayed when the question is asked, all this makes the chosen digit significant to the subject and leads him to react more strongly to that one than to the others. None of this has anything to do with lie detection and it is simply deceptive to suggest that the subject is showing a pattern of reaction that the examiner now knows to be the way he responds when he is lying....”
he can render: you are being (1) deceptive (2) truthful or (3) the results are inconclusive. As stated earlier, he is looking to see if the relevant questions received responses less than or higher than the control question responses. If they are higher, then your answers will be considered deceptive; you failed the test. If they’re lower, congratulations; you passed. If the control and relevant responses are about the same, you will be told the results are inconclusive. And that, my friend, is considered a failure, too. Start gearing up to take another test within the next 60 to 90 days. If you keep failing tests, you may be dismissed from treatment. For those on probation, failing three in a row is enough to get you kicked out of treatment. And if one of your terms of parole or probation is to remain compliant in treatment (as is almost always the case), you’re now out of compliance. **That puts you at risk of being revoked.** Technically, you can’t be revoked for failing a test but you can be for getting kicked out of treatment. That’s how they get you for failing a polygraph.

One other important point: if you fail or are told you failed, the examiner may try to get more information from you again by acting really concerned. Believe me, he is NOT being your friend! Or, he may get in your face and scream at you; don’t give in or sink to his level. He may be saying you failed, even if you didn’t, just to get more information out of you. Dr. Thornton, a treatment director in Wisconsin, admits they get a lot of information right after a failed polygraph.\(^7\) If you went in with every intention of telling the truth, after you’re told you failed, you begin doubting yourself and start searching mentally for reasons that may have caused you to fail. It is very important that you do not provide any additional information outside of what you’ve already disclosed to the examiner. You’re not trying to hide anything, but I guarantee you’ll be pretty rattled at this point, and you may say things you didn’t mean to say. And anything you say will be held against you whether it is relevant or not.

Some very good attorneys I know suggest you say nothing (or very little) throughout the entire test – even during the pre-test phase. The questions have already been prepared before you walk in the door. Simply say, “With all due respect, you already have the questions prepared for the test. Please proceed to the next part.” **You cannot be convicted for failing the polygraph test. You can be convicted on what you say during the test.**

Save your feelings and thoughts for group. It is better to work things out in that environment than with the polygrapher who doesn’t know you

---

or care about you. His only objective is to get new information from you. Just get up, shake his hand, and thank him for his time. Then, leave!

**Who’s Telling the Lies?**

Maybe the philosophy is, “It is okay to do whatever it takes to catch an offender doing something wrong.” And a lot has been revealed through these tests. I’m not against that; I’m against the method by which the information is obtained. I suspect the polygrapher tells himself, “Who cares if I have to con a little to catch a child molester lying and send him back to jail!” Isn’t it the end that justifies the means? And again, I’d have to agree if the polygraph truly was a reliable, precise, and accurate device based on scientific principles. If, without a single doubt, it uncovered a person molesting a child and stopped that from happening, that would be great! Amen. Unfortunately, the fact is that it is not a reliable instrument, and too many innocent people, people who are genuinely trying to change and put their life back together, have been made to suffer through its misuse.

The U.S. is just about the only country in the world that uses lie detectors. Canada uses them as an investigative tool and sometimes for government employee screening. The rest of the world pretty much debunks them. It is common knowledge by now that even in the U.S., except under special circumstances, results from the tests are not admissible in courts. Laws have been passed preventing employers in the private sectors from using them to prescreen potential employees. The National Academy of Sciences says the technology isn’t accurate enough to be used for employee security screening. The American Medical Association and the American Psychological Association are opposed to them. In fact, an AMA expert testified before Congress that the lie detector cannot detect lies much better than a coin toss. I think you have better odds in Russian roulette! Psychologists do not think the CQT is scientifically sound. Some offenders, especially sociopaths who feel no anxiety when lying, can beat it.

What does the American Polygraph Association have to say? According to them, accuracy and reliability data on polygraphs has been collected from eighty research projects. Of those, twelve showed to have an average accuracy rate of 98%, eleven showed an average rate of

---

8 The federal Employee Polygraph Protection Act of 1988 eliminated most pre-employment polygraph screening by American businesses.
9 USATODAY, Lie detectors are likely lying themselves, Andrew Kantor, 2004
92%, sixteen showed 81% accuracy, and forty-one showed 80%. In other words, of these eighty studies mentioned by the APA, well over half indicate the tests were wrong 19 or 20% of the time. How would you like to be the one out of five that suffers some serious consequences because of an inaccurate polygraph?

It boils down to this. The polygraph is nothing more than a prop used with an interrogation technique, a technique that relies on fear, lies, and deceit. Even Marston believed that it was the interrogation techniques used in conjunction with the technology rather than the technology itself that was responsible for the ability to detect lies.

"I don't know anything about lie detectors other than they scare the hell out of people." - Richard Nixon

The CQT is inherently unreliable. And just the fact that you can fail it for being honest makes them dangerous! In my opinion, allowing use of these devices only opens the door for more corruption and abuse. In fact, recently in Tennessee, probation officers have been ordered to stop using them in the supervision of sex offenders. I think we'll see more states following Tennessee’s lead.

Visiting a polygraph association website, I found a claim that the lie detector is one of the greatest inventions of all time. Personally, I think it's one of the greatest hoaxes of all time. They make this claim because it is on the 2003 Encyclopedia Britannica Almanac’s list of the 325 greatest inventions. I looked up this list, in alphabetical order rather than order of significance, and sure enough the lie detector is on there – right along with Astro Turf, bikinis and Play-Doh.

---

10 Ibid

11 The Tennessean, TN probation officers must stop using polygraphs in sex offender supervision, Brandon Gee, December 8, 2010

12 See International League of Polygraph Examiners web page.