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WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2001-02

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Corrections and Courts (AC-CC)

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- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (May/2012)



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**STATE LAWS ADDRESSING POLYGRAPHING OF
VICTIMS OF SEXUAL OFFENSES**
(Should be viewed as a partial list.)

ARIZONA - current through 1996

13-4065 . Prohibition on psychological or psychiatric examination to determine credibility
Except on agreement of the parties or as provided in section 13-3993, the court shall not order an adult or child victim or witness in a prosecution for any offense in violation of chapter 14 of this title, a dangerous crime against children in the first or second degree or child abuse to submit to a psychological or psychiatric examination for the purpose of assessing the witness' or victim's credibility.

[Note, 13-3993 is Examination of defendant pleading not guilty by reason of insanity; privilege inapplicability; reports]

CALIFORNIA - current through 1996.

PC 637.4.

POLYGRAPH EXAMINATION OF COMPLAINING WITNESS TO SEX OFFENSE AS PREREQUISITE TO FILING ACCUSATORY

(a) No state or local governmental agency involved in the investigation or prosecution of crimes, or any employee thereof, shall require or request any complaining witness, in a case involving the use of force, violence, duress, menace, or threat of great bodily harm in the commission of any sex offense, to submit to a polygraph examination as a prerequisite to filing an accusatory pleading.

(b) Any person who has been injured by a violator of this section may bring an action against the violator for his actual damages or one thousand dollars (\$1,000), whichever is greater.

COLORADO - current through 1995.

18-3-407.5.

VICTIM EVIDENCE - FORENSIC EVIDENCE - ELECTRONIC LIE DETECTOR EXAM WITHOUT VICTIM'S CONSENT PROHIBITED.

(1) Any direct cost associated with the collection of forensic evidence from the victim shall be paid by the referring or requesting law enforcement agency.

(2) No law enforcement agency may require a victim of a sexual offense to submit to a polygraph examination or any form of a mechanical or electrical lie detector examination as the sole condition for proceeding with any criminal investigation or prosecution. A law enforcement agency shall conduct any such examination only with the victim's written informed consent. Consent shall not be considered informed unless the law enforcement agency informs the victim in writing of the victim's right to refuse to submit to the examination. In addition, the law enforcement agency shall orally

provide to the victim information about the potential uses of the results of such tests.

CONNECTICUT - current through 1997

54-86j(a -b)

POLYGRAPH EXAMINATION OF VICTIMS OF SEXUAL ASSAULT RESTRICTED.

(a) No member of any municipal police department, the state police or the Division of Criminal Justice may request or require any victim of a sexual assault under section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b or 53a-73a to submit to or take a polygraph examination. (b) For the purposes of this section, "polygraph" means any mechanical or electrical instrument or device of any type used or allegedly used to examine, test or question individuals for the purpose of determining truthfulness.

ILLINOIS - current through 1996

725-200/1(a -b)

LIE DETECTOR TESTS. [FORMERLY 38-1551].

No law enforcement officer, State's Attorney or other official shall require a sexual assault victim to submit to a polygraph exam or other lie detector test as a condition for proceeding with the investigation,

charging or prosecution of such offense. Such a test shall be given only at the victim's request.

A victim's refusal to submit to such a test shall not mitigate against the investigation, charging or prosecution of the pending case.

IOWA - current through 1996

709.17

POLYGRAPH EXAMINATIONS OF VICTIMS - LIMITATIONS.

A criminal or juvenile justice agency shall not require a person claiming to be a victim of sexual abuse or claiming to be a witness regarding the sexual abuse of another person to submit to a polygraph or similar examination as a precondition to the agency conducting an investigation into the matter. An agency wishing to perform a polygraph examination of a person claiming to be a victim or witness shall inform the person of the following:

1. That taking the polygraph examination is voluntary.
2. That the results of the examination are not admissible in court.
3. That the person's decision to submit or refuse a polygraph examination will not be the sole basis for a decision by the agency not to investigate the matter.

An agency which declines to investigate an alleged case of sexual abuse following a decision by a person claiming to be a victim not to submit to a polygraph investigation shall provide that person, in writing, the reasons why the agency did not pursue the investigation at the request of the person.

MICHIGAN - current through 1994

28.1274(2)(1 -5)

DEFINITIONS; POLYGRAPH EXAMINATION, PROHIBITION; INFORMING VICTIM OF RESULTS; APPLICATION; EXAMINATION REQUESTED BY DEFENDANT.

A law enforcement officer, including a prosecutor, shall not order or request a sexual assault victim to submit to a polygraph examination or lie detector test. A law enforcement officer shall not inform a victim of the option of taking a lie detector test unless the victim inquires concerning a test, or when the person accused of the offense voluntarily submits to the test and the results suggest the accused may not have committed the crime.

NEW YORK - current through 1995

CPL 160.45(1 -2)

POLYGRAPH TEST; PROHIBITION AGAINST.

No district attorney, police officer or employee of any law enforcement agency shall request or require any victim of a sexual assault crime to submit to any polygraph test or psychological stress evaluator examination.

As used in this section, 'victim of a sexual assault crime' means any person alleged to have sustained an offense under article 130 or section 255.25 of the penal law.

OREGON - current through 1996

163.705

POLYGRAPH EXAMINATION OF VICTIMS IN CERTAIN CRIMINAL CASES PROHIBITED.

No district attorney or other law enforcement officer or investigator involved in the investigation or prosecution of crimes, or any employee thereof, shall require any complaining witness in a case involving the use of force, violence, duress, menace or threat of physical injury in the commission of any sex crime under ORS 163.305 to 163.575, to submit to a polygraph examination as a prerequisite to filing an accusatory pleading.

TEXAS - current through 1996.

CCP Art. 15.051.

POLYGRAPH EXAMINATION OF COMPLAINANT PROHIBITED.

(a) A peace officer may not require a polygraph examination of a person who charges or seeks to charge in a complaint the commission of an offense under Section 21.11, 22.011, 22.021, or 25.02, Penal Code.

(b) If an attorney representing the state requests a polygraph examination of a person who charges or seeks to charge in a complaint the commission of an offense listed in Subsection (a), the attorney must inform the complainant that the examination is not required and that a complaint may not be dismissed solely:

(1) because a complainant did not take a polygraph examination; or

(2) on the basis of the results of a polygraph examination taken by the complainant.

(c) An attorney representing the state may not take a polygraph examination of a person who charges or seeks to charge the commission of an offense listed in Subsection (a) unless the attorney provides the information in Subsection (b) to the person and the person signs a statement indicating the person understands the information.

(d) A complaint may not be dismissed solely:

(1) because a complainant did not take a polygraph examination; or

(2) on the basis of the results of a polygraph examination taken by the complainant.

VIRGINIA - current through 1996

19.2-9.1

WRITTEN NOTICE REQUIRED FOR COMPLAINING WITNESS WHO IS REQUESTED TO TAKE POLYGRAPH TEST.

If a complaining witness is requested to submit to a polygraph examination during the course of a criminal investigation, such witness shall be informed in writing prior to the examination that (i) the examination is voluntary, (ii) the results thereof are inadmissible as evidence and (iii) the agreement of the complaining witness to submit thereto shall not be the sole condition for initiating or continuing the criminal investigation.

09/97

Law Enforcement Policy Regarding the Polygraphing of Crime Victims

The Pennsylvania District Attorneys Association, the Office of the Attorney General, the Pennsylvania State Police and the Pennsylvania Chiefs of Police Association hereby recognize the following findings regarding the testing of victims of crime by use of a polygraph and/or other similar testing device.

WHEREAS, the law enforcement community recognizes that all victims of crime must be treated with dignity and respect; and,

WHEREAS, the use of a polygraph or similar testing device on a victim of crime can cause the victim additional stress and a fear of being disbelieved; and,

WHEREAS, the polygraph and other similar testing devices can, in certain instances, serve as a valuable tool in criminal investigations.

Accordingly, the above-named organizations hereby adopt for use by their members and personnel the following policies regarding the use of the polygraph and similar testing devices during the course of criminal investigations.

1. No law enforcement agency shall require a victim of a crime to submit to a polygraph examination, or any form of mechanical or electrical lie-detector examination, or psychological stress evaluation examination as a sole condition for proceeding with any criminal investigation or prosecution.

2. The submission to a polygraph examination, or any form of mechanical or electrical lie-detector examination, or psychological stress evaluation examination shall be voluntary on the part of a victim, and a victim will be advised that they have no obligation to submit to such an examination whatsoever.

3. No investigation or prosecution shall be terminated on the sole basis that the victim in the case refused a polygraph examination or any other form of mechanical or electrical lie-detector examination or psychological stress evaluation examination.

4. Whenever possible, investigators and prosecutors investigating a crime should conduct all other investigative steps before asking a victim to submit to a polygraph examination or any other form of mechanical or electrical lie-detector examination or psychological stress evaluation examination.

Frank Maggioni
The Pennsylvania District Attorneys Association

5/10/2000
Date

Mike Fisher
The Office of the Attorney General

5/23/2000
Date

Col. Paul Franko
The Pennsylvania State Police

5-31-2000
Date

Carl W. Miers, President
The Pennsylvania Chiefs of Police Association

5/10/2000
Date

Law

**Revictimization by Polygraph: The
Practice of Polygraphing Survivors of
Sexual Assault**

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Law

Revictimization by Polygraph: The Practice of Polygraphing Survivors of Sexual Assault*

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Abstract Sexual assault survivors are scrutinized in a manner unlike that meted out to any other victims of crime. Law enforcement officers or prosecutors may subject the survivor to a polygraph exam in an attempt to ascertain the truth or as a prerequisite to further investigation of the case. In a survey conducted with rape crisis centres across the United States, 63 centres in 17 states reported working with survivors of sexual assault who had been polygraphed. Rape crisis centres in 11 states reported that children had been polygraphed. This article examines the practice of polygraphing survivors of sexual assault.

1 INTRODUCTION

Ever since the spoken word, we have had the lie, and a desire to separate the true statement from the false statement. Distinguishing the true statement from the false statement is critical in matters of criminal law, and societies have utilized a variety of means to ascertain the truth. Although the truth is sought to clarify criminal matters, in no crime other than sexual assault is there such an extensive history of myths and disbelief surrounding the survivor of the crime. This history of myths and disbelief has prompted law enforcement officers and prosecutors in many communities to adopt the practice of polygraphing sexual assault survivors. This article explores this practice and its implications.

2 LITERATURE REVIEW

2.1 Sexual Assault

Sexual assault is a well-documented, widespread problem in American society. The National Coalition Against Sexual Assault (NCASA) states: 'Anyone can become a victim of sexual assault, regardless of age, sex, race, appearance, or economic status.'²² According to the Federal Bureau of Investigation (FBI), 'one American is raped every six minutes'.¹⁰ The available information concerning the incidence of sexual assault, child sexual abuse and incest is startling. For example, in a study by Russell,²⁶ 38% of female children had been victims of a 'hands on' sexual offence by the age of 18.

Koss¹⁵ reports that 'one out of every four college women has been the victim of rape or attempted rape'. Recent information on male rape indicates that '7% to 10% of all adult rape victims are male'.²²

Trauma to the sexual assault victim is also well-documented: 'Victims suffer physically and psychologically. A myriad of problems may result - sleep and eating disorders, nightmares, anxiety, fear, feelings of shame, anger and revenge.'²² Burgess and Holmstrom report the prevailing emotional reaction of rape survivors to be fear - 'fear of physical injury, mutilation and death'.⁹ Burgess and Holmstrom state that survivors also report feelings of 'humiliation, degradation, guilt, shame, . . . embarrassment, . . . self-blame, anger, and revenge'.⁹ In a study conducted by Warshaw, '30% [of sexual assault victims] contemplated suicide'.²⁹

The women's movement of the 1960's first began to expose women's reality of sexual assault. By 1972, the first rape crisis centres in the United States were formed.¹⁶ Women have worked to dispel myths concerning sexual assault, and to improve the system serving sexual assault victims. As a result, sexual assault, which was once rarely acknowledged, has now come to be understood as a far too common experience, particularly in the lives of women and children. Today, thousands of women, children and men speak out after being sexually assaulted.

2 2 The Second Assault

Several authors have poignantly described the 'second assault' which is perpetrated by the 'system' after a woman reports that she has been sexually assaulted.^{7 8 16 30} In perhaps no other crime are the victims scrutinized in the manner experienced by sexual assault survivors. In a study by Williams and Holmes,³⁰ 13% of the victims interviewed indicated that the 'worst thing about this experience [sexual assault]' was the 'judgmental attitudes of others', ranking this experience number five behind fear, helplessness, the sexual acts of the assault and negative personal consequences.

In the seventeenth century, Chief Justice Lord Matthew Hale ruled that judges are required to provide the following instructions to juries: 'Rape is an accusation easily to be made, hard to be proved, and harder to be defended by the party accused, though never so innocent.'⁶ This attitude seems to have survived and prevailed throughout the twentieth century. A 1977 study by Bohmer, cited by Williams and Holmes,³⁰ of 38 judges revealed that they classed rape victims into one of three categories:

'(1) [G]enuine victims: those who are attacked by a stranger leaping out of the shadows of a dark alley; (2) consensual victims: the complainant was seen as asking for it, regardless of whether the assault was consistent with a legal definition of rape (a bar pickup was used as a stereotypic example); (3) vindictive females: the alleged rape was seen as totally consensual sex or as fabricated for the woman's own idiosyncratic, vindictive purposes.'

Even Burgess and Holmstrom⁹ have labelled legally defined sexual assault cases as 'accessory-to-sex' (for example a child 'consenting' to sex with an adult), and 'sex-stress' (that is giving consent to sex and then withdrawing consent prior to having sex, because the situation has changed), failing to acknowledge these cases as 'real rapes'.

Williams and Holmes³⁰ provide evidence that the public believes that women frequently make false accusations of rape. Their study of over 1 000 Anglo-American, black, and Mexican-American men and women revealed that the majority believed that 'men are often falsely accused of rape'. Indeed, others have documented that rape victims are routinely 'scrutinized for truthfulness and consistency of detail'.¹⁸

There are few references in the literature to the use of polygraph exams to distinguish a 'real rape' from a false accusation. This is, however, one of the means by which survivors of sexual assault are revictimized by the system. In a Florida study, Martin, DiNitto, Norton and Maxwell¹⁹ noted that polygraph exams are administered by law enforcement officers and prosecutors to assure themselves of the accuracy of the survivor's statement. In 1989, the Texas Department of Public Safety polygraphed more survivors of sexual assault than victims of any other crime.²¹ The use of polygraph exams reaffirms the belief that women frequently make false accusations of sexual assault. It also serves to 'traumatize further many of the small number of victims who choose to report these crimes.

2 3 Methods of Ascertaining Truth

In biblical times the three primary methods used to determine guilt or innocence were 'trial by battle, the ordeal, and compurgation'.³ In the case of 'trial by battle', the injured person or a family member met the accused and engaged in a duel: 'The gods were believed to give the victory to the innocent party'.³ As civilization advanced, compurgation was used, which required several people to take an oath that the accused was innocent.

The 'ordeal' was also based on the idea of the gods protecting and/or aiding the innocent person. The ordeals to which the accused were subjected included 'carrying a piece of hot iron, walking through fire, plunging one's arm in boiling water, or running a gauntlet of a shower of spears If a man's hand healed rapidly after he had carried a hot stone or picked an object out of a pot of scalding water, he was adjudged innocent'.³

The history of torture extends from the 'devices of primitive man' to the practices of modern day police departments using the 'third degree'.³ In early modern history, torture was used as a method of 'extracting confessions of guilt or disclosing incriminating information relative to others'.³ There were usually several stages of torture, beginning with 'imprisonment in a foul dungeon or a small cell'.³ This was followed by mental torture caused by the uncertainty of what was to happen next as the subject was brought into a room of unfriendly judges with heinous instruments of torture. Finally, various forms of physical torture were used, some which could result in death.

Another well-known method of determining the truth is the oriental rice test. In this method, the suspect is fed a mouthful of rice. The suspect 'would be judged guilty if he could not easily and quickly spit out the rice from his mouth - a test predicated on the fact that fear and tenseness inhibit the creation of saliva'.⁵

Block describes another truth test, this one used by King Solomon to 'determine which of two women was speaking the truth in claiming a small

child as her own. Ordering the child to be cut in two, the ruler reasoned that the truthful woman would willingly relinquish her claim in order to save a life and that the liar would not challenge the edict'.⁵

2 4 Polygraph Exams

The polygraph exam is the 'lie detector' of the 20th century. Cesare Lombroso, in approximately 1895, utilizing a hydrosphygmograph, attempted to detect false statements by measuring changes in blood pressure.²⁴ Dr John A Larson is credited with developing the first polygraph in 1921, which measured blood pressure, heart rate and respiration.¹³ In 1926 Leonard Keeler introduced a fourth measure to the polygraph exam, 'a system of measuring skin resistance to electricity'.¹³ Finally, John E Reid added a measure of muscle contractions to the polygraph.¹³

During the polygraph exam, the person under investigation is subjected to questioning after being attached by various means (such as pneumograph tubes around the chest and abdomen, a blood pressure pulse cuff around the arm and electrodes to two fingers) to the polygraph machine; the examiner then interprets the subject's physiological responses, as recorded by the polygraph machine, to determine the truthfulness, or lack thereof, of the response to each question. Several methods of questioning may be utilized during an interview in an effort to provide a baseline measure of the subject's truthful and deceptive responses.¹⁷ This is followed by several tests, and may conclude with the examiner telling the subject that deceptive responses have been recorded - whether or not this is true - in an attempt to elicit a confession.¹⁷ (Since it is not possible to describe polygraph methods and questioning without a lengthy discussion, those interested in further information may see Lykken¹⁷ or Reid and Inbau.)²⁴

The validity of the polygraph remains questionable. Supporters of the polygraph claim an accuracy rate of more than 90%, and that 'it is difficult for even the most cunning offender to deceive an experienced polygraph examiner'.⁵ Yet, few states allow information from polygraph exams to be admitted as evidence in criminal trials, because of lack of confirmation about its validity.⁵ According to Block, J Edgar Hoover was 'unimpressed by the claimed value of the polygraph'.⁵ Richard Nixon allegedly said, 'I don't know how accurate they [lie detectors] are, but I know they'll scare the hell out of people'.⁵

It is this ability to 'scare the hell out of people' that is the basic tenet of the polygraph exam. In fact, many times suspects confess during a polygraph procedure. According to JE Reid, the developer of the modern day polygraph exam, 'the most important requirement for an effective examination by means of this technique . . . [is to] increase a lying subject's concern over possible detection'.²⁴

2 5 Factors Affecting Polygraph Results

Many authors have written about the polygraph exam and factors which can affect its reliability and validity.^{1 2 5 12 13 17 23-25 27} There are articles on how to 'beat' a polygraph exam,¹¹ and examples of inaccurate polygraph results.^{13 17} For purposes of this article, reliance is placed on the work of the

developer of the modern day polygraph himself, JE Reid. Reid's²⁵ long list of factors affecting polygraph test results includes:

'Lack of concern over the possibility of detection . . . extreme emotional tension or nervousness . . . overanxiety . . . anger . . . concern over neglect of duty or responsibility that made possible the commission of the offense by someone else . . . involvement in other similar acts or offenses . . . physical discomfort during test . . . excessive interrogation prior to test . . . excessive number of test questions . . . adrenal exhaustion . . . inadequate question phraseology . . . inadequate control questions . . . physiological and mental abnormalities . . . miscellaneous factors (which include room temperature, moving the blood pressure cuff or arm, moving the pneumograph tube, etc.).'

Many of the items in the above list indicate one of the primary problems with the polygraph exam: The polygraph may be able to register reaction to a question, but not necessarily a deceptive reaction. At this time in our history, a specific emotional response indicating a false statement has not been isolated. Instead, the polygraph exam attempts to detect reactions of fear and guilt.

According to Burgess and Holmstrom⁹ the overwhelming emotion expressed by sexual assault survivors is fear. In addition to fear (that is, what Reid calls 'extreme emotional tension and nervousness'), survivors may also experience anxiety (that is, what Reid calls 'overanxiety'), anger, and self-blame (that is, what Reid calls 'concern over neglect of duty or responsibility that made possible the commission of the offense by someone else').²⁵ It must also be noted that the survivor's reaction may be increased at times when he or she is reminded of the assault, such as during questioning about the offence.

Several other factors noted by Reid should also be considered when determining the reliability of polygraph exams on sexual assault survivors. Reid notes that excessive interrogation prior to the exam may affect the results.²⁵ Most survivors reporting sexual assault have not only been verbally interrogated by law enforcement officers, but also physically examined as evidence is collected by medical personnel during the sexual assault examination protocol (more commonly known as the 'rape exam').

Reid also notes that physical discomfort during the polygraph exam may affect results.²⁵ For example, the pneumograph tubes, which are placed below the breasts and across the chest, may be uncomfortable for women, especially menstruating women. This physical as well as emotional discomfort may be compounded if the survivor was bound by his or her offender during the course of the assault.

3 METHODOLOGY

3 1 Background of Study

The Texas Association Against Sexual Assault (TAASA) is a state-wide membership organization comprised primarily of rape crisis centres and staff from those centres. In 1988 organizational and individual members made the board of directors of TAASA (of which this author was a director) aware that police investigators were polygraphing survivors of sexual assaults in conjunction with case investigations. The TAASA membership

became interested in legislation which would ban this practice. In preparation for the next session of the Texas legislature, the TAASA board of directors, in conjunction with some of its members, conducted the first phase of the research reported in this article. During this phase, a questionnaire was drafted and distributed to the general membership concerning the practice of polygraphing sexual assault survivors. The intent of the questionnaire was to determine the extent of the practice of polygraphing sexual assault survivors; how and when the polygraph was requested; the actions taken based on the results of, or refusal to take, the polygraph exam; the impact on survivors; and whether children as well as adults were being polygraphed.

During the 1989 Texas legislative session, the author was contacted by a reporter with a national television show. Having heard of the legislation to ban polygraphing of sexual assault survivors, the reporter asked whether this practice occurred elsewhere in the United States, or whether it was 'just another Texas aberration'? Not knowing the answer, the author conducted the second phase of this research, a brief telephone survey of several state anti-sexual assault coalitions and several other rape crisis centres in the nation. Some respondents said they had heard that it occurred; others did not know if it was a practice. In order to determine systematically the extent of the practice, the author conducted the third phase of the research, a survey of members of NCASA.

3 2 Instruments

The survey instrument distributed in Texas by TAASA included nine questions. Seven close-ended questions required a 'yes' or 'no' answer and two open-ended questions asked for details of specific incidents or other comments.

The instrument distributed nationally through NCASA in phrase three was basically the same as the instrument distributed through TAASA, except for minor wording variations (for instance 'you have worked with' was changed to 'you or your centre has worked with'). The instrument distributed through NCASA also asked if any of three specific adverse actions had occurred following administration of the polygraph exam to the survivor - charges dropped, no investigation or survivor arrested. Additionally, respondents were asked to indicate if their state had a law banning or restricting polygraph exams on sexual assault survivors. (See Table 1 for the instrument distributed nationally.)

3 3 Sampling and Distribution

3 3 1 Texas Distribution

In 1989 TAASA mailed the survey questionnaire to all 57 rape crisis centres in Texas. A letter accompanying the questionnaire briefly explained the proposed legislation to prohibit law enforcement or criminal justice personnel from requesting or requiring a sexual assault survivor to submit to a polygraph exam. The letter further indicated that the survey results would be used to assist in the passage of the legislation. Respondents were asked to complete the questionnaire based on their experience with survivors in their service area. The letter included a telephone number which could be

called for additional information. Thirty-five (61%) of the 57 centres responded to the survey (two additional Texas centres responded to the distribution through NCASA).

3 3 2 National Distribution

In 1990 the questionnaire, with minor modifications, was distributed to members of NCASA by three means. First, in June 1990 the questionnaire was mailed as part of a regional newsletter distributed in the southwest United States. Secondly, the questionnaire was reproduced in the 1990 summer edition of NCASA's national newsletter. Finally, in July 1990 the questionnaire was distributed to persons attending the NCASA annual conference and business meeting, which was held in Denver, Colorado.

Each time the survey was distributed, a return address was provided. Respondents paid for the return postage. In addition, a short statement was attached to the questionnaire stating NCASA's position on polygraph testing of sexual assault victims and the intended use of the results of the questionnaire. Twenty-one centres responded to the NCASA newsletter; eight centres responded to the regional newsletter; and 19 centres responded to the conference distribution. (The Ohio Coalition Against Sexual Assault (OCASA) copied and distributed the questionnaire to centres in Ohio, and returned a compilation of the results.)

The questionnaires from all sources were tabulated. For question number one, all answers were tabulated for 'yes' and 'no' responses. For questions two through seven, only centres which responded 'yes' to question one were included in the tabulation. A 'yes' or 'no' answer for each state was also provided for question number ten.

3 4 Results

Combining results from phase one and phase three, 83 centres representing 19 states returned questionnaires - Alaska, California, Connecticut, Florida, Hawaii, Idaho, Illinois, Iowa, Kentucky, Missouri (serving Kansas City, Kansas also), Montana, New York, Oklahoma, Ohio, Pennsylvania, Rhode Island, Texas and Virginia. The 83 centres which responded served 364 counties with a total population of approximately 39 292 525.²⁰ Responses were received from centres serving all the counties in Ohio, Connecticut and Rhode Island. Additionally, the service area of the centre responding in Hawaii contained approximately 79% of the population of Hawaii, the service area of the centre responding in Illinois contained approximately 49% of the population of Illinois, and the service area of the centres responding in Texas contained approximately 73% of the population in Texas.

Twenty (24%) of the 83 centres had no experience of survivors being asked to take polygraph exams. In two states, California and Alaska, none of the centres reporting had polygraph experiences. Table 2 shows the cumulative total number of 'yes' responses (that is, responses of those that had polygraph experiences) to each statement on the questionnaire. Of the 63 centres reporting experiences with the polygraphing of survivors, 31 centres (in 15 states) reported that the survivors had been requested to take the polygraph *before* the investigation commenced. Twenty-two centres (in 13

states) reported that the survivors had been told that there would *not* be an investigation if the survivor did not take a polygraph exam. Twenty-nine centres (in 12 states) reported that the survivors were asked to submit to the polygraph test *before* the perpetrators were asked to take the exam. Twenty-six centres (in 11 states) reported that children who had been sexually abused had been asked to submit to polygraph exams.

Eighteen centres (in nine states) reported experiences with survivors being told that they would go to jail if they lied during the polygraph exam. Thirty-two centres (in 13 states) reported that survivors had dropped charges as a result of their experience with polygraph testing.

Nineteen centres (in 12 states) reported that adverse actions were taken based on the results of the polygraph exam, or because the survivor refused to take the exam (responses from the 37 centres in Texas were not available to this question). Two major types of adverse action were reported. Thirteen centres (in eight states) reported that charges were dropped. Eleven centres (in nine states) reported that no investigation was conducted based on either the victim's refusal to submit to the polygraph exam or the results of the polygraph exam. Other adverse actions included discontinuation of investigations, harassment of survivors by law enforcement officers, pressure and added stress on survivors, and refusal of law enforcement officers to submit cases to the prosecutor. Personal knowledge of the author includes one case in Texas in which the survivor was arrested after 'failing' the polygraph exam.

Twenty-four of the 83 respondents (29%) provided comments to the open-ended question on the survey instrument. The comments generally fell into five categories:

- a Thirty per cent of the centres responding to this question reported that the practice rarely occurred, occurred only in special instances or occurred only in particular areas.
- b Twenty-one per cent of the respondents provided descriptions of survivors' responses, such as their being frightened and/or upset by the procedure.
- c Seventeen per cent of the centres provided information on laws in other states banning the practice of polygraphing sexual assault survivors.
- d Twelve per cent of the centres reported that polygraph was a routine practice with certain survivors, such as in acquaintance/date rape, marital rape, or with minors.
- e Eleven per cent of the responses indicated reactions to the practice of polygraphing survivors, such as 'hate it', shock and disbelief that this could be happening anywhere.

4 DISCUSSION AND CONCLUSIONS

4.1 Limitations of the Study

The primary limitations of this study are the relatively small number of responses, and the potential bias of a convenience sample. The rape crisis centres responding to the survey represent only a small percentage of centres

in the country. However, the service areas of the centres responding to this survey contain approximately 17% of the population of the United States. As might be expected in a convenience sample, this study may have included more responses from centres familiar with the polygraphing of survivors than those which were not.

4 2 Discussion

Despite these limitations, it is obvious that survivors of sexual assault are being asked to submit to polygraph exams throughout the United States - it is not 'just another Texas aberration'. The polygraphing of survivors of sexual assault seems to be a local practice, with some centres in a state having experiences with it, and others not. In some areas, all survivors meeting certain criteria are asked to submit to a polygraph exam - more than one centre reported that this was the case for any survivor of an acquaintance rape.

Persons reporting the crime of sexual assault are subjected to treatment unlike that received by most victims of crime. Some law enforcement officers refuse to begin an investigation until the survivor has taken and 'passed' a polygraph exam. Some survivors of sexual assault are required to submit to a polygraph test prior to the offender's being polygraphed, or even identified. Survivors of sexual assault are not given the benefit of belief, despite widespread knowledge of the victimization of women. Especially troubling is that children may be subjected to a polygraph exam.

Given the lack of conclusive evidence concerning the reliability or validity of the polygraph exam in general, and the additional factors which may hinder an accurate assessment of the reactions registered on a polygraph exam by a sexual assault survivor, subjecting a survivor to this process is unwarranted. Recognizing this, at least three states, New York, Connecticut and Illinois, currently have laws banning or restricting law enforcement officers and prosecutors from using polygraph exams with sexual assault survivors. In Texas the polygraph exam may only be administered to a person who *voluntarily* agrees to take it. But, according to Simon, cited in Gale,¹² 'a rational person will not place herself at risk unless she has reason to fear what others may do to her, or refuse to do for her, if she does not submit to [a polygraph exam]'. Use of the polygraph exam in Texas and other states can hardly be considered to be voluntary when sexual assault survivors realize that their cases will not be investigated if they refuse to submit to the exam - thereby insuring that their offenders will walk free.

4 3 Conclusion

Polygraph exams have failed to prove the ability of the machine or the examiner to distinguish falsehood from truth. It is highly unlikely that a polygraph exam can separate the reaction of a trauma survivor from that of a liar. Unfortunately, use of this method has become one more revictimization of the survivor who has come to the system for protection. The use of polygraph exams in sexual assault cases further perpetuates the myth that women frequently and falsely accuse innocent men of sexual assault.

The TAASA continues to pressurize the state to pass legislation to ban the use of polygraph exams on sexual assault survivors. In addition to

legislation, TAASA has recently received the support of an American Civil Liberties Union (ACLU) attorney to pursue legal action, such as the tort actions addressed by Edgar A Jones. Jones¹⁴ suggests that tort action may be considered for battery, misrepresentation, intentional infliction of mental distress, defamation and product liability as a result of a person's having been polygraphed. Both TAASA and NCASA are committed to improving society's response to survivors of sexual assault. To achieve this goal, necessary action must continue until no survivor of sexual assault is subjected to revictimization by polygraphing.

Notes

- * A summary of the findings of this study has been published in 1994 *Violence Update* 4 (6): 3.
- 1 Abrams S A *Polygraph Handbook for Attorneys* (1977).
- 2 Barland GH *Criminal Investigation* 1985 *Society* 23: 46-51.
- 3 Barnes HE *The Story of Punishment* (1930) especially 7-8 10-11.
- 4 Benedict H *Recovery: How to Survive Sexual Assault* (1985).
- 5 Block EB *Lie Detectors* (1977) especially 12-13.
- 6 Brownmiller S *Against our Will: Men, Women and Rape* (1975) especially 413.
- 7 Burgess AW (ed) *Rape and Sexual Assault* (1985).
- 8 Burgess AW & Holmstrom LL *The Victim of Rape: Institutional Reactions* (1978).
- 9 Burgess AW & Holmstrom LL *Rape: Victims of Crises* (1974) especially 11-14 39.
- 10 Federal Bureau of Investigation Uniform Crime Reports in National Coalition Against Sexual Assault *Sexual Violence: It Affects Us All* (1989).
- 11 Fischman J Beat that Lie Detector! (Guilty People Can Escape Detection) 1985 *Psychology Today* 19: 10-12.
- 12 Gale A (ed) *The Polygraph Test* (1988) especially 164.
- 13 Gugas C *The Silent Witness* (1979) especially 2.
- 14 Jones EA American Individual Rights and an Abusive Technology: The Torts of Polygraphing in Gale.
- 15 Koss MP Hidden Rape: Incidence, Prevalence and Descriptive Characteristics of Sexual Aggression and Victimization in a National Sample of College Students in Warshaw R (ed) *I Never Called It Rape* (1988) especially 11.
- 16 Largen MA *The Anti-rape Movement Past and Present* in Burgess.
- 17 Lykken DT *A Tremor in the Blood: Uses and Abuses of the Lie Detector* (1981).
- 18 Madigan L & Gamble NC *The Second Rape: Society's Continued Betrayal of the Victim* (1991) especially 15.
- 19 Martin PY, DiNitto D, Norton DB & Maxwell MS *Services to Rape Victims in Florida 1984: A Needs Assessment Study* (1984).

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- 21 Moore G of the Texas Department of Public Safety, personal communication November 1992.
- 22 National Coalition Against Sexual Assault *Sexual Violence: It Affects Us All* (1989) especially 1.
- 23 Pyle CH Asking the Wrong Questions 1985 *Society* 22: 54-55.
- 24 Reid JE & Inbau FE *Truth and Deception: The Polygraph ('Lie Detector') Technique* (1966) especially 10.
- 25 Reid JE & Inbau FE *Truth and Deception: The Polygraph ('Lie Detector') Technique* (1977) especially 215-257.
- 26 Russell DEH *The Secret Trauma: Incest in the Lives of Girls and Women* (1986).
- 27 Saxe L Umpiring Controversy 1985 *Society* 23: 39-43.
- 28 Texas Department of Health *Sexual Assault Annual Report* (1991).
- 29 Warshaw R (ed) *I Never Called It Rape* (1988) especially 66.
- 30 Williams JE & Holmes KA *The Second Assault: Rape and Public Attitudes* (1981) especially 19-20 86 136.

TABLE 1: Survey on Use of Polygraph Testing on Survivors of Sexual Assault

- 1 Have any survivors that you or your centre has worked with been asked to take a polygraph test? Yes No
If yes, go to question 2. If no, go to question 10.
- 2 Was the survivor asked to take a polygraph test before an investigation was begun? Yes No
- 3 Was the survivor told that an investigation would not begin until a polygraph test was taken? Yes No
- 4 At the time of the polygraph exam, did law enforcement officers tell the survivor he or she would go to jail if he or she lied? Yes No
- 5 Was the survivor asked to take the exam, before the assailant? Yes No
- 6 Has any survivor said he or she dropped sexual assault charges as a result of his or her experience with polygraph testing? Yes No
- 7 Has a child survivor been asked to take a polygraph test? Yes No
- 8 Has there been adverse action taken because of a survivor's refusing to take a polygraph test, or because of the results of the test? Yes No
If yes, the action was: Charges dropped
 No investigation
 Arrested survivor
 Other _____
- 9 Any other information you may wish to cite: _____

- 10 Does your state have a law restricting or banning polygraph testing on sexual assault survivors? Yes No
- 11 Centre name _____ City/State _____
 Counties/Parishes served _____

TABLE 2: Cumulative Responses to Questionnaire

Survey question	N=19 Total states answering yes	N=83 Total centres answering yes
Any survivor polygraphed? Before investigation would begin? No investigation if survivor refused exam?	17 (89%) 15 (79%) 13 (68%)	63 (76%) 31 (37%) 22 (27%)
Threat of jail if survivor failed exam?	9 (47%)	18 (22%)
Survivor tested before assailant?	12 (63%)	29 (35%)
Any survivor drop charges?	13 (68%)	32 (39%)
Any child ever polygraphed?	11 (58%)	26 (31%)
State law restricting polygraphs?	3 (17%)	3 (6%)
Any adverse action after exam?	12 (63%)	19 (23%)
<i>If yes to above, what adverse action:*</i>	<i>N=18</i>	<i>N=46</i>
Charges dropped	8 (44%)	13 (28%)
No investigation	9 (50%)	11 (24%)
Arrested survivor	0 (0%)	0 (0%)
Other	3 (17%)	5 (11%)

* Does not include Texas

The Validity of the Lie Detector: Two Surveys of Scientific Opinion

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The widespread use of polygraph ("lie detector") tests has important social and individual consequences. Courts asked to admit polygraph findings into evidence, as well as individuals asked to submit to polygraph tests, have a natural interest in the acceptance by the relevant scientific community of the polygraph technique. For this reason, we conducted mail surveys to obtain the opinions of 2 groups of scientists from relevant disciplines: members of the Society for Psychophysiological Research and Fellows of the American Psychological Association's Division 1 (General Psychology). Survey return rates were high (91% and 74%, respectively). Most of the respondents believed that polygraphic lie detection is not theoretically sound, claims of high validity for these procedures cannot be sustained, the lie test can be beaten by easily learned countermeasures, and polygraph test results should not be admitted into evidence in courts of law.

If one asks which psychological test—the Wechsler Adult Intelligence Scale, the Scholastic Aptitude Test, the Graduate Record Examination, the Minnesota Multiphasic Personality Inventory, or some other test—has the most serious consequences for the examinee's future, we suggest that the easy winner in this contest may be a polygraph test, invented by lawyer John Reid (Reid, 1947; Reid & Inbau, 1977) and known as the Control Question Test (CQT). The CQT is currently widely used in the United States by law enforcement agencies to determine whether certain criminal suspects should be prosecuted or classified as uninvolved in the crime under investigation.

Although a number of state supreme courts and legislatures have proscribed the use of polygraph results in criminal trials, in many states prosecutors can offer to release defendants who are able to pass polygraph tests subject to the stipulation that the results of the test can be introduced as evidence in court should the defendant fail the test. In addition, a trial court may be asked to consider polygraph test results as evidence on the basis of arguments that polygraph testing satisfies the court's standards for the admissibility of scientific evidence. These requests almost always originate with defense attorneys who wish

to admit the results of a passed polygraph test. The rules for the admissibility of scientific evidence vary across states, but both state and federal courts are likely to be interested in whether a purported scientific procedure has achieved general acceptance among scientists.¹

Citizens asked to take polygraph tests may also wonder whether there is general acceptance in the relevant scientific community regarding the accuracy of the technique. Two prior surveys of psychologists' opinions have been interpreted as indicating that there is widespread acceptance of polygraphic lie detection. In this report, we consider the limitations of these prior surveys and present the results of more comprehensive surveys of members of two psychological societies.

Surveys of Scientific Opinion

Members of the Society for Psychophysiological Research (SPR) have been surveyed by or for polygraph

¹ Acceptance by the relevant scientific community was established by the Supreme Court in 1923 under what has been known as the *Frye* ruling (*Frye v. United States*, 1923). Although *Frye* was superseded by the legislatively enacted Federal Rules of Evidence (1984), the new rules applied only to federal courts. In the decades since the *Frye* decision, many state courts came to adopt and still rely on the "general acceptance" test of *Frye*. A recent U.S. Supreme Court decision (*Daubert v. Merrell Dow Pharmaceuticals*, 1993; see Faigman, 1995; Faigman, Kaye, Saks, & Sanders, 1997), which is likely to influence state courts that follow the federal lead, has replaced the Federal Rules of Evidence, but under *Daubert*, the general acceptance criterion of *Frye* remains relevant, as are other factors such as whether the technique is based on "valid" scientific principles and methodology.

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We would like to thank Deborah Rasmussen for her assistance with this project, which included managing the survey mailings and processing and analyzing data.

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advocates on two occasions (Amato, 1993; Gallup Organization, 1984). Although both surveys contained multiple questions, the answer to one particular question asked in both surveys has been used to suggest acceptance of polygraphy by the scientific community (e.g., Honts & Quick, 1996; Raskin, Honts, & Kircher, 1997). In those surveys, respondents were asked to choose one of four statements that best described their "opinion of polygraph test interpretations" to determine "whether a subject is or is not telling the truth." The question and the responses in both prior surveys are reproduced in Table 1.

Proponents of polygraph testing have drawn special attention to the fact that about 60% of respondents in both prior surveys chose Alternative B, indicating that polygraph interpretation "is a useful diagnostic tool" (see Table 1). There is general agreement that polygraph testing can be useful as an interrogation tool, and respondents who chose Alternative B may have interpreted the statement to mean nothing more than this. Moreover, with regard to this question, the prior surveys did not emphasize the distinction between the CQT, the validity of which is controversial, and other polygraphic detection techniques such as the Guilty Knowledge Test (GKT; Lykken, 1981), which many consider to be scientifically credible. It is possible that some SPR members answered this question with the GKT rather than the CQT in mind.

These results seemed to be limited in scope and unclear in their implications. Moreover, the Gallup poll was conducted over a decade ago, and a response rate of only 30% was achieved in Amato's mail poll. Consequently, we endeavored to more thoroughly assess current scientific opinion about polygraphy by (a) covering a variety of issues that are both controversial in the literature and

likely to be of interest to trial courts, (b) obtaining opinions from members of two relevant scientific organizations, and (c) structuring our surveys to optimize the likelihood of a high response rate.

Polygraph Techniques

In our questionnaires, to avoid the vagueness of prior surveys regarding detection of deception techniques, we provided respondents with descriptions and definitions of the various deception detection methods. As background for the current report, we describe these methods in this section by paraphrasing the descriptions used in our surveys.

CQT

The CQT compares the physiological disturbance caused by relevant questions about the crime (e.g., for the O. J. Simpson case, "On June 12, did you stab your ex-wife, Nicole?") with the disturbance caused by "control" (more appropriately, comparison) questions relating to possible prior misdeeds (e.g., "Before 1992, did you ever lie to get out of trouble?" or "During the first 45 years of your life, did you ever try to seriously hurt someone?"). As characterized by Raskin (1986), the control questions, which are deliberately vague and therefore difficult for anyone to answer truthfully, are designed to give the innocent person

the opportunity to become more concerned about questions other than the relevant questions and to produce stronger physiological reactions to the control questions. If the subject shows stronger physiological reactions to the control as compared to the relevant question, the test outcome is

Table 1
Three Surveys of the Opinions of Members of the Society for Psychophysiological Research Regarding the Usefulness of Polygraph Test Interpretation

Response	% Who agreed in three surveys		
	Gallup (1984), N = 152	Amato (1993), N = 135	Iacono & Lykken (1994-1995), N = 183
Question: Which one of these four statements best describes your own opinion of polygraph test interpretations by those who have received systematic training in the technique, when they are called upon to interpret whether a subject is or is not telling the truth? It is . . .			
A. a sufficiently reliable method to be the sole determinant.	1	1	0
B. a useful diagnostic tool when considered with other available information.	62	60	44
(Between B and C) ^a	2	—	2
C. of questionable usefulness, entitled to little weight against other available information.	33	37	53
D. of no usefulness.	3	2	2

^a Although not offered as an option, in two of the surveys, respondents indicated a choice that fell between alternatives B and C.

interpreted as truthful. Stronger reactions to the relevant questions indicate deception. (p. 34)

Directed Lie Test (DLT)

As an alternative to the control questions that are used in the CQT, some examiners substitute a "directed lie" question for the control question. An example would be "Have you ever told a lie?" or "Have you ever broken a rule?" to which subjects are told to answer "no." Subjects are also instructed to think about a particular time they told a lie or broke a rule when they were asked these questions. Guilty subjects are expected to show stronger reactions to the relevant questions, whereas the innocent subject's focus on the directed lie questions should elicit stronger reactions to them than to the relevant questions (Raskin, 1989).

GKT

The GKT attempts to detect not lying, but whether the suspect possesses "guilty knowledge," that is, knowledge that only the perpetrator of the crime and the police would possess (Lykken, 1981). For example, "If you were at the crime scene, Mr. Simpson, you would know what Nicole was wearing. Was she wearing a green swimsuit? A black cocktail dress? A white tennis outfit? A red blouse and slacks? A blue bathrobe? A T-shirt and jeans?" A GKT might consist of 10 such items. Guilt would be indicated by a consistently stronger physiological response to the correct guilty knowledge alternative among these items. Although the GKT is seldom used in the field, it has been the topic of considerable interest, generating a substantial number of research reports in psychological journals (for reviews, see Abrams, 1989; Ben-Shakar & Furedy, 1991; Iacono & Patrick, 1988).

Issues Related to the General Acceptance of Polygraph Testing

The questions included in our survey were intended to tap several of the important controversies regarding the scientific status of CQT polygraphy, focusing on those that appear relevant to the admissibility of CQT results as evidence in court. Because of space constraints and because these issues have been discussed at length elsewhere, we have only briefly characterized the major topics below. The interested reader will find a thorough discussion of issues related to the admissibility of the CQT in Faigman, Kaye, Saks, and Sanders (1997), including a review of the history and current legal status of polygraph evidence and chapters discussing at length the arguments for and against admitting polygraph results in court. Other relevant background sources include Ben-Shakar and Furedy (1991); Honts and Quick (1996); Lykken (1981),

U.S. Congress, Office of Technology Assessment (1983); and Raskin (1986, 1989).

At issue is the plausibility of the psychological foundation on which the CQT is based as well as its psychometric properties. There is considerable debate regarding validity. Controversial questions include the following: How accurate is the CQT in general application? Do laboratory studies provide a realistic appraisal of the validity of the CQT in field settings? Can guilty people learn to appear innocent by using "countermeasures" to manipulate their responses to control questions discreetly? Also at issue is whether CQTs administered under adversarial circumstances by the police have validity equivalent to that of CQTs administered through a defendant's defense attorney (the so-called "friendly" test), the results of which are protected by attorney-client privilege and not likely to become public unless the defendant is deemed to have passed the CQT. Little is known about the relatively new DLT variant of the CQT, but because its use appears to be on the rise in criminal cases, sampling scientific opinion regarding its theoretical soundness appears timely. Finally, although the GKT is seldom used in the field, its standing in the scientific community relative to the CQT is of interest because its theoretical foundation is markedly different from that of the CQT.

Method

Scope of Surveys

Our surveys were based in part on the recommendations of Dillman and his colleagues (Dillman, 1978; Salant & Dillman, 1994). We attempted to encourage responding by keeping the surveys short; we also endeavored to broadly cover issues related to CQT validity. Attaining the first of these goals led to our limiting the surveys to a cover letter with three pages of questions and sending follow-up prompts to those slow in responding. The second goal was addressed in part by having three different survey versions with overlapping content and surveying members of two organizations. As did Gallup and Amato, we surveyed members of SPR. Additionally, because it is the psychological and psychometric, rather than the physiological, aspects of polygraphy that are the focus of controversy, we felt that a survey of members of SPR would be usefully supplemented by a similar survey of those psychologists who have been distinguished by election as Fellows of Division 1 (General Psychology) of the American Psychological Association (APA). The issue of polygraph validity was addressed by repeating (for the SPR survey only) the question from the prior surveys that is reproduced in Table 1 and adding questions that dealt explicitly with the advisability of admitting CQT results in court, estimated CQT hit rates, the ease with which countermeasures might be used to defeat a CQT, the effect of friendly tests, and the likely validity of both the GKT and the directed lie variant of the CQT. Questions covering the soundness of the principles and methodology underlying polygraphic lie detection

were also included, along with questions about how to interpret laboratory and field studies of CQT validity.²

SPR survey. The SPR survey was mailed to members in October 1994 along with a stamped return envelope and reply card that respondents were asked to mail under separate cover after they had mailed their survey. In this way, anonymity was assured while making it possible to track respondents. Within about 2 weeks of this mailing, a postcard was sent to prompt responding. About 3 weeks after the initial mailing, nonresponders were sent a second survey with return envelopes and postcards. Approximately 7 weeks after the initial mailing, this process was repeated, with nonresponders receiving a personalized note exhorting them to complete the survey.

APA survey. A somewhat different approach was taken for the APA survey that was mailed in March 1995. We first sent Fellows a letter alerting them to our intention to mail them a survey on lie detection. Two weeks later, we mailed the surveys along with a dollar bill and a stamped return envelope. Rather than enclose a postcard for tracking respondents, surveys were marked with an identification number for tracking purposes, and respondents were promised confidentiality. Follow-up mailings, including another survey and stamped envelope, were sent to nonresponders about 1 and 2 months after the initial contact letter. Two versions of the 3-page APA questionnaire, differing in three of the questions asked, were evenly and randomly split among the Fellows.

Participants

The surveys were sent to a randomly selected 50% of all nonstudent members of SPR and also to all listed Fellows of APA's Division 1. Only those members of either group with U.S. addresses were solicited for participation.³

Information Provided to Respondents

To avoid the vagueness of prior surveys regarding detection of deception techniques, we provided respondents (as appropriate depending on which of the surveys they received and the specific questions they were asked) with descriptions and definitions of the CQT, DLT, and GKT with primary source material from each technique's most respected proponents, wherever feasible (e.g., Lykken, 1981; Raskin, 1986, 1989). Respondents were also given a description of the countermeasure research of Honts, Hodes, and Raskin (1985) and Honts, Raskin, and Kircher (1995), again citing the authors directly, that included a description of how subjects were taught countermeasures and how effective they were. By providing this detailed explication of the nature of these procedures, we hoped to provide respondents with a clearer and more accurate characterization of polygraphy than was presented in the two prior SPR surveys. By providing this information in the words of leading advocates, we sought to ensure that it would be accurate and presented in the most favorable light. Respondents were instructed to answer questions on the basis of what they knew and believed about polygraph testing.

Results

Of the surveys sent to 216 SPR members, two were returned as nondeliverable. Of the 214 remaining, 195

members (91%) returned questionnaires. Of those who returned questionnaires, the response rates for the individual questions (designated "% with opinion" in the tables) ranged from 81% to 96% and averaged 88%. The average age of the respondents, of whom 79% were men and 21% were women, was 47 years ($SD = 10.8$). In the case of the APA Fellows, 249 surveys were mailed. Nine of these were returned as nondeliverable, and communications were received from an additional 14, indicating that the APA member was either now deceased or unable to respond for health reasons. Of the 226 remaining, 168 (83 from one survey version, 85 from the other), or 74%, returned usable questionnaires. Response rates for individual items ranged from 81% to 98%, averaging 92%. The sample consisted of 84% men and 16% women. The average age of respondents was 64 years ($SD = 11.1$). It was possible to use an APA biographical directory to determine whether those who did not respond to the survey differed in age or sex from the responders. The average age of the nonresponders was 66 years ($SD = 12.3$). Of the 59 nonresponders, 50 (85%) were men. Hence, the age and the sex of the nonresponders were quite similar to that of the responders.

SPR Survey

We asked our SPR respondents to answer the same question used in the Gallup and Amato surveys but made it clear that the question referred to conventional lie detection with the CQT. Ninety-four percent of respondents rendered an opinion to this item. The results, shown on the right in Table 1, indicate that a majority of psychophysicists consider that the usefulness of the CQT is questionable. Chi-square tests comparing the frequencies with which Alternatives B and C were chosen in the three surveys indicates that the endorsements of these two alternatives differed significantly between this survey and that of the Gallup Organization, $\chi^2(1, N = 321) = 12.90, p < .001$, and that of Amato, $\chi^2(1, N = 308) = 8.35, p < .01$. Nevertheless, 44% of our respondents thought the technique might be a "useful diagnostic tool," so we were left to wonder whether nearly half of SPR members actually believe the CQT is valid as a test, even valid enough to be introduced in evidence at trial.

² Copies of the surveys are available from W. G. Iacono or D. T. Lykken.

³ These surveys were motivated by a request that we and Raskin, Honts, and Kircher contribute chapters on polygraphy to a legal reference volume that addressed the scientific status of polygraphy in light of Daubert (Faigman et al., 1997). We violated randomness to the extent of excluding from the prospective SPR sample ourselves, members of our department, and Raskin et al. For the APA survey, the only respondents excluded were three Fellows from our department.

Table 2
 Responses to Questions About Polygraphy by Members of the SPR
 and APA Fellows From Division 1

Response	% SPR members			% APA members		
	With opinion	Who agree	SE	With opinion	Who agree	SE
Would you say that [the CQT, GKT, DLT] is based on scientifically sound psychological principles or theory?						
A. CQT	84	36	3.8	88	30	3.8
B. GKT*	83	77	3.3	81	72	5.5
C. DLT*	—	—	—	89	22	4.8
Would you advocate that courts admit into evidence the outcome of control question polygraph tests, that is, permit the polygraph examiner to testify before a jury that in his/her opinion, either the defendant was [deceptive or truthful] when denying guilt?						
A. Deceptive	91	24	3.2	95	20	3.2
B. Truthful	91	27	3.3	96	24	3.4

Note. SPR = Society for Psychophysiological Research; APA = American Psychological Association (Division 1 represents General Psychology); CQT = Control Question Test; GKT = Guilty Knowledge Test; DLT = Directed Lie Test. Dashes represent questions that were not asked of SPR members.

* Question asked to only half of APA Fellows.

To address these possibilities, respondents were asked the questions listed in Tables 2 and 3. Turning to Table 2, we found that only 36% considered the CQT to be based on principles that are "scientifically sound." In contrast, 77% indicated that the GKT had a sound scientific basis. Although questions of admissibility are decided by judges, not scientists, and on legal rather than scientific grounds, Amato and Honts (1993) interpreted their earlier survey results to mean that SPR members consider polygraph tests "useful for legal proceedings" (p. S22). Therefore, we asked our respondents explicitly whether they would favor introduction of CQT findings as evidence in court. About three fourths of respondents were opposed to the introduction of such evidence.

Responses to the remaining SPR survey questions are summarized in Table 3. Polygraph proponents uniformly assert that the CQT is over 85% accurate (e.g., Abrams, 1989; Ansley, 1983; Honts & Quick, 1996; Raskin et al., 1997). To determine how such claims were viewed by the SPR membership, we asked respondents the following question:

Proponents of polygraphy typically assert that the CQT is highly accurate, with hit rates of 85% or better for both guilty and innocent suspects. Based on what you know and believe, to what extent would you agree that the CQT is accurate at least 85% of the time in real life applications for guilty and innocent subjects?

Respondents were asked, separately for guilty and innocent suspects, to rate the extent to which they agreed with this claim of 85% accuracy on a 5-point scale anchored at one end with *is a considerable overestimate* and at the other with *is a considerable underestimate. Is about right*

identified the scale's midpoint. The responses to this question are summarized in Table 3. To simplify the presentation, those who endorsed either of the overestimate options were said to disagree with the 85% accuracy claim, and those who endorsed *is about right* or either of the underestimate choices were considered to have agreed with the accuracy figure. For both the guilty and the innocent, about three quarters of SPR members disagreed that the CQT is accurate 85% of the time.

To tap member opinion about friendly tests, we instructed respondents to assume that a defendant awaiting trial plans to take either a private CQT from a polygrapher hired by their lawyer or an adversarial one from a police examiner and to assume that the polygraph examiners were interchangeable (e.g., they had equivalent training, experience, and expertise). Respondents rated which test was more likely to be passed with a 5-point scale anchored with *private test* at one end and *police test* at the other, with *likelihood of passing equal* at the midpoint. Of the sample, 75% chose one of the two scale points indicating that the private test was more likely to be passed. As the next item in Table 3 indicates, 99% of respondents expressed an opinion indicating acceptance of the notion that the CQT can be "beaten" by augmenting one's response to the control questions.⁴

⁴ For this question alone, respondents were given three possible answers to choose from (yes, no, and can't say). Of the 187 respondents choosing one of these alternatives, 22% chose the third option. To make the response summary (Table 3) for this question comparable to the others, we did not include these individuals in the summary data.

Table 3
Opinions About Polygraphy of Members of the Society for Psychophysiological Research

Questionnaire item	% With opinion	% Who agree	SE
CQT is at least 85% accurate . . .			
a. in tests of guilty suspects.	83	27	3.5
b. in tests of innocent suspects.	82	22	3.3
"Friendly" CQTs more likely to be passed than those taken under adversarial conditions.	88	75	3.3
CQT can be beaten by augmenting one's response to the control questions.	96	99	0.7
Reasonable for courts to give "substantial weight" to results of laboratory studies to estimate CQT validity in real life.	92	17	2.8

Note. CQT = Control Question Test.

Finally, respondents were asked the following question: "Some empirical studies of the CQT involve laboratory manipulations in which those experimental subjects assigned to the guilty group are instructed to commit a mock crime (e.g., "steal" a ring from a desk) followed by a polygraph test. In your opinion, is it reasonable for judicial proceedings to give substantial weight to the polygraph "hit rates" obtained in these laboratory simulations to estimate the validity of the CQT for innocent and guilty suspects in real-life criminal investigations?" Only 17% agreed with this assertion.

To determine whether the results varied as a function of how knowledgeable respondents were about the CQT, we asked respondents to circle a number from 1 to 7 anchored with *not at all informed* at one end (corresponding to a value of 1) and *very informed* at the other (corresponding to a value of 7). Those choosing points 4-7 were considered to be informed (33% of respondents) on the topic, the rest less informed. We compared these two groups for their answers on all the questions in Tables 1-3 using chi-square statistics. There was only one significant result (Question 1a, Table 3), $\chi^2(1, N = 159) = 10.35$, $p < .01$, indicating that 42% of the informed group believed that the CQT was at least 85% accurate for guilty subjects compared with 18% of the less informed group.

Survey of Division 1 Fellows

The opinions of distinguished general psychologists as measured by our survey are summarized in Tables 2 and 4. As Table 2 indicates, when APA Fellows were asked the same questions as the SPR members about the soundness of the CQT and GKT and the advisability of admitting polygraph evidence in court, they responded very similarly (for each question common to both surveys, z tests revealed no significant differences in the proportions agreeing.) Only APA members were queried about the soundness of the DLT; 22% thought it was scientifically sound.

Asked to make their "best estimate of the accuracy of the CQT in testing both innocent and guilty criminal

suspects," Fellows estimated the accuracy to be around 60% for both innocent and guilty subjects (Table 4). Nearly three fourths of the respondents said they either "definitely would" or would be "inclined" to take a privately administered CQT if they were personally guilty of some crime and wished to use the test results to deflect suspicion from themselves. It is interesting to note that when instructed to assume they were innocent with the opportunity to take a police-supervised CQT, the results of which would be presented to a jury, only 35% would be inclined to take it. Over 90% felt that "professional criminals, defendants with unscrupulous lawyers, or foreign agents" could learn to beat the CQT using countermeasures, and 75% expressed "moderate" to "high confidence" that they could learn to use the countermeasures of Honts et al. (1985, 1994) "well enough to defeat a CQT." Regarding the CQT's psychometric soundness, it can be seen that 20% thought the CQT could accurately be described as a standardized test, whereas only 10% thought it to be an objective procedure, "relatively independent of differences among examiners in skill and subjective judgment." Most (93%) agreed with the following statement: "Strong and unequivocal scientific evidence of validity should be required before the accuracy claims of polygraph proponents are believed."

Fellows were divided into informed (45% of the group) and less informed groups following the identical procedure used for the SPR survey. By using chi-square and t tests to compare these two groups for the questions asked in Tables 2 and 4, we found only one result to be significant (Table 2, Question 1b), $\chi^2(1, N = 66) = 4.35$, $p < .05$, indicating that 85% of informed Fellows believed that the GKT was scientifically sound, compared with only 62% of the less informed respondents.

Discussion

Matters of science cannot be settled by vote, nor can courts be expected to base decisions on the admissibility of scientific evidence on the opinions of scientists. Nevertheless, as Kassir, Ellsworth, and Smith (1989) have

Table 4
*Opinions About Polygraphy of Fellows of Division 1 of the
 American Psychological Association*

Questionnaire item	% with opinion	Mean estimate/ % who agree ^a	SE ^b
1. Best estimate of the accuracy of the CQT . . . for testing innocent suspects.	81	63	1.5
for testing guilty suspects.	81	60	1.4
2. If guilty, would take a "friendly" CQT.	98	73	3.5
3. If innocent, would take an "adversarial" CQT.	97	35	3.7
4. Criminals and spies are likely to beat a CQT.	94	92	2.2
5. Confident could personally learn how to defeat a CQT.	97	75	3.4
6. The CQT can "accurately be called a standardized procedure."	95	20	3.2
7. The CQT is "relatively independent of differences among examiners in skill and subjective judgment."	97	10	2.3
8. Strong empirical evidence required before accuracy claims of proponents are believed. ^c	96	93	2.9

Note. Division 1 represents General Psychology. CQT = Control Question Test.

^a Mean estimate for Question 1; % who agree for Questions 2-8. ^b Standard error of the mean for Question 1; standard error of proportion for Questions 2-8. ^c This question was only asked to half of APA fellows.

noted in their survey research, the general acceptance of a technique by the scientific community is an empirical question. To answer that question, we surveyed the opinions of two scientific organizations, assessing their opinions on over a dozen topics relevant to the scientific status of polygraphy. The two groups, quite different in terms of the background and expertise of their members, gave similar answers to the questions that were common to both surveys (see Table 2), so we may reasonably assume agreement on the questions unique to each of them. Both of our surveys, which elicited healthy return rates for mailed questionnaires (Dillman, 1978; Heberlein & Baumgartner, 1978), produced results that complement each other, and stand in contrast to prior surveys on this topic.

Our SPR survey elicited a different response profile to the question in Table 1 than did the surveys of Gallup and Amato, with respondents in our survey more likely to view polygraph test interpretation as having questionable usefulness. The reasons for this difference are not known. Our sample may be more representative of the SPR membership than those of the other surveys. Eighty-six percent of the 214 people we sent surveys to answered this question, compared with only 30% of those polled by Amato. No information was provided in the Gallup Organization (1984) report on how many SPR members were unavailable for or refused to cooperate with their survey. The fact that the Gallup survey was conducted over the telephone and preceded the current survey by more than 10 years may also be factors accounting for the differential response rates.

In the SPR survey we asked respondents whether they participated in either the Gallup or the Amato survey; the responses shed some additional light on this issue. None

of our respondents could recall participating in the Gallup survey (9% could not recall whether they had). Eight percent indicated they participated in the Amato survey, and 15% could not recall whether they participated. This low degree of overlap across surveys is difficult to explain. At least for the older survey carried out by Gallup, this lack of overlap could reflect turnover in SPR membership.

Respondents to both of our surveys do not accept the accuracy claims of the polygraph community. Three fourths of the SPR members thought it unlikely that the validity of the CQT could be as high as 85%, and the APA Fellows estimated its average validity at about 61% (vs. 50% accuracy reflecting chance). They do not believe CQT results should be admitted as evidence in court. Seventy-four percent of SPR members and 78% of Division 1 Fellows said they would oppose the use of such evidence. Nor do SPR members agree that laboratory studies with mock crimes should be used by courts to estimate CQT validity in real life. They do not accept friendly and adversarial tests as equivalent. Instead, they view friendly tests as more likely to be passed. Over 90% of members of both groups agreed that the CQT can be defeated with a simple countermeasure. APA Fellows indicated that they believe both criminals and they themselves could learn countermeasures to defeat the CQT. Their confidence in the DLT is no higher than their faith in the CQT, which they characterize as neither standardized nor objective.

These results varied little as a function of respondents' self-rated knowledge of the area. Of the 24 items from both surveys, informed and less informed respondents differed significantly on only two of them. For the one item that dealt with the CQT, a clear majority of both informed

and less informed respondents found 85% accuracy for the CQT to be an overestimate. The other question, which dealt with the GKT, indicated that both informed and less informed respondents thought this technique was based on scientifically sound principles. Even the 44% of respondents who thought the CQT to be a useful diagnostic tool (i.e., those choosing Alternative B in Table 1), were found to be unenthusiastic about admitting polygraph test results in court (only half favored doing so), and a clear majority of them (over 60%) thought the CQT was less than 85% accurate in tests of both guilty and innocent subjects.

It was not the case that members of these two organizations were negatively disposed to polygraphic interrogation in general. In contrast to their doubts about the CQT, almost three fourths of respondents viewed the GKT as scientifically sound. Because we did not ask the question, we cannot claim that these experts would advocate the admissibility at trial of the results of GKTs. Although it is our personal belief that the GKT is a promising forensic tool, we would not ourselves advocate its admissibility in the absence of additional research with real-life criminal cases.

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It is vital that our definition of sexual assault exclude the response, reactions and personal background of the victim and pinpoint, instead, the behavior of the perpetrator. There must be evidence that the perpetrator received "intelligent, informed and voluntary affirmation, which is not be construed as coerced or reluctant submission." This removes from the perpetrator the hollow defense that "No" sometimes means "Yes." The perpetrator must assume that "No" always means "No" and that the perpetrator must hear a "Yes."

Adopted: 10/22/92

Re-Affirmed: 3/18/93

TESTING OF VICTIMS/SURVIVORS

PCAR advocates for a victim/survivor's right to give informed consent to any test, treatment and/or procedure.

Revised and Approved by Board

October 25, 1996

LIE DETECTOR TESTING OF VICTIMS/SURVIVORS

The PA Coalition Against Rape opposes all polygraph testing of victims of sexual assault, the victim's non-offending family members or significant others.

Justification

While other states are passing legislation forbidding such investigative practices, Pennsylvania law enforcement personnel are increasing their reliance on polygraphing of sexual assault survivors and perpetrators as a standard investigatory tool. The results of a victim's polygraph test may be used as a justification for stopping an investigation or as a reason for never initiating one. A negative test may be used as grounds for prosecuting a sexual assault victim for false accusation. An "inconclusive" test is treated as a negative test, as is refusal to be tested. Both result frequently in the same responses given a negative test.

Polygraph machines are a conglomeration of instruments used to measure blood pressure, cardiac activity, respiration, galvanic skin response (response to electricity), and sometimes muscle contractions. The devices measure the body's response to the stress normally associated with fear. If the examiner interprets the relevant questions as generating more arousal than the control questions, the subject will be diagnosed as deceptive, or will "fail" the test. **The greater the degree of a subject's emotional disturbance, the lower the likelihood of the test detecting deception.**

While those who administer polygraph tests claim a 90% rate of validity (a still inadequate percentage), independent investigations find a variability up to 100%, with most pointing to rate of invalid results close to 30%. In one research report, in cases in which there was clear evidence of sex crimes having been committed, 30% of victims and perpetrators tested negative. An enormous list of factors affects the validity of any given test (see attached list); however, polygraphing continues to be the chief investigative tool for numerous counties in Pennsylvania. According to one State Police trooper, some district attorneys require routine administration of the test to victims in any sex crime investigation; sexual assault victims are polygraphed far more frequently than victims of any other crime.

Incidence of testing is highest when there is little physical evidence; when the victim knew the assailant; or when the victim is black. Victims are often threatened that refusal to take the test will mean an assumption that they are lying; they are threatened with prosecution--and occasionally prosecuted for obstruction of justice and false reporting--if they refuse to be tested or if they fail the test. Often victims welcome the opportunity to be tested in the belief that they will be vindicated; they are not informed of the statistical invalidity of the tests nor the factors affecting the results.

Yet even among polygraph examiners, testing of "women who claim sexual assault" is controversial. An on-going debate, publicized by the US Department of Defense, regarding the best method of questioning victims clearly indicates examiners' doubt as to the effectiveness of their testing. Tests in which polygraph results were verified against physical evidence indicated an unacceptable 85-88% reliability. No inconclusive exam results were checked against physical evidence, an important exclusion given the fact that PA State Police assume all inconclusive tests are negative.

The purpose of any criminal investigation is to gather information admissible in court for purposes of prosecution. The results of polygraph testing are inadmissible in Pennsylvania criminal courts, except under some extreme situations, and then as a clear exception to the law. Thus the testing of victims has only one purpose: to test the truth of her story. This practice perpetuates the centuries-old myth women often falsely accuse men of sex crimes.

The testing of perpetrators likewise has a single purpose: to force a confession. This is particularly true in cases of sex crimes against children. (While the results of testing are not admissible in court, evidence obtained from the testing is admissible; those being tested are read their rights, and every statement is recorded as potential court evidence.) The perpetrator's belief that the child initiated the sexual contact or that the victim "asked for it" completely invalidates the test. He shows no guilty response because he feels no guilt. For a similar reason, victims may test falsely: belief in their own culpability makes their test responses highly emotional and provides a guilty reading.

Much of the success of a polygraph exam rests in the ability of the examiner to convince the person being polygraphed that the machine can actually detect deceptive statements. A person who does not believe the machine can detect deception can easily appear innocent on a test despite his guilt. A person who believes in the validity of the test and is truly frightened of being tested may appear dishonest even when telling the truth. To press a belief in the test, examinees are often told the test shows they are lying when in fact it does not. The fact that the examiner is merely guessing about the truth of a statement and may well be wrong increases the emotional stress of the examinee.

Advocates for sex crime victims talk frequently about revictimization by the system. **Clearly the polygraph exam is an extreme example of revictimization.** Many victims interviewed indicate that the worst element of their experience of sexual assault was the judgmental attitudes of others. What clearer evidence can police investigators provide of their disbelief and their presumption of the victim's own guilt than administration of a polygraph exam?

A 1977 study reported that judges view victims in three categories: genuine victims ("good" victims, as a Williamsport chief of police commented in 1989); consensual victims (those who "asked for it"); and vindictive females (those for whom the sex act was totally consensual or completely fabricated). State Police report that 50% of victims lie in their reports of sex crimes, an absurd "statistic" that encourages continuing doubt in the minds of the law enforcement, judicial personnel, and the general public of the validity of all reports of sexual victimization. State Police do not report the facts accurately: 50% of victims fail polygraph exams which are dubious investigative tools considered inadequate for criminal court evidence. Polygraphing testing of potential employees has actually been outlawed in Pennsylvania based on the consistency of unreliable results (Protection From Polygraph Act).

STATE OF NEW YORK

3769

1995-1996 Regular Sessions

IN SENATE

March 27, 1995

Introduced by Sen. VOLKER — read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to prohibiting a request to any victim of a sexual assault crime to submit to polygraph test.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Subdivision 1 of section 160.45 of the criminal procedure
- 2 law, as amended by chapter 78 of the laws of 1990, is amended to read as
- 3 follows:
- 4 1. No district attorney, police officer or employee of any law
- 5 enforcement agency shall request or require(, as a prerequisite to
- 6 initiating a criminal investigation,) any victim of a sexual assault
- 7 crime to submit to any polygraph test or psychological stress evaluator
- 8 examination (for the purpose of subjecting the statements of such victim
- 9 to analysis to determine the truth or falsity of such statements).
- 10 § 2. This act shall take effect immediately.

*Signed into law by the Governor
Tuesday, March 5, 1996*

EXPLANATION—Matter in italics (underscored) is new; matter in brackets [] is old law to be omitted.

LBD07536-01-5

Standards and Principles of Practice

AMERICAN ASSOCIATION OF POLICE POLYGRAPHISTS (AAPP) BY-LAWS

1. Robert's Rules of Order will be used as a guideline for conducting all official meetings of the AAPP.
2. The President may appoint any member to standing committees to conduct specific business of the AAPP.
3. Public criticism regarding professional conduct of one member by another, other than before the Committee of Standards and Ethics or the Board of Directors (filed in writing and signed by the writer) is condemned and expressly forbidden for all AAPP MEMBERS.
4. Any member who knowingly makes a false certification or endorsement regarding an applicant's eligibility and/or qualifications, will be subject to termination of membership.

STANDARDS AND PRINCIPLES OF PRACTICE FOR THE AMERICAN ASSOCIATION OF POLICE POLYGRAPHISTS (AAPP)

I. PRIMARY PURPOSE

The primary purpose of a polygraph examination is to determine if the person being examined is being truthful or untruthful to the issue under investigation.

II. BASIC USES OF THE POLYGRAPH

- A. The polygraph examination should be a supplement to, not a substitute for, a field investigation.
- B. The effectiveness of the polygraph examination, to a large extent, will be based upon the thoroughness of the investigation, prior to having the person take the examination.
- C. To maximize the effectiveness of the polygraph examination, the investigator and the polygraphist must work together as a team.
- D. The polygraph examination may be used to test the veracity of:
 1. Suspects
 2. Victims
 3. Informants

III. POLYGRAPHISTS CREDENTIALS

- A. Only fully trained polygraphists, or intern polygraphists under the direct supervision of a senior polygraphist should be allowed to conduct polygraph examinations.

B. All law enforcement polygraphists should be bound individually and collectively to the standards, objectives, and principals of practice of the American Association of Police Polygraphists, and existing law(s).

IV. POLYGRAPH INSTRUMENT

A. Polygraph instruments must be capable of recording visually, permanently and simultaneously, indications of a person's:

1. Cardiovascular pattern and changes therein.,
2. Respiratory pattern and changes therein.
3. Changes in skin resistance (Electrodermal Responses).
4. The polygraph instrument should be calibrated as per manufacturer's instructions.

V. INVESTIGATOR RESPONSIBILITIES

A. During an investigation in which the polygraph might be utilized, the investigator should not resort to any misleading statements. If the person who determines that he/she was deceived later takes a polygraph examination, he/she may be overly suspicious of both the procedure and the polygraphist. Such a mental attitude may cause the person's reactions to be so erratic that no conclusive chart interpretation could be made.

B. The investigator must emphasize to a person who may take a polygraph examination that the polygraph technique is an extremely effective method of establishing the truth. Confidence should be expressed in both the accuracy of the procedure and the impartiality of the polygraphist.

C. Prior to the examination, the investigator should withhold, from the person to be examined, certain information believed to be known only to the victim, the investigator, and a person with guilty knowledge. These facts could be of vital importance to the polygraphist in test and question formulation.

D. When requesting a person to submit to a polygraph examination, the investigator should inform the person that they will be given the polygraph examination only if they are freely and voluntarily in agreement to take the examination. It is also recommended that the polygraphist have the examinee sign a consent form.

1. If the person exhibits fear of the test procedure, the investigator should assure the person that the polygraphist will thoroughly explain the procedure prior to the examination.
2. No attempt should be made by the investigator to explain the procedure, except to express complete confidence in the reliability.
3. Threats to use the polygraph in an effort to obtain a confession are forbidden.

E. Polygraph examinations should be approved for scheduling only when the following conditions have been met:

1. An investigation by other means has been as thorough as circumstances permit.

2. The person taking the examination has been interviewed.

F. The investigator should provide the polygraphist with as many case facts and documents as possible, including the complete complaint file. In addition, information concerning the background of the person being examined should be available.

G. At least one investigator working on the case should be immediately available during the polygraph examination to assist the polygraphist, should a matter arise with which the polygraphist is not familiar.

H. If the person being examined is under arrest, the investigator should have custodial responsibility.

I. In those situations where it is necessary to cancel a scheduled polygraph examination, the polygraphist should be notified as soon as practical.

J. The investigator should not subject the person taking the polygraph examination to interrogation immediately prior to a polygraph examination.

VI. POLYGRAPHIST'S RESPONSIBILITIES

A. The responsibility of the conduct of the polygraph examination, areas to be covered, test questions, and all related procedures should lie with the polygraphist.

B. The polygraphist should have sole responsibility to determine if any particular examination should take place and the time and location.

C. A polygraph examination should never be conducted where, in the polygraphist's opinion, poor examination atmosphere and/or surrounding(s) prevail.

D. The polygraphist should, if requested, submit a written report at the conclusion of each polygraph examination.

E. The polygraphist should be responsible for properly maintaining and protecting the polygraph files and records.

F. Results of a polygraph examination, and disposition of such written reports shall be in accordance with departmental policies and existing law(s).

G. The polygraphist shall not attempt to make a physical or psychiatric diagnosis of the examinee except to make a determination as to the testability of the person taking the polygraph examination.

H. The polygraphist shall produce a minimum of two polygraph charts relative to the testing issue.

I. Association members may also avail themselves of the review functions of the Association's Quality Control Committee.

VII. PERSONS NOT TO BE EXAMINED

A. Officers from other agencies, unless:

1. There is an investigation of a criminal matter by that agency in progress.
2. The examinee's commanding officer has been notified of the forthcoming polygraph examination.
3. Prior approval has been given by the polygraphist's supervisor.

B. Members of the polygraphist's agency/department, unless approved by the Director of the proper authority of agency/department.

C. Normally, persons will not be examined on the same subject matter after an examination has already been administered by another police agency. Exceptions authorizing such examinations should be obtained from the supervisor in charge of the polygraph section.

D. No polygraph examination should be administered on anyone concerning a crime after that person has been formally charged with that offense in court unless the prosecuting attorney is aware of and in agreement with the examination being conducted.

E. Juveniles

1. No polygraph examination should be given to any person legally deemed to be a juvenile without written permission from at least one parent, a guardian, attorney, probate judge having jurisdiction, or as may be perceived by governing law(s).
2. The polygraphist should have final authority to determine if a juvenile is to be examined.

F. It is impossible to detail all the physical disabilities which might affect the polygraph tracing; however, the following guidelines should be observed:

1. Heart condition: A person with a serious heart condition whose doctor advises against the examination will not be permitted to submit to an examination. Should a person claim to be suffering from a heart condition, the polygraphist should have a signed letter from his/her doctor stating that the person may be examined.
2. Pregnancy: It is recommended that no woman, known to be pregnant, will be given a polygraph examination unless the following conditions have been satisfied:

The polygraphist has received a signed letter from the examinee's doctor stating that the examinee may be examined.

3. Epilepsy: A person known to be suffering from epilepsy, and whose doctor advises against the polygraph examination, will not be permitted to submit to an examination. If the examination is to be administered, the polygraphist should have written permission from the examinee's doctor so stating that the person may be examined.

4. No person should be given a polygraph examination if that person has not had sufficient food, rest and relief from lengthy interview/interrogation prior to the examination.

5. Mental Condition: The fact that the person might be suffering from a mental condition, e.g., psychosis or neurosis, or a physical disability that may affect the mental state, such as a cold, tuberculosis, etc., or a combination of mental-physical condition(s), e.g., does not automatically disqualify that person from being examined.

6. Emotional Instability: Under normal circumstances, no person should be given a polygraph examination immediately following an incident in which they are involved, especially if the incident was of a violent nature. Example: The victim of an armed robbery being given a polygraph examination shortly after he/she had been allegedly robbed. In this situation, the person should not be given a polygraph examination immediately following the incident.

7. A polygraphist should not conduct a polygraph examination on a person whom the examiner believes to be medically or psychologically unsuitable for testing. If there is any doubt as to the personal ability to undergo a polygraph examination for these reasons, a competent examination by a licensed physician, psychologist or psychiatrist and a written report with recommendations, should be obtained prior to the polygraph examination being administered.

VII. RESPONSIBILITIES OF THE AGENCY/DEPARTMENT TO THE POLYGRAPHIST

In order for the polygraphist to maintain and improve his/her professional competency, the employing agency/department should allow the examiner:

1. To attend a minimum of one professional polygraph seminar on a yearly basis. Traveling, living and attendance expenses in this regard, should be paid for by the agency/department employing the polygraphist.
2. To require membership in appropriate professional organizations, reimbursing the actual cost of membership and/or assessments

IX. REEXAMINATION

A. As a person's mental and physical condition affects the test results, the polygraphist must occasionally conduct reexaminations. Even after reexamination, the polygraphist is not always able to determine if the person is being truthful or untruthful.

B. If an indefinite finding is reported by the polygraphist, it is not to be interpreted as indicating truthfulness or untruthfulness. It merely indicates that the person should have the