Polygraph Testing with Sex Offenders

The use of the polygraph has long been controversial, especially in terms of the accuracy of the Comparison Question Test (CQT). Proponents such as David Raskin and Charles Honts have fiercely debated skeptics such as William Iacono and David Lykken for many years. Cross and Saxe (2001) state, “Regardless of one’s position about the evidence, the clear conclusion is that there is no agreement among scientists” (p. 200). However, a major problem isn’t with the polygraph itself, but with the ways in which it is misused by biased or poorly trained examiners. This is what this panel addresses.

Raskin and Kircher (2014) state, “The voluminous literature indicates that they can be highly accurate when properly employed in appropriate circumstances, but they are also subject to abuse and misinterpretation” (pp. 122-123). A frequent misuse of the polygraph is by police officers who use the polygraph as a way of eliciting confessions. In police interrogations extravagant claims may be made about the polygraph’s ability to detect truth (Lilienfeld & Landfield, 2008). The suspect may be told he has failed the polygraph, even if this is not true, so any denials are futile. Some suspects may be persuaded they must be guilty even though they have no recollection of having committed the offense. This can lead to what Gudjonsson (1992) terms an “internalized false confession.” Gudjonsson gives examples of this. I have also seen this happen. Out of the Innocence Project’s 325 exonerations to date, one-fourth of the wrongful convictions were based on false confessions (http://www.innocenceproject.org/).

The polygraph is often used erroneously in assessing and monitoring sexual offenders. Polygraph testing is routinely used in treatment programs, especially in
the civil commitment programs that 20 states now have. It is also used to monitor the sex offender’s behavior on supervised release or probation. It is used not only to uncover information about the resident’s sexual offense history, but to monitor his behavior while in the program.

To progress in treatment, patients are required not only to pass polygraphs about personal events in their family history and their sexual offending history, but to pass maintenance polygraphs involving their behavior in the treatment program. Examinations test for not only rules violations and masturbation patterns, but for sexual thoughts and fantasies. If a resident fails the polygraph, he cannot progress in treatment. He may be removed from an advanced phase of treatment and put back in a beginning phase or a motivational phase.

Kenneth Blackstone has reviewed many of the protocols in cases where the resident was judged untruthful in a maintenance polygraph and then received a significant setback in treatment. He has found multiple deviations from standardized PDD procedures, especially in the construction of the questions asked during the exams. Mr. Blackstone’s guidelines for the proper construction of questions is presented later in this paper.

Some case examples (names are pseudonyms)

Anderson

Mr. Anderson, who came from an extremely abusive and dysfunctional family, was committed in 1999 at age 40. He was active in the treatment program and was promoted to Phase Two where he worked on identifying the factors that contributed to his past offending. He had particular difficulty with his formative events timeline about his childhood. This assignment was extremely stressful for him—at times he became quite emotional or asked to be excused from presenting. The staff psychiatrist recommended he not be required to revisit traumatic events from his childhood because it caused him so much distress. The timeline, however, is a required part of Phase Two. Eventually he presented an event the facilitators and group believed was improbable and he was required to take a polygraph concerning it. He failed the polygraph, and the polygraph examiner wrote he said he had been lying about the event.
Mr. Anderson said he believed the event he described in his timeline actually happened. It was only after he was confronted in treatment that he began to question it. He later acknowledged this event may have been a product of his imagination that he came to believe. He denied deliberately lying or telling the polygraph examiner he lied. Rather, he maintained the alleged event, in which he was sexually abused at a very young age by an older woman, was vague, but he believed what he told the group. Now he thinks the incident was unlikely, although he believed it at the time he presented his timeline. But because he failed the polygraph he was removed from Phase Two and referred to a Motivational Assessment Program to work on honest disclosure.

Jones

Mr. Jones was civilly committed in 2000 and was active in treatment. He was of borderline intelligence and in the treatment track for patients with cognitive disabilities. He was described as a good worker and motivated for treatment. At the time I examined him he was 71 years old, had terminal bone cancer, and was living on the skilled care unit but still going to treatment. He also had diabetes, had undergone radiation therapy, and was taking many medications including morphine for pain. He wore Depends because the radiation caused him to bleed from his anus. He no longer had erections. He had recently been told there wasn’t anything more medically that could be done.

Although the state evaluator originally recommended him for discharge, he changed his recommendation after another patient told the staff that Mr. Jones said he would like to molest another child once released. This was even though this patient had psychiatric problems and had a reputations for being unreliable. Mr. Jones denied making the statement but the staff required him to take a polygraph. He took the polygraph, denied making the statement, and the examiner concluded he was being deceptive. Mr. Jones discussed this in group and again denied making the statement, saying he didn’t ever remember making such a comment, but if he did it would have been in jest. He denied he had any plans or desire to ever abuse a child again if he were to be discharged. The facilitator told him it wasn’t a matter of believing one patient over another but of believing the polygraph over Mr. Jones. Mr. Jones was not discharged and died of his cancer several months later.
Johnson

Mr. Johnson was civilly committed in 2001, was in treatment and was promoted to Phase Two. While in Phase Two he successfully completed the penile plethysmograph (PPG) testing and passed polygraphs on this. In 2007 he passed polygraphs on his sexual offenses and his formative events timeline.

However, he was also required to pass “maintenance” polygraphs concerning following the SRSTC rules. He took and failed three polygraphs in 2007 and 2008. He maintained he didn’t understand why he was found deceptive on these polygraphs, which had to do with exposing himself and sexual contact with another patient. But because of the failed polygraphs he was removed from his Phase Two group and placed in a Phase One Process group, a significant treatment setback. This was done even though he had been cooperating and doing well in group, because passing maintenance polygraphs is required for Phase Two. He was frustrated and didn’t think this treatment setback was warranted. Nevertheless, he remained in treatment and was placed in an individualized treatment group as well as the Phase One Process Group.

His attorney retained Ken Blackstone to review the polygraphs and conduct one of his own. Mr. Johnson passed the polygraph administered by Mr. Blackstone. In an addendum to his report, Mr. Blackstone described how in the earlier maintenance polygraph, the relevant questions violated the rules of proper relevant question formulation. Mr. Johnson was eventually returned to Phase Two, progressed to Phase Three, and given supervised release in 2014.

Smith

Mr. Smith was civilly committed as a SVP in 1998 and after several years was promoted to Phase Two of the program. He was an attentive and active group member. In addition to doing well in treatment, the records were positive regarding his behavior in his living unit, therapeutic work setting, writing class, and an independent living skills group. But he was removed from Phase Two and placed in a Phase One process group because he flatlined on the PPG and didn’t pass the accompanying polygraph. When he flatlined on the PPG and failed the polygraph the treatment staff believed he was uncooperative and unable to produce a valid profile on the PPG because of deliberate manipulation. He denied this and told me he honestly attempted to follow the instructions but was confused by what different
people told him to do. I read his records and believe he was sincerely attempting to comply with the requirements of these tests. He said he tried to cooperate with the PPG but that he masturbated only rarely—because of his Buddhist definition of sexual misconduct, he tried to avoid frequent masturbation and sexualizing others. Consequently he didn’t show arousal to the PPG vignettes. But the treatment program requires the patient to produce an interpretable PPG in order to advance in treatment.

Selected References


   In this comprehensive book, Ken Blackstone discusses how polygraph examinations work and how they are used in the SVP civil commitment programs. He describes the difference between forensic testing and utility testing, which is the norm for adjudicated sex offenders in treatment programs and while under supervision. He notes that polygraph tests are unreliable when the proper procedures aren’t followed and that serious mistakes are routinely made.


   The authors present a comprehensive discussion of the polygraph, its history, proper methodology, and its use with juveniles. They note that there is a dearth of research on the polygraph with juveniles and that the studies that have been done show mixed results. The American Polygraph Association states it can be done with juveniles age 12 and older but this is controversial. Blackstone recommends that since juveniles tend to show fatigue, restlessness, and lack of attention after lengthy interviews, that they should be tested in two phases.


   This article provides an excellent description of how the polygraph is used in sexual offender treatment. The authors differentiate between three different uses of the polygraph and note that as the use casts an increasingly larger net, there is greater potential error. The three different uses are specific-incident tests, maintenance-compliance tests, and sexual- history disclosure tests. The authors argue that too much credence is given to the perceived validity of polygraph testing in sex offender treatment, particularly as it pertains to using it for sexual history disclosure and monitoring. They also note that the validity is poor with mentally retarded patients and that intent questions seriously reduce test validity.

They are skeptical of the polygraph. They note that polygraph tests to assess veracity are widely promoted in sexual abuse matters although there are substantial differences in professional and scientific opinion about the validity of such techniques. Polygraph diagnoses of an individual's deception are inferences made by an examiner who compares physiological reactions to a set of questions. The test situation, however, is also used to induce examinees to admit crimes. In addition to their use in investigations, polygraph tests are used by treatment and probation programs to assess and monitor sexual offenders. They maintain that, although there are dissenters, most knowledgeable scientists consider polygraph testing as unvalidated.


Contains a section on the polygraph, including how it is used for obtaining confessions. Gudjonsson gives examples of false confessions where the person confessed after he was told he failed the polygraph. Suspects may become confused about their own recollections of events and begin to believe they have committed a crime of which they have no memory.


This was one of four expert affidavits in the 2004 lawsuit against the Illinois civil commitment program. Dr. Iacono concluded the CQT used at the treatment program wasn’t standardized or objective. The control questions weren’t written correctly and caused the CQT to be biased against truthful people. Therefore only 40% of the truthful residents could be expected to pass the polygraph and consequently the rest would not be allowed to progress in treatment. He stated, “The refusal to allow residents to complete their treatment unless they pass a CQT is a substantial departure from the practices of psychologists providing mental health treatment.”


Good overall discussion of the CQT and the GKT (Guilty Knowledge Test). Iacono states the primary weakness of the CQT is the degree to which the comparison questions work as required for truthful individuals. He is more optimistic about the GKT (sometimes referred to as the concealed information test). He discusses the sharp controversies surrounding the CQT throughout its history and observes that the field remains highly polarized. The use of the CQT in sexual offender treatment presents a problem when the offender must pass a polygraph test in order to progress in treatment or be released.

Detailed and comprehensive skeptical article. They note that because it is “effective, as a ‘bloodless 3rd degree,’ in inducing confessions, the polygraph is likely to continue to be valued in police work” (p. 533).


The polygraph is discussed in this article as an example of one of the ten indicators of pseudoscience—extravagant claims. They also discuss confirmation bias.


It is often believed that psychopaths are able to “beat” the polygraph because they are without conscience and skilled at manipulating others. However David Raskin and Robert Hare (the developer of the Hare Psychopathy Checklist) conducted a study with 48 prisoners, half of whom were diagnosed psychopaths. Half of each group were “guilty” of taking $20 in a mock crime and half were “innocent.” The subjects were interviewed and then Dr. Raskin polygraphed them. The overall accuracy rate for all subjects was 95% and psychopaths were as easily detected as nonpsychopaths.


This edited book contains seven chapters, which address topics related to credibility assessment. It builds on a 2001 book called the Handbook of Polygraph Testing. The new book not only discusses polygraph testing, but critically discusses newer methodologies for detecting deception including behavioral and facial observation, fMRI, and Ocular-motor measures and behavioral and facial observation. The chapter on the polygraph by David Raskin and John Kircher is useful. It describes the CQT (Comparison Question Test), proper procedures for administering it and research on its validity. Raskin and Kircher conclude, “The voluminous scientific literature indicates that they can be highly accurate when properly employed in appropriate circumstances, but they are also subject to abuse and misinterpretation.” A following chapter by Charles Honts on countermeasures and credibility assessment is also useful.

Rosky notes that the apparent utility of the polygraph to work both as a treatment and supervision aid and as a deterrent for future offending is cited as ample justification for its use. He examines these claims and concludes that although post-conviction polygraph testing may have some utility by increasing disclosures of prior offending and, within specific cases, admissions of treatment and supervision violations, the limited evidence accumulated thus far does not adequately ascertain its accuracy nor support its efficacy or effectiveness as a deterrent. He concludes with recommendations for creating a real evidentiary base beyond polygraph testing’s apparent ability to elicit more information from offenders to evidence that can determine whether it is efficacious and effective in reducing criminality and deviance.


Stalans reviews recent developments in assessing risk and gauging treatment progress. Probation departments in many jurisdictions have recently created specialized sex offender programs that provide intensive supervision and treatment. It has been recommended that specialized sex offender probation and parole programs obtain a fuller disclosure of past sexual offending and use polygraph testing to do this as well as to determine if sex offenders are being compliant with treatment and probation condition. However, it is important for professionals to not rely on polygraph results to terminate treatment, file a violation of probation or parole petition, or determine whether a suspect committed a crime because the polygraph exams have high rates of false positives. Client behaviors and characteristics as well as the experience of the polygraph tester affect the accuracy of the results.
Relevant Question Construction

(From Lies, Damn Lies, and Lie Detectors – copyright 2015 Kenneth E. Blackstone)

1. A relevant question must be simple and direct and deal with a dichotomy that can be answered “Yes” or “No.”

2. A relevant question must address a physical act that is open to only one interpretation.

3. A relevant question shall not deal with outcome, i.e., “Did you kill that man?”

4. A relevant question shall have only one action verb and one target person/issue.

5. A relevant question shall not deal with thoughts, fantasies, urges, and dreams.

6. A relevant question shall not deal with efforts; i.e., “Did you try to have sex . . .”

7. A relevant question shall not address intent, perception, or opinion.

8. A relevant question shall not ask for absolute certainty about an estimate, i.e. “Have you masturbated less than 100 times since your last test?”

9. A relevant question shall not express examiner opinion or doubt, i.e., “Do you expect me to believe you . . .?”

10. A relevant question shall have only one dimension—multi-dimensional questions are too novel and too complex, i.e., “Are you lying to me about whether you . . .?”

11. A relevant question shall have a narrow or a well-defined time frame. Never ask about ever. If this is an event-free test, the time period must be specified and limited to six months; i.e., “During the last six months have you . . .?”

12. Qualifiers and caveats shall be placed at the inception of a relevant question; i.e., “Other than what we have discussed,” or “Since your last polygraph test.”

13. A relevant question shall not condense multiple issues into one relevant question, i.e., “Did you lie on that affidavit?”
Truth in 3D  
(Kenneth E. Blackstone)

As the outcome of a polygraph-assisted comparison question test is typically posted as Deception Indicated, No Deception Indicated, or Inconclusive, it is very important to agree on a definition of deception. Webster’s dictionary gives “the act of making someone believe something that is not true” as a definition, but as an examiner who has seen many cases of innocent omission and uncertainty that were also translated as deception, the definition I would give is much broader: Deception is anything less than absolute certainty.

A person who is deceptive may be:

- Deliberately lying
  - Telling 99.9% of the truth. A forthcoming person who is trying to tell the truth and omits .1% because the interviewing examiner did not listen and did not seem interested is also deceptive.
  - Telling 100% of the truth. A person who is totally forthcoming, yet for some reason such as an examiner who is harsh and critical, may leave the person uncertain of his answers.

While a person who is non-deceptive is

- Certain what the question is asking.
- Certain what is or is not in his memory.
- Certain the examiner is an objective listener.