

Approved: March 27, 2000
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Vice Chairperson Representative Becky Hutchins at 1:30 p.m. on March 6, 2000 in Room 313-S of the Capitol.

All members were present except: Representative Powell, excused
Representative Rehorn, excused

Committee staff present: Theresa Kiernan, Revisor of Statutes
Russell Mills, Legislative Research
Mary Galligan, Legislative Research
Winnie Crapson, Secretary

Conferees appearing before the committee:

Proponents of HB 2725:

Representative Ruff
Doug Williams
William Iacono, University of Minnesota
Detective Bill Roche
Robert Beattie

Opponents of HB 2725

Robert A. Brisintine, Jr., American Polygraph Association
Tim Madden, Chief Counsel, Department of Corrections
Robert Blecha, Kansas Bureau of Investigation
Lt. John Sams, Topeka Police Department
Mike Mann, American and Kansas Associations of Police Polygraphers
Capt. David Burger, Kansas Peace Officers' Association
Sgt. Rusty James, Lenexa Police Department
Don Michaels
Theresa Michaels

Written testimony provided by:

Gary Davis, National and Kansas Polygraph Associations
Donald Williams, Investigations LLC
Gail Roberson, Sex Offender Treatment Program, Lansing Correctional Facility
Randy Rogers, Kansas Sheriffs' Association

Others attending: See attached list.

Vice Chairman Representative Hutchins opened the meeting.

Clyde Graeber, Secretary, Department of Health & Environment, outlined two bills he requested be introduced relating to the Land of Oz project.

Representative Cox moved, Representative Dahl seconded, that the two bills requested by Secretary Graeber be introduced: (1) to bring the statute that created the authority under the Kansas Tort Claims Act [HB 3021] and (2) to establish the Sunflower Army Ammunition Plant trust fund to receive the proceeds from the payment obligation surety bond [HB 3020]. Motion passed.

CONTINUATION SHEET
MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS
March 6, 2000

Hearing was opened on:

HB 2725, The Kansas polygraph protection act.

Vice Chairman Hutchins referred the Committee to the memo by Mary Galligan, Kansas Legislative Research, giving an overview of **HB 2725** describing procedures for the use of polygraphs in criminal investigations and provisions creating crimes and a civil cause of action related to illegal polygraph use (Attachment #1).

Representative Ruff introduced the bill and noted fourteen states have applied some restrictions on the use of polygraphs and others are considering it.

Dr. William Iacono of the University of Minnesota presented testimony in support of the bill (Attachment #2). Dr. Iacono referred committee members to U.S. v. Scheffer, 523 US ___, 140 L Ed 2d 413, 118 Sct ___ (1998) and its citation of his article "The Scientific Status of Research on Polygraph Techniques in Modern Scientific Evidence. He was asked to provide to the committee a copy of the study cited by the Supreme Court. He noted there are widely divergent views regarding the accuracy of polygraph testing.

Douglas Williams presented testimony in support of the bill (Attachment #3) based upon his experiences administering polygraph tests.

William Roche, a police detective with the Concord CA Police Department, testified in support of the bill (Attachment #4), sharing his experiences with both pre-employment polygraphs and their utilization in criminal investigation.

Robert M. Beattie presented testimony in support of the bill (Attachment #5). His testimony was based upon his experience as a practicing attorney and professor at Friends University where his course teaches how the polygraph intertwines the disciplines of psychology and law. In response to questions from Representative Gilbert, Mr. Beattie said to his knowledge no license is required in Kansas for a polygraph examiner. He stated he did not find the proposed time restrictions in the bill unreasonable and he could find no studies supporting the use of polygraph for any kind of therapy.

Robert A. Brisentine, Jr., Chairman of the Legislative Committee of the American Polygraph Association, presented testimony in opposition to the bill (Attachment #6). He described the APA as a non-profit technical, professional and educational association establishing standards of ethical practices, techniques, instrumentation and training relating to polygraphs. The Association supports the passage of licensing legislation and opposes legislation that would unfairly deny the right to use polygraph examinations. Mr. Brisentine said in response to questions from Representative Edmonds about the accuracy of polygraph tests that he could provide information that in over 250 studies the range acceptable to scientific scrutiny is 85% to 95%. Vice Chairman Hutchins asked Mr. Brisentine to provide a copy of the review to the committee.

Tim Madden presented the written testimony of Charles E. Simmons, Secretary of Corrections (Attachment #7) describing the use of polygraph examinations as a component of the treatment program provided to sex offenders while incarcerated and during supervision of offenders on parole or postrelease. Mr. Madden presented a proposed amendment to **HB 2725** by adding a new Sec. 6 on page 2:

Sec. 6. The department of corrections and entities contracting to provide services to the department may utilize the polygraph examinations in the treatment of offenders. The department may utilize polygraph examinations for the purpose of supervising offenders and in investigations relating to the security and orderly operation of the department.

CONTINUATION SHEET
MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS
March 6, 2000

Robert Blecha, Assistant Director of the Kansas Bureau of Investigation, presented testimony in opposition to the bill (Attachment #8). He stated there are four polygraphists who perform examinations for the KBI and for state and local law enforcement agencies across the state. He described their use of polygraph examinations. Mr. Blecha stated the KBI never to his knowledge used polygraph results as the sole basis for hiring or firing.

Mr. Blecha had not seen the February 4 memorandum of Mary Galligan, Legislative Research. He was asked to provide the Committee with responses to the bullets in that memorandum.

Lt. John Sams presented testimony opposing the bill on behalf of the Topeka Police Department (Attachment #9) stating there currently exists adequate legislation and regulations on both the State and Federal levels to curtail any abuse and to allow anyone to seek remedy against such perceived abuse. He described the use of polygraphs by the Topeka Police Department.

Mike Mann presented testimony in opposition on behalf of the American Association of Police Polygraphists and the Kansas Association of Chiefs of Police (Attachment #10). The AAPP is a national association representing polygraph examiners. He stated it is the belief of the AAPP that scientific evidence strongly supports the high validity and reliability of the use of polygraphs and supports the continued scientific research on polygraph.

Capt. David Burger, Lenexa Police Department, presented testimony in opposition on behalf of the Kansas Peace Officers' Association (Attachment #11). He stated the polygraph is a reliable tool with a proven record of effectiveness. In response to a question about what would be a reasonable time to be hooked up to a polygraph, he said he believed reasonableness would be different in different situations.

Sgt. Rusty James, a polygraph examiner with the Lenexa Police Department, presented testimony on behalf of LPD in opposition to the bill (Attachment #12), stating that the polygraph is a valuable tool for law enforcement and this bill would severely restrict the use of polygraph testing in Kansas. He described the use of polygraphs in internal investigations.

Don Michaels and Theresa Michaels testified in opposition to the bill describing the benefits of use of polygraph examinations in the treatment of sex offenders.

Written testimony was presented by:

Gary Davis, Forensic Assessments, Inc., Vassar KS (Attachment #13)
Gail Roberson, Counseling Center, Joplin MO (Attachment #14)
Randy Rogers, Sheriff, Coffey County, Kansas Sheriff's Association (Attachment #15)
Donald L. Williams, Investigations LLC, Wichita (Attachment #16)

The hearing on **HB 2725** was closed.

The meeting adjourned at 2:50 p.m. The next scheduled meeting is March 7.

HOUSE FEDERAL & STATE AFFAIRS COMMITTEE

COMMITTEE GUEST LIST

DATE: March 6, 2000

NAME	REPRESENTING
Mike Mann	AAPP / Ks. Assn of Chiefs of Police
Robert E. Beeha	KBI
John Sams	Topeka Police Dept
Ricky A. Mills	Topeka Police Dept
Bob Stover	ALCOPS Inc
Don Williams	INVESTIGATIONS, LLC
Robert Amundson	American Polygraph Assoc.
Caroline Adams	Action Investigations Ctld.
Pat Beattie	Joe Burress
Dana Williams	Joe Burress
Jeff Kottling	KPOA / KSN
DAVID BURGER	KPOA
Rusty James	Lawrence Police Dept.
Tim Madden	KDOC
Joe Furd	KDHE
Rory Davis	NPA - KPA
Donald R. Michael	SELF
Jessica O'Michael	SELF
David Roberson, MS, APC, AMP	NPA-KPA

Joe Burress
 WILLIAM ROCHE
 WILLIAM IACONO

NPA - KPA
 SELF
 SELF

February 4, 2000

From: Mary Galligan

Re: HB 2725

HB 2725 would enact the Polygraph Protection Act, which would establish procedures for the use of polygraphs in criminal investigations, create crimes and a civil cause of action related to illegal polygraph use.

For purposes of the act, polygraph would be defined as a device or procedure that measures a person's physiological reactions to questions about past events or intentions and that is used to evaluate a persons veracity or deception.

The bill would allow law enforcement officers investigating the commission of a felony to request that the subject of the investigation take a polygraph. Any subject of an investigation of a felony would be able to request a polygraph examination. Any such polygraph examination would have to follow procedures:

- The subject of the polygraph would be able to request that the subject's attorney be present and if such request is made, the polygraph could not be conducted in the absence of the subject's attorney;
- A subject could not be forced to participate in a polygraph;
- The subject of a polygraph would have to be informed of all provisions of the Act;
- The subject could end the polygraph procedure at any time;
- The subject of a polygraph would be entitled to record the polygraph session;
- The entire polygraph procedure, including any questioning, explanations and interviews conducted before and after the polygraph examination could not exceed 90 minutes in length;
- No more than one polygraph procedure could be administered to a subject in a 24-hour period;
- A videotape, questions, and answers would be admissible in court against the subject;

House Fed. &
State Affairs
Date 3/6/00
Attachment No. 1
Page 1 of 2

- A polygraph examiner's opinion and interpretation of polygraph results would not be admissible in criminal or administrative proceedings against the subject;
- A polygraph examiner's opinion and interpretation would be admissible as evidence against the polygraph examiner and the examiner's superiors in criminal or civil proceedings for violation of the Act;
- The entire polygraph procedure would have to be audio-videotaped by the state and a copy of the tape and a copy of the polygraph chart would have to be provided to the subject or the subjects' attorney;
- The tape would have to include at least two views, a view of a chart, and a view of the subject and polygraph administrator; and
- The record of any polygraph would be admissible in criminal and civil actions.

Under the bill, polygraph use may be demonstrated for educational purposes, but no recordings or interpretations of those demonstrations are admissible in proceedings regarding employment, contracts, insurance, or therapy.

The bill would create a civil cause of action against a polygraph examiner, the examiner's superiors and employers, and others who may be in violation of the act and for malpractice against a polygraph examiner. A prevailing plaintiff in such an action could be awarded economic, noneconomic, and punitive damages.

The bill also would make it unlawful for anyone other than a law enforcement officer to use or employ a polygraph, to ask another to take a polygraph, or to offer to give another a polygraph examination. The bill also would make it unlawful for anyone to penalize a person who declines to take a polygraph. Violation of the act would be a level 10 nonperson felony (5-13 months incarceration; presumptive probation for most criminal records; or a maximum \$100,000 fine, or both). Any polygraph examiner convicted of violation of the act would be prohibited from further polygraph administration or examination practice.

Currently, Kansas does not license or regulate polygraphists. A 1988 law that created a polygraph regulation and licensure scheme was repealed in 1990 because the Board of Polygraphists was never appointed. At that time there were not enough people in the state who met the statutory qualifications for appointment to constitute a Board. Since the Board was never formed, the profession was never regulated.

2

William G. Iacono, Ph.D.
Distinguished McKnight University Professor
Professor of Psychology and Neuroscience
Adjunct Professor of Child Development
Director, Clinical Science and Psychopathology Research Training Program

RE: House Bill No. 2725, "Kansas Polygraph Protection Act"

Mr. Chairman, Members of the Committee; I would like to congratulate Kansas on being one of the first states to consider legislation to protect its citizens from what the late Senator Sam Irvin called '20th Century witchcraft', the myth of the lie detector.

I am currently a Distinguished McKnight University Professor and Director of the Clinical Psychology Training Program at the University of Minnesota. I specialize in psychophysiology, the basic science from which polygraph testing is an application. I am a Past-President of the international scientific organization known as the Society for Psychophysiological Research. I have received a Distinguished Scientific Contribution Award from this organization as well as from the American Psychological Association. I have published over 175 scientific articles, and have over 50 scientific presentations and publications on "lie detection" or polygraphy. My work was cited by the United States Supreme Court in *U.S. v. Scheffer*, the 1998 case that eliminated polygraph tests from military courts martial. Much of what I have to say today is summarized in my article that was cited by the Supreme Court. I have served as a consultant regarding polygraphy to various government agencies, including the U.S. Congress Office of Technology Assessment, the CIA, the Joint Security Commission of the Clinton Administration, and the Department of Defense. I served on the Department of Defense Polygraph Institute's Curriculum and Research Guidance Committee for approximately four years. I have testified in state and federal court regarding the scientific status of polygraph testing on over 30 occasions.

The issue before you is a difficult one because there are widely divergent views regarding the accuracy of polygraph testing. Polygraph operators are largely honorable individuals who administer tests that have profound and often devastating effects on the lives of those they test. It is only human, under the circumstances, for polygraphers to believe what they do is highly accurate. However, as a scientist who has studied the claims of the polygraph industry for almost 20 years, I can tell you their claims are based largely on wishful thinking. From peer reviewed scientific articles published in the best scientific journals, we can make the following straightforward conclusions:

- 1) The theory on which polygraph testing is based is not scientifically sound.
- 2) Polygraph tests are not tests at all; they are more accurately clinical interviews assisted by the recording of bodily responses.
- 3) Polygraph tests are neither standardized nor objective. There are no meaningful controlling standards for polygraph tests. Every test is different, constructed according to the subjective judgment of the examiner.

House Fed. &
State Affairs
Date 3/6/00
Attachment No. 2
Page 1 of 2

- 4) Polygraph tests are strongly biased against the innocent and have no better than chance accuracy with innocent people. In other words, they work as well as a coin toss.
- 5) Guilty individuals can easily learn how to defeat polygraph tests using countermeasures. Countermeasures involve artificially augmenting responses to certain questions on the test. (e.g., by lightly biting the tongue or doing stressful mental arithmetic before answering these questions).
- 6) There is no way for examiners to know if a subject is using effective countermeasures.
- 7) Two published surveys of scientists regarding their opinions about polygraphy indicate widespread skepticism regarding industry claims. Scientists to not believe polygraph theory is scientifically sound, they do not believe the tests are accurate, and they do not believe polygraph tests constitute scientific evidence.

These scientific findings indicate that there are no good reasons to believe the claims of the polygraph industry and many reasons to doubt them.

From my personal experience of the last two decades as a consultant to government agencies and expert witness in dozens of court proceedings, I am all too familiar with the havoc these inaccurate tests have wreaked on innocent people seeking employment or seeking to have their credibility verified. Because these tests are strongly biased against innocent people, untold thousands of skilled workers have been denied fair access to jobs for which they were qualified. Ironically, employee screening polygraph tests are most strongly biased against citizens of good character and moral conviction, so the best employee prospects are often prevented from serving in jobs where trustworthiness is important. Employers can hide behind their use of these invalid tests to cover discriminatory practices and illegal motives. Because the general public is still largely unaware of the pitfalls of polygraph testing, many innocent individuals suspected of lying in criminal investigations voluntarily agree or even request to have polygraph tests to clear them of suspicion. Instead, they fail and even if not prosecuted, live under a cloud of suspicion, lose their reputations, are denied employment opportunities, and incredibly, sometimes come to doubt their own innocence, believing if they failed a polygraph, then certainly they must be guilty of something. Guilty people use passed polygraph tests to manipulate legal proceedings to get charges against them dropped, to get better plea agreements, or to falsely show compliance with court ordered treatment or with the terms of their probation. Because it is easy to learn how to beat a polygraph test from popular books and internet web sites, career criminals with the desire to learn how to use countermeasures can effectively do so.

The act before you would protect innocent people from false incrimination by polygraph, make it possible for qualified individuals to obtain jobs they would otherwise be denied based on the results of invalid polygraph tests, and make it difficult for criminals to manipulate the legal system by using in their defense polygraph tests passed with the aid of countermeasures. For these reasons, it is my hope that you will act favorably on this bill. Thank you.

House Fed. &
State Affairs
Date 3/6/00
Attachment No. 2
Page 2 of 2



About Doug

Sting The Polygraph!

Sting Publications

About Doug

Questions

Testimonials

Order

Home



My name is Douglas Gene Williams, and I plead guilty to crimes against humanity. I was a right-wing terrorist, I tortured thousands of people, documented more forced confessions than most Gestapo Agents, violated countless constitutional rights, and had absolutely no regard for human dignity. I was often rewarded for my skillful use of terrorism - there are some truly grim stories behind those official letters of commendation I earned as a police detective sergeant. I was a highly trained, well equipped,

terrorist agent. My specialty was psychological trauma, and my weapon was the "lie detector".

You have a right to know a little about me before you invest any more of your time, so let me tell you right up front, I'm crazy. Friends and enemies alike agree with my self-diagnosis, they differ only as to the cause of my obvious malady. Some say I was crazy to quit the cops after almost ten years' service, and they have a point because I did spend a lot of time and energy preparing for a career only to abandon it when I reached the prime earning years. Others will tell you I cracked under the strain of a guilty conscience, that I went over the edge running from the ghosts of my many victims, and there is some truth to that because I do feel guilty about what I did. The way I see it, I lost it when I decided to make restitution for my sins, but I'm from the buckle on the Bible Belt, and out here we are taught that if we sin, we must confess and make restitution before we can expect exoneration - this restitution business is what's driving me nuts.

I have the dubious distinction of being the only licensed polygrapher to ever blow the whistle on the so-called "lie detector" and I have been blowing it so long now I'm about blue in the face, but the message has still not gotten to the powers that be. I was a detective sergeant with the Oklahoma City Police Department and ran the polygraph section of the internal affairs division for six years. I administered more than six thousand polygraph examinations for our department as well as other local, state, and federal agencies. During that time, I discovered that what I did for a living was a fraud, and in 1979 I embarked upon what turned out to be a crusade to outlaw the polygraph.

I set about to prove three things about the polygraph that I knew to be true:

1. The polygraph test has a built-in bias against a truthful person
2. It is certainly not capable of determining truth or deception
3. It can be beaten rather easily

Who Needs Doug's Manual?

The ACLU estimates that over a million polygraph exams are given each

House Fed. &

State Affairs

Date 3/6/00

Attachment No. 3

Page 1 of 3

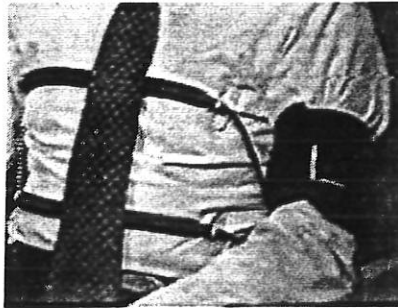
2/23/00 10:19 AM

year and another five to seven million people are "at risk" to having to take a polygraph exam.

- If you have applied to or work for the federal, state or local government...you need to read Doug's manual!
- If you think there is even a remote chance that you will ever have to undergo the invasion of the "lie detector"...you need to read Doug's manual!
- If you administer polygraph exams...you need to read Doug's manual!
- If you are an attorney...you need to read Doug's manual!
- If you have applied to or work in law enforcement... you need to read Doug's manual!
- If you are concerned about the governments invasion into our civil rights... you need to read Doug's manual!

Why Believe Doug?

"I look forward to the day when the polygraph test will just be a bad memory. As to my ex-colleagues' criticism, I would offer this thought for consideration. It would, after all, be the ultimate irony for a "lie detector" operator to object to the truth."



Doug Williams, Author
How To Sting The Polygraph

The results of a polygraph exam are not dependent on the person being examined telling the truth, but on whether the *examiner* or the *examinee* is in control. Since 1979 Doug has helped literally thousands of individuals take control of their polygraph examination. This is indeed his *greatest credential*.

Doug Williams:

- Is a graduate of Oklahoma City University with a BS degree in Police Science
- Is a graduate of the National Training Center for Lie Detection in New York City.
- Was the first person licensed by examination under the 1972 Oklahoma Polygraph Licensing Act, and was licensed by the State of Oklahoma from 1972 to 1979.
- Administered over 6000 polygraph examinations for many law enforcement agencies including the Secret Service and the FBI
- Is a ten year veteran of the Oklahoma City Police Department and held the rank of Detective Sergeant
- Testified as an expert witness before the U.S. Senate and the U.S. Congress and was very instrumental in getting the Employee Polygraph Protection Act passed into law.
- Was a member of the board of the Office of Technology Assessment, an investigative

House Fed. &
State Affairs

Date 3/6/00

Attachment No. 3

Page 2 of 3

2/23/00 10:19 AM

arm of the US Congress empaneled to study the validity of the polygraph as a "lie detector"

- Has been a guest lecturer at a number of colleges and universities.
- Was featured on scores of local TV news and talk shows, and over 2,000 radio talk shows.
- Demonstrated the inability of the polygraph to detect truth or deception on 60 Minutes with Diane Sawyer.
- Taught a Justice Department attorney how to produce a "truthful" chart utilizing the "Sting Technique" on CBS Nightwatch.
- In November, 1998, discussed the "Sting Technique" on NBC Nightly News with Tom Brokaw.
- Demonstrated the "Sting" technique on CNN World News, and CNN Headline News on June 22nd 1999. For a video, call 1-800-CNN-NEWS and ask for the report by Kathleen Koch.
- Was featured on the Fox Family Channel show entitled, "Exploring the Unknown", on February 4th 2000, where I taught the host how to control every tracing on the chart in less than five minutes. He demonstrated how he could deliberately lie and still produce a "truthful" chart every time.



QUESTIONS?

E-mail Doug Williams at Sting Publications: doug@polygraph.com

Copyright © 2000 Doug Williams. All rights reserved.
Information in this document is subject to change without notice.

This site produced and hosted by:



House Fed. &
State Affairs
Date 3/6/00
Attachment No. 3
Page 3 of 3
2/23/00 10:19 AM

Testimony of William V. Roche to the Kansas House of Representatives Federal and State Affairs Committee on HB2725, The Kansas Polygraph Protection Act. Monday March 6th, 2000.

My name is William Roche. I am a police detective with the Concord, CA. Police Department. I graduated second in my police academy. I have received numerous commendations for my community service as well my criminal investigations. Based on my achievements, I was selected by my peers to be our agency's officer of the year.

I have experienced pre-employment polygraphs relative to obtaining my career in law enforcement, and have utilized the polygraph pursuant to my criminal investigations.

I am here today on my own time and expense to share my experiences with you.

The use of the polygraph in criminal investigations:

In the area of criminal investigations, the ability to effectively interview and interrogate someone will take many phases. A legitimate phase is to use a ruse during the course of an investigation to have a person believe you have more knowledge about the crime than you actually do.

Whether it's a mother saying she has eyes in the back of her head, or on the many occasions investigators have told suspects a hidden video camera captured them committing the crime.

Often times to enhance these ruses, props are introduced. It is not uncommon to have suspects put their hands on computer screens, or even grab the antenna of a patrol car, and then tell the person the item is a lie detector that will determine if the person is telling the truth.

It is the belief of the unknown and the ignorance of the person that causes them make admissions.

The polygraph is nothing more than a technical looking prop for investigators to use when interviewing suspects.

The ability to effectively learn countermeasures is pathetically easy and available to download on the Internet in a just a matter of minutes.

To make a determination on guilt, innocence, or compliance with probation terms based on polygraph results alone is irresponsible.

In a recent case before the US Supreme Court (United States v. Scheffer.), a criminal defendant wanted to use a polygraph test he passed as evidence in his criminal trial. The U.S. Government argued against this request stating the polygraph is too prone to countermeasures.

The Justices took note of the Governments position on the case and Justice Kennedy wrote, "...there is much inconsistency between the Governments extensive use of polygraphs to make vital security determinations and the argument it makes here, stressing the inaccuracy of these tests."

As a police officer, I would be negligent to clear a child molester of wrong doing based on polygraph results, only have him strike again.

And what service would I be doing my profession and community to accuse an innocent person of wrong doing because the charts "zigged" when they should have "zagged." To defame an innocent person is contrary to the standards I adhere to.

Furthermore, this theory of using polygraph for rehabilitation or compliance with probation terms is fine for the purpose of intimidation and to solicit admissions from ignorant suspects, but it is ludicrous if the actual results are going to be considered as part of the person's compliance with their probation.

To give polygraph results any credibility in an investigation, *without* the support of an admission or confession, is reckless and slander.

The basis of the polygraph and why the innocent are more likely to fail:

A polygraph is only a comparison between two types of questions, which are referred to as relevant and control questions. The examiner must establish a baseline for what a lie response looks like on the chart by using questions that have no significance to the investigation.

It is critical for the examiner to insert control questions to the examinee under the premise they are actual questions that need to be answered honestly. However, the examiner actual wants the examinee to lie to the control questions so a baseline can be established.

The examiner will assume that whatever answer the examinee provides to the control question is a lie. If you answer the control question honestly, you will fail the examination because a sufficient base line was not established.

I see a confusing dilemma here. You tell a person you want him to tell the truth, but in actuality you want him to lie. If the person tells the truth in an examination, he will fail the test. This is sick.

Criminal investigators will lie to suspects about evidence they don't have in order to obtain the truth. However, the polygraph examiner will tell the person to tell the truth, in hopes they will lie. The entire theory is backwards.

I have personally witnessed comments from polygraph examiners like, "The toughest part of a polygraph is getting the proper control questions," and my favorite, "He is being too honest, I'm having a hard time making him lie on the control questions."

Although this is a humorous contradiction, the results are deadly serious for innocent suspects and job applicants. Careers are lost and reputations ruined because the examinee failed to adequately lie.

Polygraph vs. Forensic Science

Many in the field of polygraph would like to stress the credibility of their field. I find this humorous.

Think of the many fields within forensic science. Some of these fields include DNA, ballistics, fingerprint and fiber analysis.

The polygraph begins with the examiner attempting to establish credibility with the examinee by using a marked deck of cards or some other magic trick. The examiner will then make believe they can determine what card the examinee chose by using the polygraph. Have you ever seen a DNA Scientists doing imitations of Bulwinkle pulling a rabbit out of his hat in order to establish credibility?

With the awesome ability to ruin a reputation, destroy a career, and take a dream from a person, look at the training that is required.

With about ten weeks of training, a polygraph examiner is considered an expert to measure the response of the human body's extraordinarily complex cardiovascular system, respiratory system, how the brain and emotions work and then make a conclusive diagnosis as to whether the person is innocent or guilty.

With power like this, why would one bother to ever attend medical school?

Polygraphist profiling: How the examiner can manipulate the tests:

What I find even more deeply disturbing in the field of polygraph, is not only how the examinee can manipulate the results, but also how the polygraphist can manipulate the results as easily as a doctor can manipulate taking a persons blood pressure.

Imagine sitting in a doctor's examination room. The doctor walks in and looks at a mole on your arm and says the mole looks like advanced cancer. Then the doctor takes your blood pressure. What is the probability the blood pressure is not indicative of your true resting heart rate.

An example of this behavior occurred against me.

In 1997, I applied to the Secret Service to be an Agent.

Before the Secret Service agents would administer the polygraph exams, they interrogated and agitated me. At times even yelling and making threatening gestures to the point I moved my head in fear of being struck. I still remember my hands trembling out of pure anger as the electrodes were being strapped to my fingers. Once I was strapped into the machine, my breathing and heart rate was monitored. This occurred for 13 hours over the course of two days.

Although this behavior was outside their standards in training, it resulted in my job offer being revoked.

The polygraphist can fail the person before the examination even begins. A few well placed words and accusations just before the examination is all it takes.

If society thinks police profiling through traffic stops is an issue, imagine the vulnerability of a criminal defendant or applicant for a job with a polygraphist who has a chip on their shoulder.

Here are a few examples of this behavior (not at my police agency):

An African American police applicant being asked by an examiner, "You only smoked marijuana one time and you live in Oakland?" (Oakland is a community in California with a high African American population.)

A polygraph examiner told a police applicant with Korean decent that he must be a communist if he came from Korea.

I would like to think polygraphists, and especially my peers in law enforcement would adhere to the highest level of ethics, but unfortunately, as I personally experienced, not all do.

By simply requiring the pre-interview, the examination, and the post interview to be video and audio recorded, the ability for the polygraphist to invoke their personal biases into the examination is all but removed.

This is the same theory of why a male doctor is required to have an observer when he examines a female patient.

In the state of California, Police Officers cannot be forced to submit to polygraph test. Unfortunately, this is not true for officers in our neighboring state, Nevada.

However, the law requires that the pre-interview, the exam and the post interview be audio and video recorded, and the subsequent tape be made available to the officer.

Remember though, even a professionally administered polygraph is only 50% accurate, but at least there is 50% chance of passing, where there is virtually none when it is conducted unethically.

All this costs is the expense of a video tape. Professionals never object to having their work reviewed. Frankly, any investigator who would not record a critical part of an investigation when it is conducted in a controlled setting is reckless and opening their work to suspicion. I can assure you as a criminal investigator, nothing is more gratifying when a defense attorney asks me if the interview was recorded and I can reply, "Yes, would you like a copy."

In conclusion, I would like to leave you with the following thought. Imagine the next time you are walking through an airport metal detector. You confidently enter the metal detector focused on catching your flight. Suddenly the alarm goes off. Maybe the calibration is off in the machine, or the watch on your wrist has too much metal on it.

Instead of researching the issue, you are labeled a security risk and escorted from the airport banished from ever flying again.

That same scenario is played out in real life everyday with the polygraph. Please, you have the power to stop this and protect your citizens.

I have a web site I have compiled much of my research in. The site is www.stopolygraph.com.

Thank you for your time and I will be happy to answer any questions.

(C)

PREPARED TESTIMONY OF ROBERT M. BEATTIE JR., ESQ.
TO THE KANSAS HOUSE OF REPRESENTATIVES
FEDERAL AND STATE AFFAIRS COMMITTEE
ON HB 2725, THE KANSAS POLYGRAPH PROTECTION ACT
MONDAY, 6 MARCH 2000

SUMMARY

1. THE PURPOSE OF HB 2725, THE KANSAS POLYGRAPH PROTECTION ACT, IS TO PROTECT INNOCENT PEOPLE.
2. HB 2725 DOES **NOT** RESTRICT THE USE OF THE POLYGRAPH AS AN INTERROGATION AND DECISION-MAKING TOOL BY POLICE.
3. HB 2725 ADDRESSES THE HARM CAUSED BY THE POLYGRAPH TO HONEST CITIZENS IN THE PUBLIC, PRIVATE, AND QUASI-PUBLIC SECTORS. POLYGRAPH ERRORS ACCUSING HONEST CITIZENS OF LYING ARE NOT HARMLESS, BUT ARE CONSEQUENTIAL.
4. SCIENTIFIC STUDIES OF THE POLYGRAPH CONCLUDE THAT IT IS **NOT!** A LIE DETECTOR. THERE IS NO "PINOCCHIO EFFECT", NO PSYCHOPHYSIOLOGICAL DETECTION OF DECEPTION (PDD), THE *SINE QUA NON* OF THE POLYGRAPH INDUSTRY.
5. THE POLYGRAPH IS JUNK SCIENCE. IN *DAUBERT* HEARINGS COURTS CONSISTENTLY AGREE THAT THE POLYGRAPH IS **NOT** BASED IN THE SCIENTIFIC METHOD.
6. HB 2725 DOES **NOT** CONFLICT WITH FEDERAL LAW. THE FEDERAL EMPLOYEE POLYGRAPH PROTECTION ACT (EPPA) DECLARES THAT IT "SHALL NOT PREEMPT STATE OR LOCAL LAW THAT IS MORE RESTRICTIVE IN ANY PROVISION" THAN THE EPPA.
7. THE COURTS AND OTHER ELECTED OFFICIALS LOOK TO THE LEGISLATURE FOR GUIDANCE AND ACTION IN THIS AREA.

CONTENTS

Page One --	Summary
Page Two --	Witness Introduction and Credentials
Page Three --	Public Policy Considerations
Page Four --	Courts Hold that the Polygraph is Junk Science
Page Five --	Recent and Historical Points
Page Six --	Pernicious Use of the Polygraph

WITNESS INTRODUCTION AND CREDENTIALS

I am Robert Beattie, a Wichita attorney and educator. I've practiced law in state and federal trial and appellate courts and administrative agencies. I've earned university degrees with majors in Natural Sciences and Mathematics, Human Resources Management, and Law. I was a Kansas Certified Emergency Medical Technician for 17 years, working as a Firefighter 9 of those years.

I also teach as an adjunct in the political science department at Newman University, and in the psychology department at Friends University. In addition to being a member of various professional bar associations, I am a member of the American Psychology-Law Society, a member of PERK – the association for Psychological & Educational Research of Kansas, and a member of Psi Chi, the National Honor Society in Psychology.

At this time I am also president of Sunflower Mensa, the greater Kansas chapter of the American Mensa High IQ Society.

In my "Psychology and the Law" course at Friends University, I teach, among other things, about how the polygraph intertwines the disciplines of psychology and law. Since 1998 I have a standing challenge inviting polygraph examiners to test my students after they have learned about polygraph theory and countermeasures. No polygraph examiner has accepted the challenge. I wrote about this challenge, and about polygraph related legal and public policy matters, in a two-part article. It was published as the Lead Columns in the May and July 1999 issues of the Journal of the Kansas Trial Lawyers Association.

In my legal practice I have been consulted about polygraph law by persons not only in Kansas, but also from all across the United States. I should mention that ALL of my polygraph related legal work to this point has been *pro bono*. I consider this matter to not only address fundamental public policy and constitutional issues, but also to be a battle between reason and folklore.

PUBLIC POLICY CONSIDERATIONS

1. THE PURPOSE OF HB 2725, THE KANSAS POLYGRAPH PROTECTION ACT, IS TO PROTECT INNOCENT PEOPLE.

Many innocent people, who are uninformed about the unreliability of the polygraph as a lie detector, demand to take a polygraph to clear their name. Nearly half of them are shocked when the examiner tells them they are lying. **Social Science Citation:** Christopher J. Patrick and William G. Iacono, *Validity of the Control Question Polygraph Test*, 76 J. APPLIED PSYCHOL. 229 (1991) (44% of truthful subjects were wrongly classified as deceptive.) In their most recent evaluation of the polygraph, **US v. Scheffer**, 523 US 303 (1998), the United States Supreme Court wrote: "Scientific field studies suggest the accuracy rate of the 'control question technique' polygraph is 'little better than could be obtained by the toss of a coin,' that is, 50 percent." Where the polygraph is the dispositive factor, nearly half of the guilty are set free and nearly half of the innocent are accused of lying. As currently practiced by Kansas law enforcement, the polygraph has a grossly disparate (and possibly unconstitutional) impact on the guilty and the innocent, turning the innocent into victims. Innocent persons are currently being victimized by the polygraph. This bill provides reasonable protections for the innocent.

2. HB 2725 DOES **NOT** RESTRICT THE USE OF THE POLYGRAPH AS AN INTERROGATION AND DECISION-MAKING TOOL BY POLICE.

The police use the polygraph as an interrogation technique to elicit admissions against the witness's interests. That practice continues unchanged. When giving a suspect a polygraph, the examiner may begin by using conjuror/magician tricks (marked cards and so forth) to make the examinee think that the instrument works as an infallible "mind reader." After attempts to persuade the witness that the polygraph is an unbeatable lie detector, the witness is then sworn and Mirandized. Kansas Courts have held that all sworn *statements* made in the polygraph are admissible, it is only the results that are inadmissible because of the polygraph's *unreliability*. **State v. Green**, 245 Kan. 398 (1989). The utilitarian reason that the police use the polygraph is unchanged by this bill.

3. HB 2725 ADDRESSES THE PERNICIOUS USE AND ABUSE OF THE POLYGRAPH IN THE PRIVATE AND QUASI-PUBLIC SECTORS

Allowing the continued use of the polygraph in the private and quasi-public sectors is doing much more harm than good. While it is arguable that the State should allow polygraph exams to continue just as the State continues to allow the practices of "psychic reading," "palm reading," etc., there are profound refutations to this position. These are addressed on page four – pernicious use of the polygraph in the private and quasi-public sectors.

COURTS HOLD THAT THE POLYGRAPH IS JUNK SCIENCE

1. SCIENTIFIC STUDIES OF THE POLYGRAPH CONCLUDE THAT IT IS NOT A LIE DETECTOR – AND THE COURTS AGREE!

In the 1980s and 1990s, tort reform efforts to eliminate the introduction of junk science, and eliminate the testimony of self-proclaimed but unqualified "expert witnesses" that introduced the junk science to the jury, led to the US Supreme Court's *Daubert* ruling. In a *Daubert* hearing the judge evaluates whether the proposed testimony is based in the scientific method, and whether the witness has sufficient knowledge of the science on which their proposed testimony is to be based in order to be admitted as a scientific expert.

Since the introduction of *Daubert* and its progeny, with respect to polygraph litigation, in *Daubert* decisions across the United States -- including the Tenth Circuit Court of Appeals, which includes Kansas – courts have held that --

- 1) The polygraph is NOT based in the scientific method, and
- 2) Polygraph examiners, unless they have some other formal education in science, have no education in the scientific method, and are excluded as expert witnesses. **Illustrative Legal Citations:** US v. Cordoba, 991 F.Supp. 1199 (C.D.Ca. 1998); US v. Call, 129 F.3d 1402 (10th Cir. 1997); US v. RDA Jr., 1998 U.S.App. LEXIS 18288, No. 97-5145, 7 August 1998.

2. FBI DIRECTOR J. EDGAR HOOVER SWORE THAT THE POLYGRAPH IS NOT A LIE DETECTOR

In an often overlooked sworn statement to the Warren Commission, in 1964 FBI Director J. Edgar Hoover swore that "It should be pointed out that the polygraph, often referred to as 'lie detector' is not in fact such a device."
see The Warren Commission Report, Appendix XVII, Polygraph Examination of Jack Ruby, Interpretation of the Report (Quote from J. Edgar Hoover).

3. HB 2725 DOES NOT CONFLICT WITH FEDERAL LAW

Worried about polygraph abuses, twelve years ago our federal legislature passed, and President Ronald Reagan signed into law, the **Employee Polygraph Protection Act, 29 USC § 2001 et. seq. (29CFR § 801 et. seq.)**, which was a much needed but very limited polygraph bill. When it was enacted in 1988 Congress contemplated that States would enact stronger legislation. **29 USC § 2009** declares that the federal EPPA "shall not preempt State or Local law that is more restrictive than any provision" in the EPPA.

Although California and a few other States have enacted provisions stronger than the federal EPPA (both houses of the Virginia legislature have recently passed a polygraph protection act) the Kansas Polygraph Protection Act is the most comprehensive.

HISTORICAL AND RECENT POINTS

Only a few hundred years ago we practiced the Trial-by-Ordeal. It was an earlier form of Physiological Detection of Deception (PDD), the "Pinocchio Effect," the *sine qua non* of the polygraph industry. If the accused liar's wounds festered in the scalding or burning ordeal, or if the accused choked in the swallowing ordeal, these physical manifestations were accepted as proof that the subject was lying.

We now look upon those tests as ridiculous superstitions, and agree that passing the trial-by-ordeal had more to do with sanitary wound care or practiced gluttony than it did with the question of whether or not the subject was lying or telling the truth. In my view, today's polygraph is such a trial-by-ordeal. The physiological responses that the polygraph measures have as little to do with determining whether a subject is lying as did the burn wounds of the trial-by-ordeal. Neither in the past nor today is there evidence supporting a "Pinocchio Effect" justifying the polygraph as a means of Physiological Detection of Deception (PDD).

There are thousands of recent real world examples of errors by polygraph examiners who were certain of their results. For example, years before he was caught by other means, confessed spy CIA agent Alrich Ames lied in his polygraph exam, but was judged to be telling the truth by the polygraph examiner. Some recent polygraph examiners say that Dr. Wen Ho Lee is telling the truth; others say Dr. Lee is lying. Which polygraph examiner is right?

H.L. Mencken wrote that "one belly-laugh" is worth a thousand syllogisms. I had such a belly-laugh when I realized this: **As far as I have been able to determine, ALL people who claim to have been abducted by space aliens have passed their polygraph exams.** (If the pro-polygraph panel can point to a purported alien abductee who failed, ask them, "Is that the best you can do?")

Travis Walton, who swears he was abducted by space aliens in 1975, and who was the subject of a movie "Fire in the Sky," passed his polygraph exam. (Jenny Randles, Alien Contacts & Abductions, p. 46. New York: Sterling Publishing Company, 1994). **Charles Hickson**, who swears he was a space alien abductee in 1973, passed his polygraph exam. (Ralph Blum, Beyond Earth: Man's Contact with UFOs, p. 198-199. New York: Bantam Books, 1974). **Whitley Strieber** claims he met with humanoid extraterrestrial visitors several times between 1985 and 1988. He has passed **three** polygraph exams, one of them arranged in London by the BBC. (Whitley Strieber, Communion: A True Story, p. 304-306. New York: Avon (paperback), 1987; Whitley Strieber, Transformation: The Breakthrough, p. 249-250. New York: William Morrow (hardback), 1988.)

As for me, I think this illustrates that the polygraph is completely incapable of detecting truth-tellers from liars. What do you think?

PERNICIOUS USE OF THE POLYGRAPH IN THE PUBLIC, PRIVATE, AND QUASI-PUBLIC SECTORS

A 50% accurate polygraph test is good from the point of view of the State's prosecutors, since 50% of the time they will accurately accuse a guilty party of lying. The suspect will be told: "You might as well confess, you failed the test." However, this also means that society is harmed half of the time: it lets half the guilty go, and it wrongly accuses half of the innocent. This is why polygraphy is doing more harm than good. This harm applies to all the arenas where the polygraph is used, including the public, private, and quasi-public sectors --

- Applicants for most law enforcement jobs in Kansas must pass a polygraph exam. Failing to "pass" a polygraph essentially precludes the candidate from a career in law enforcement.
- Sexual assault victims may be given polygraph exams by the police when the person they accuse passes his polygraph exam.
- Insurance companies may ask policyholders to take a polygraph exam and deny paying claims when the policyholder fails. I telephoned the Insurance Commissioner's office about this practice and an attorney told me that their office has no problem with it.
- The polygraph is being used on patients by self-proclaimed "therapists." Use of the polygraph for "therapy" and "rehabilitation" has been approved by the Kansas high courts and by a Kansas federal court. **Legal Citations:** Bankes v. Simmons, 265 Kan. 341 (1998); State v. Roy A. Lumley, 25 Kan.App.2nd 366 (1998) and State v. Roy A. Lumley, No. 78,447, 16 April 1999; Lile v. McKune, 24 F.Supp.2d 1152 (1998).

Honest police recruits, honest victims of crime, honest insurance policyholders, and citizens in need of legitimate medical therapy rather than quackery, have all been victimized by the polygraph. Polygraph examiners wrongly labeling honest and innocent people liars have wrecked careers and damaged families. This bill will stop that damage.

Since 1947 the Kansas Supreme Court has excluded polygraph evidence under the old **Frye** standard. (State v. Lowry, 163 Kan. 622) However, the court also says that in the absence of a statute, it is not up to them to regulate polygraph evidence outside the courtroom. Outside the courtroom, **regulating polygraph use and abuse is up to the legislature.** It's up to you.



AMERICAN POLYGRAPH ASSOCIATION

NATIONAL OFFICE — ROBBIE BENNETT, *Manager*

951 EASTGATE LOOP, SUITE 800, CHATTANOOGA, TENNESSEE 37411-5608
MAILING ADDRESS: P.O. BOX 8037, CHATTANOOGA, TENNESSEE 37414-0037
e-mail: apabennett@aol.com — <http://www.polygraph.org> — 423/892-3992 — 1-800-APA-8037 — FAX 423/894-5435

PRESIDENT

Donald A. Weinstein, M.S.
DOD Polygraph Institute
7540 Pickens Ave
Ft Jackson SC 29207
803/751-9122

**VICE PRESIDENT
PRIVATE**

William J. Scheve, Jr.
2258 Toniwood Ln
Palm Harbor FL 34685-2225
727/781-2600

**VICE PRESIDENT
GOVERNMENT**

Milton O. Webb, Jr.
9101 Volunteer Dr
Alexandria VA 22309-2922
703/806-0457

**VICE PRESIDENT
LAW ENFORCEMENT**

John E. Consigli
Massachusetts State Police
485 Maple St
Danvers MA 01923-4004
978/538-6029

SECRETARY

Vickie T. Murphy
Maryland Institute of Criminal Justice
8424 Veterans Hwy Ste 3
Millersville MD 21108-0458
410/987-6665

TREASURER

Lawrence Wasser
30555 Southfield Rd Ste 410
Southfield MI 48076-7753
248/559-1600

BOARD OF DIRECTORS

Richard W. Keifer, Chairman
Keifer Group Investigations
1203 Tall Pine Dr
Apopka FL 32712-2586
407/880-1411

Donnie W. Dutton, M.S.
DOD Polygraph Institute
7540 Pickens Ave
Ft Jackson SC 29207
803/751-1952

Sylvia B. Gage, M.A.
20782 Dockside Ter
Sterling VA 20165-7453
703/430-7375

David E. Knefelkamp
PO Box 151
Stillwater MN 55082-0151
651/439-3011

Michael L. Smith
Tennessee Bureau of Investigation
1148 Foster Ave
Nashville TN 37210-4406
615/253-3485

EDITOR

Donald J. Krapohl
DOD Polygraph Institute
7540 Pickens Ave
Ft Jackson SC 29207
803/751-5864

GENERAL COUNSEL

Gordon L. Vaughan, ESQ.
Vaughan & DeMuro
111 S Tejon St Ste 410
Colorado Springs CO 80903-2245

TESTIMONY PRESENTED TO THE COMMITTEE ON FEDERAL AND STATE AFFAIRS

KANSAS HOUSE OF REPRESENTATIVES

BILL NO. 2725

By:

Robert A. Brisentine, Jr.

Chairman, Legislative Committee

American Polygraph Association

March 3, 2000

DEDICATED TO TRUTH

House Fed. &
State Affairs

Date 3/6/00

Attachment No. 6

Page 1 of 7



REMARKS OF ROBERT A. BRISENTINE, JR., AMERICAN POLYGRAPH ASSOCIATION,
TO THE COMMITTEE ON FEDERAL AND STATE AFFAIRS, KANSAS HOUSE OF
REPRESENTATIVES ON MARCH 6, 2000

HOUSE OF REPRESENTATIVES BILL No. 2725

Mr Chairman and Members of the Federal and State Affairs Committee. I am Robert A.

Brisentine, Jr., a private polygraph examiner and a former President of the American Polygraph Association or APA. In addition to 2,250 professional polygraph examiners within the APA, I also speak for the several thousand members of state and regional polygraph associations. It is my pleasure to appear before you and present the views of the APA, on the legislation you are considering.

I am the Chairman of the Legislative Committee of the American Polygraph Association and have been associated with polygraph for the past 50 years. I am retired from the Federal Government with 21 years in the military service and 23 additional years as a civil servant. All of my government service with the exception of one year was in Law Enforcement and I have been a practicing Polygraph Examiner for the past 45 years. I should mention that during the past 10 years I have been in business for myself as a Polygraph Examiner.

The APA is an International Association, which represents the Polygraph Field in programs establishing standards of ethical practices, techniques, instrumentation and training. The APA is a non-profit technical, professional and educational organization. The APA can be grouped around six basic programs: standards, ethics and principles of practice, training, research, publications and public service. The APA strives to upgrade professionalism in the field and to assure that only competent, ethical, and highly trained professionals are available in those cases where truth is an area of issue. In addition, the APA supports the passage of licensing legislation

House Fed. &
State Affairs
Date 3/6/00
Attachment No. 6
Page 2 of 7

2

by Federal, State and municipal governing bodies and opposes legislation that would unfairly deny individuals and organizations the right to use Polygraph Examinations. The issue you are considering has special urgency for our members, for the polygraph industry and in particular, the residents of Kansas.

Mr. Chairman, we commend you for your concerns regarding the improper use of the Polygraph. There is no question that a polygraph can be used abusively. We understand this Committee's interest in focusing public attention on the potential for abuse of the polygraph technique. We share this concern but we take a different approach to solving the problem. We believe that the answer lies in establishing strict standards for training and proficiency of polygraph examiners and for the accuracy and quality of polygraph examinations. The answer does not lie in further restricting the use of the Polygraph Technique, whether it is in the area of Crimes Against Persons, Crimes Against Property, Drug Crimes or Sex Crimes. Further, an examination administered by a competent private examiner is as valid as an examination administered by a competent Law Enforcement/ Government Examiner, or vice versa. We hope these hearings will provide a valuable catalyst for a fresh look at the role and responsibility of polygraph examiners. The APA is however opposed to HR 2725, as it is presently written.

The proposed Bill appears to prohibit any person "unless authorized by law", to request another person to take a polygraph examination, requires "the state" to audio-videotape the examination from at least two views; prohibits the administration of more than one series (a "procedure") of testing in a 24 hour period and requires the examination to be administered in 90 minutes. These prohibitions would most probably eliminate the use of polygraph in Kansas. Additionally, the 90 minute examination and the one series of testing in a 24 hour period violates valid procedures for

House Fed. &

State Affairs

Date 3/6/00Attachment No. 6Page 3 of 7

administering polygraph examinations, as no examination should be rushed and the restriction of permitting the collection of only one series of testing a day will result in many "Inconclusive" examinations. The APA agrees with those sections of the Bill that require the examination to be voluntary and permits the Examinee to cease taking the examination at any time.

The right of the public to protect its business places, its job security, its hard-earned wages, and its health, safety and welfare must be weighted against the desire of the criminal to conceal undetected criminal behavior, dishonesty and material misstatements of fact. Crime on the street has reached such proportions that law enforcement and other elements of criminal justice must use every valid, legal and ethical procedure to protect society. The facts reveal that a polygraph examination conducted by a competent and ethical polygraph examiner is both a reasonable and an effective technique for protecting public rights. It should not be used for frivolous matters, it should not be used for unethical probing into personal questions of sex, religion, or politics that have no bearing on the issue under investigation and it should not be used without the consent of the examinee. Violations of ethical considerations in the use of the polygraph should be prosecuted vigorously in the public interest.

In 1964 a committee of the US House of Representatives stated that the accuracy of the polygraph technique had not been proven to the satisfaction of the scientific world. This was a "wake up call" for the polygraph community. The American Polygraph Association, the Department of Defense of the US Government and many scientists initiated research to determine the reliability and validity or accuracy of the polygraph technique. These studies resulted in establishing polygraph accuracy in the 85 to 95 % range. These studies also resulted in the development of computerized equipment that provide more parameters to evaluate, resulting in greater validity. While the accuracy obtained in experimental situations is most impressive, it is

4

not as high as that reported by polygraph examiners in real-life situations. Further, the vast majority of individuals who are administered polygraph examinations report them as less obtrusive with greater privacy than other investigative procedures. In my experience, I have not found that the proper conduct of a polygraph examination creates false emotions. Virtually all well trained and experienced polygraph examiners quote validity statistics of 90 % or higher. Research to determine the utility of the Polygraph when compared with handwriting, eyewitness and fingerprint identification reported by Dr Frank Horvath of Michigan State University, revealed that cases in which polygraph is used are resolved with a utility ratio of 90%, as compared to 85% for handwriting, 35% for eyewitness testimony and 20% for fingerprint identification.

The Federal Government has found that the Polygraph is a most valuable investigative tool and is most essential to the investigative processes. The reason the Federal Government has recognized success with the polygraph is the training and screening process of the polygraph examiner, the quality control of the polygraph examinations administered within the government and the standards required of the government examiner. The APA fully subscribes to these stringent requirements. While there have been abuses in our profession, as in any other profession, these abuses have been greatly reduced and the validity of the polygraph technique has been enhanced considerably in the past seven years through greater and more frequent training and computerization of the polygraph procedure.

As a retired Federal Government Polygraph Examiner who was charged with administering the largest law enforcement polygraph activity in the nation prior to retirement, I am aware of many criminal incidents that would not have been solved without the use of the polygraph. There are numerous cases in which the offender would not go to trial if the victim's statement could not be

House Fed. &
State Affairs

Date 3/6/00

Attachment No. 6

Page 5 of 7

5

verified through some means. As most sex crimes are not generally witnessed, the polygraph is the most unobtrusive procedure and sometimes the only procedure to verify the statements of appropriate persons affiliated with the investigation. The polygraph technique is utilized by all federal and state agencies that have enforcement powers and by a majority of the local governments that conduct investigations affecting public health and safety. The increased incidents of crime complaints coupled with the limited resources of many Law Enforcement Agencies dictates that law enforcement use all valid procedures in the conduct of their investigations. Many states have enacted laws to license, certify and supervise polygraph examiners. I am saddened to report that Kansas is not one of those states. Rather than eliminate a valid procedure that law Enforcement needs, would it not be better to regulate the certification requirements and discipline of the polygraph examiner?

In a free society, no person's right is absolute; it must give way, to a degree, to the rights of others. Crimes have reached such proportions that law enforcement must use every valid, legal and ethical procedure to protect society. If there is a chance the alleged victim is fabricating his or her complaint or that the Prosecutor needs additional verification that a crime occurred before referring the case for trial, then the use of polygraph is appropriate. The facts reveal that a polygraph examination conducted by a competent and ethical polygraph examiner is both a reasonable and an effective technique for protecting the innocent, whether it is the alleged victim or the accused. As previously mentioned, the Polygraph should not be used for unethical probing into personal and private matters that have no bearing on the issue under investigation and it should always be voluntary. Ethical violations in the use of the polygraph must not be tolerated. I can assure you that when the APA is notified of some wrong activity by a member examiner, the matter is aggressively investigated and if found culpable, the member is punished swiftly and decisively.

House Fed. &

State Affairs

Date 3/6/00Attachment No. 6Page 6 of 7

6

Not too many years ago, I was asked to polygraph a young lady who contended that she had been raped by a member of the US Navy. The accused refused to be examined with the polygraph based on the advice of his lawyer however the young girl, who was pregnant, agreed to be administered a polygraph. This polygraph revealed that the Complainant was telling a partial truth as she had been violated, but by her Father and not by the Navy man. In this instance, the case would not have been resolved and an innocent man would have been placed on trial. I could give you many instances wherein the case would not have been solved if law enforcement was prohibited from conducting a polygraph of the Complainant. In a number of instances the Complainant's statement does not appear correct and Probable Cause to prosecute does not appear to exist.

Legislation in the form of HR Bill 2725, which would severely limit the use of polygraph by Polygraph Examiners in the Kansas Criminal Justice arena does not appear appropriate and would be detrimental to residents of the State. Instead of a prohibition type legislation, the American Polygraph Association recommends legislation that would license and regulate the use of polygraph wherein the rights of the public would be protected by assuring that only those polygraph examiners who are properly trained and utilize proven standards are permitted to conduct polygraph examinations in the State of Kansas.

Thank you for allowing me to speak with you today. I am available if there are any questions of me.

Robert A. Brisentine, Jr.

HR-7/#25/WORD 97



DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
900 S.W. Jackson — Suite 400-N
Topeka, Kansas 66612-1284
(785) 296-3317

Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

Date: March 6, 2000

To: House Federal and State Affairs Committee

From: Charles E. Simmons
Secretary of Corrections

Re: HB 2725

HB 2725 prohibits the use of polygraph examinations except for investigations of felony crimes. Additionally, polygraph examinations of witnesses and complainants is prohibited by the bill. Finally, HB 2725 establishes procedures for conducting polygraph examinations. Violations of the provisions of HB 2725 would be a severity level 10 nonperson felony.

The Department of Corrections utilizes polygraph examinations as a component of the treatment program provided to sex offenders while incarcerated as well as during the supervision of offenders on parole or postrelease supervision in the community. Additionally, the department utilizes polygraph examinations as a tool when conducting investigations involving the security of correctional facilities, breaches of which do not rise to the level of being a felony. The department also uses polygraph examinations of witnesses and informants as an aid in assessing their veracity in guiding the course of investigations.

The department incorporated the use of polygraphs into its Sexual Abuse Treatment Program at the recommendation of a treatment consultant provided by the National Institute of Corrections. The use of polygraphs is a widely recognized treatment tool for sex offenders. In their book "The Sex Offender, New Insights, Treatment Innovations and Legal Developments", Vol. II; Schwartz, Ph.D. and Cellini, Ph.D., noted that for many years clinicians have recognized the utility of polygraph examinations in the treatment of sex offenders and that numerous treatment programs utilize routine polygraph assessments. (Pages 6-3 to 6-4, a copy of which is attached).

House Fed. &
State Affairs
Date 3/6/00
Attachment No. 7
Page 1 of 6

March 6, 2000

Page 2

Polygraph assessments of offenders residing in the community assist the department in determining whether heightened supervision of a released offender or additional rehabilitation treatment should be pursued.

Polygraph examinations are also a valuable tool in the investigation of matters affecting the security of correctional facilities. Situations that compromise the security of facilities do not always rise to the level of constituting a felony crime. Gambling, unauthorized dealing and trading between inmates, some forms of improper relations between staff and inmates, and the crime of mistreatment of a confined person are not felonies but nonetheless are matters that must be investigated by corrections officials. Additionally, HB 2725 would prohibit the use of polygraph examinations of an inmate who makes an accusation that a staff member has committed a felony crime.

The department believes that HB 2725 would impair its ability to fulfill its mission of providing a safer Kansas through effective correctional services. The department has prepared a balloon amendment to HB 2725 permitting polygraph examinations for the treatment and supervision of offenders as well as investigations relating to the security and orderly operation of the department.

The department urges amendment of HB 2725.

House Fed. &
State Affairs

Date 3/6/00

Attachment No. 7

Page 2 of 6

THE SEX OFFENDER
NEW INSIGHTS,
TREATMENT INNOVATIONS AND
LEGAL DEVELOPMENTS

VOLUME II

Edited by
Barbara K. Schwartz, Ph.D.
and
Henry R. Cellini, Ph.D.

Used with permission of the authors granted to
Kansas Department of Corrections



Civic Research Institute

4490 U.S. Route 27 • P.O. Box 585 • Kingston, NJ 08528

House Fed. &

State Affairs

Date 3/6/00

Attachment No. 7

Page 3 of 6

Used with permission of the authors granted to
Kansas Department of Corrections

Copyright © 1997

By Civic Research Institute, Inc.
Kingston, New Jersey 08528

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

*From a Declaration of Principles jointly
adopted by a Committee of the American Bar
Association and a Committee of Publishers*

All rights reserved. This book may not be reproduced in part or in whole by any process without written permission from the publisher.

Printed in the United States of America

Library of Congress Cataloging in Publication Data
The sex offender: Volume II: New Insights, treatment innovations
and legal practice/Barbara K. Schwartz, Henry R. Cellini

ISBN 1-887554-02-5

Library of Congress Catalog Card Number 95-70893

House Fed. &
State Affairs

Date 3/6/00

Attachment No. 7

Page 4 of 6

agement activities, (11) denial of the difficulty of change and need for help, and (12) denial of relapse potential and possible recidivism. With the exception of the first, these are all minimizations of an admitted behavior and are often successfully challenged during the early phase of treatment groups. Schlank and Shaw (1996) have described "absolute denial" as the continuation of denial of the sexual offense after the process of confrontation in a traditional sex offender treatment setting.

Treating Minimization and Absolute Denial

Because it is expected that most sexual offenders minimize or deny their charges, experienced clinicians have developed numerous strategies for confronting these defenses and assisting clients in fully participating in their treatment. Routinely, offenders who have denied their charges in court and even in court-ordered sexual offender specific psychological evaluations admit their guilt and subsequently take responsibility for their offenses once they have been exposed to the safety of a well-facilitated sexual offender treatment program. Thus, most programs allot a specific amount of time and sometimes specific procedures for confronting denial during the early phase of treatment. In recognition of this process, most programs have already allowed offenders in complete denial to participate in treatment for a limited period of time, during which the offender is expected to respond to the support and the peer pressure of the group by admitting culpability. Schwartz (1995) noted that denial seems to disappear once the "individual understands that the therapist will not reject him and brand him as a sex-crazed pervert" (p. 14-6). She discusses other techniques, including deliberately ignoring the denier until he begins to bond with the other group members, using paradoxical interventions, and using hypnosis (either to retrieve memories that were actually suppressed or to allow an offender an opportunity to admit while "saving face").

For many years now, clinicians have incorporated erectile measures and polygraphy to interfere with minimization and denial. Barnard, Fuller, Robbins, and Shaw (1989) described a computerized lab as a component of the sex offender treatment program where penile plethysmograph evaluations were routinely utilized to confront the minimization and denial of treatment participants. Numerous treatment programs utilize routine polygraph assessments where offenders' minimization and denial are confronted in the context of community management of the offenders. Adolescent offenders in the Fuller's community-based treatment program, "Adolescents Who Sexually Offend," are administered polygraphs which question the details of their offense descriptions as well as reviewing their overall honesty in group and their exposure to high-risk factors that might jeopardize their relapse prevention plans. Recent court decisions have supported the therapeutic use of polygraphs as long as they do not cause the client to self-incriminate.

Marshall (1994) routinely includes offenders who totally deny any deviant behavior in his treatment groups. During group sessions, each offender is asked to disclose to the group the nature of his offenses in detail, including not only the assaults but also the surrounding preceding circumstances, his thoughts and feelings at the time, his emotional and mental state, his level of intoxication (if relevant) and how this was induced, and his interpretation of the victim's behaviors and emotional reaction.

Therapists are provided with detailed court reports of the offenses and challenge

House Fed. &
State Affairs

Date 3/6/00

Attachment No. 7

Page 5 of 6

each offender's version while also providing a supportive environment for change. Each offender is asked to repeat his version of the offenses until it closely matches the court report. In Marshall's study, only 2 deniers remained out of 25 who began the treatment groups.

Marshall's technique appears highly effective with incarcerated populations, where treatment staff have some leverage (e.g., being able to recommend an offender for early release if he benefits from treatment). However, this technique is less powerful with offenders in community-based programs with limited incentives to offer or with offenders who are incarcerated with no possibility of early release.

Dealing With Continued Denial

However, the most difficult task seems to be the treatment of offenders who are in complete and resistant denial. Many programs point to the limited number of treatment beds available and refuse to accept offenders who will not admit to committing their crimes. Happel and Auffrey (1995) presented further justification for excluding denying offenders, stressing the importance of both limiting the time and money spent on offenders "who are unwilling to admit their deviance and work in group" and also avoiding the difficulties involved in accepting "sex offenders who threaten cohesion and confidentiality through their denial and intimidation of others" (p. 17). A recent court case (State v. Imlay, 1991) suggests that these reasons may not be adequate anymore. In this Montana case, a sexual offender on probation was found not to be in violation of his probation after being terminated from his sex offender group for failure to admit to his offense. The court stressed that this man was only "asserting his constitutional right against self-incrimination." However, it continues to be routine to eject denying sexual offenders from treatment programs after several weeks or months in the treatment program.

On the other hand, some clinicians have maintained deniers in treatment without requiring admission. As mentioned earlier, Maletzky (1991, 1993) has reported on his experience treating offenders who deny and has begun follow-up studies of their recidivism rates. Steen (1992) also described a treatment program that included offenders who completely denied their charges. In her program, offenders were considered to have successfully completed treatment without admitting, and she has described an apology letter written by a denier to his victim at the time of reunification. In this letter, the denier refers to vague ways in which the victim may have felt hurt and apologizes for this rather than for the specific offenses. In addition, O'Donohue and Letourneau (1993) reported some success in a community-based treatment group in which offenders who denied their guilt were provided with an overview of victim empathy training, cognitive restructuring, sex education, assertiveness and social skills training, and education about sexual offender therapy.

A Program for Treating Deniers

In an effort to treat resistant deniers outside the traditional ongoing group setting, Shaw and Schlank (1992) described some early data that provided support for introducing victim empathy and relapse prevention elements in a nonthreatening manner to prepare denying offenders (who were court-ordered to community-based treatment) for entrance into a sexual offender treatment program. Their early data was support-

House Fed. &
State Affairs

Date 3/6/00

Attachment No. 7

Page 6 of 6



9

Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

TESTIMONY
BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
ROBERT E. BLECHA, ASSISTANT DIRECTOR
IN OPPOSITION TO HB 2725
MARCH 6, 2000

Mr. Chairman and Members of the Committee:

I am Bob Blecha, Assistant Director with the Kansas Bureau of Investigation (KBI), and appear here today in opposition to HB 2725.

Within my division there are four polygraphists who perform examinations not just for the KBI, but for state and local law enforcement agencies across the state. We average 400-500 polygraphs a year. I, myself, am not a polygraphist and do not pretend to understand the science. There are people here today who can explain it far better than I.

After 12 years as a county sheriff and 20 years with the KBI, I can assure you that I have seen polygraphs work as an investigative tool. No tool devised by man is perfect and 100% reliable, but a polygraph examination is a valued, useful investigative tool in the law enforcement community. The polygraph examination is not the sole determining factor in an investigation.

I have seen people under suspicion cleared at least tentatively, which allows law enforcement to focus its all too limited resources on more productive suspects. A typical example is where numerous individuals have access to the location where property has disappeared, such as six bank tellers who have access to the cabinet from which money has disappeared. By use of the polygraph on those six

House Fed. &
State Affairs
Date 3/6/00
Attachment No. 8
Page 1 of 2

tellers, five of them may pass and we are allowed to focus our investigation on the person who failed. Even if the person who failed the polygraph doesn't give a confession, which frequently is the case, such tests are of great value to law enforcement. By reviewing their financial records, normally unexplained cash deposits and expenditures are discovered in these embezzlement cases, and when confronted and asked to explain the additional wealth, a confession sometimes follows.

While these kinds of financial investigations could be done absent a polygraph, it would require obviously six times the number of investigative hours to conduct those kinds of investigations on all six persons having access to that cash drawer. If the investigative hours saved were multiplied by the 400-500 polygraph examinations the KBI conducts each year, you can see the massive savings in hours alone the polygraph provides law enforcement.

I am not saying that a polygraph examination is a perfect investigative tool, nor am I saying it cannot be abused, just as any tool can be misused. What I am saying is that a polygraph examination done properly has demonstrated itself to be useful in detecting the innocent as well as the guilty, and is used by the FBI, CIA and military and law enforcement across this country as a needed and valuable tool.

Several years ago the federal government stepped in and proposed restrictions with the Federal Employee Polygraph Protection Act. The use of the polygraph in law enforcement is governed by the courts. HB 2725 would deny law enforcement access to this investigative tool and would undoubtedly result in not just some guilty parties going free, but some innocent persons being unnecessarily the subject of an investigation. Thank you.



CITY OF TOPEKA

DEPARTMENT OF POLICE
320 S. Kansas Ave., Suite 100
Topeka, Kansas 66603-3640
Phone 785-368-9551
Fax 785-368-9458

TESTIMONY ON HOUSE BILL 2725 by LT JOHN SAMS, TOPEKA POLICE DEPARTMENT

The Topeka Police Department is opposed to House Bill 2725 dealing with regulations being proposed regarding the administration of polygraph tests. There currently exists adequate legislation and regulations on both the State and Federal levels to curtail any abuse and to allow anyone to seek remedy against such perceived abuse.

In 1988 the Federal Polygraph Protection Act was passed to deal with irregularities that occurred in the polygraph field. This federal Act deals with employee rights regarding the administration of polygraph and the instances when a polygraph may be administered to an employee. Appropriate exemptions were made to the fields of government and some private industry that deals with sensitive issues.

Since that time this Federal Act has stood well for the private sector as well as the public sector. In Law Enforcement the polygraph plays an important role as an investigative tool. The term investigative must be kept in mind as there are absolutely no provisions in any law that allows the polygraph to be used as the sole determination in the prosecution or administration of criminal justice to any person.

The Topeka Police Department has found that the polygraph is an integral tool to be used in criminal investigations. No case or criminal prosecution is concluded based on the findings of any polygraph test. The polygraph is used as support to verify the veracity of victim and witness statements. It is used to verify the truth of suspects on alibis they give to prove their innocence. It has been used to protect against false accusations by vindictive victims who falsely report a crime. The Topeka Police Department has used the polygraph extensively over the years in investigations ranging from homicides to hit and run cases.

There are many instances that can be cited to show the positive aspect of using a polygraph to help in an investigation to identify the guilty party. This Department recently concluded a case on a local financial institution where six polygraph tests were administered to employees. The test was to clear them and show there was no wrong doing on their part. One person failed the test and subsequent investigation found that person to have stolen in excess of \$30,000 from the financial institution. It also revealed this same person had committed the same crime twice before at other financial institutions where they had been employed.

House Fed. &
State Affairs

Date 3/6/00

Attachment No. 9

Page 1 of 3

The polygraph pointed the way towards a suspect. The polygraph did not convict anyone. The investigator was able to utilize the results of the test to find evidence of the persons wrong doing. This case was successfully concluded and will be prosecuted. The police are frequently presented cases such as this, with multiple persons involved where the polygraph is used to point out a possible suspect as noted above or to clear anyone of wrong doing.

The polygraph is used in many cases where several persons are involved. It is used to narrow the scope of an investigation and give direction to an investigator wherein to best concentrate their efforts. By doing this an investigator can better direct his time and resources toward a specific end. It results in savings to an organization in time and money as it eliminates needless work.

Removing this tool from law enforcement would hinder investigations. Police officers need access to tools that will help them solve cases. Polygraph has been a discipline under constant scrutiny since its inception. Vast improvements have occurred in the field through testing and experimentation to validate the veracity of the test results. Polygraph is used extensively throughout all the law enforcement fields. It is used in investigations and in the probation field to monitor sex offenders, such as is currently being done at Larned State hospital.

It is also an important resource used in the hiring process by most law enforcement agencies. Law Enforcement is committed to hiring the best possible candidates for these positions. The polygraph is used to verify information provided by applicants during the application process. It is used to verify any facts they present to the hiring agency and has been used very successfully to eliminate less than acceptable candidates who have attempted to hide criminal activities and substance abuse problems.

It also plays an important part in any law enforcement agency's policing of itself. Recent events point out the need to maintain a corruption free law enforcement agency. Polygraph is used during internal investigations to determine the officer's credibility, as well as the complaining party. The polygraph again is only a tool to be "used", not the determining factor. Many departments have safeguards built into labor agreements with their employees that regulate the use of polygraph testing.

Passage of this type of irresponsible legislation would greatly harm law enforcement agencies in Kansas. There are no examples of misuse of the polygraph or anyone charged or convicted of any crime based solely on a polygraph test.

There are three polygraph examiners on the Topeka Police Department. All are Kansas certified Law Enforcement officers who have undergone extensive training in the field of polygraph testing. They are all members of professional organizations; the Kansas Polygraph Association and the American Polygraph Association. They strive to always maintain their professionalism and skill. Participation in these organizations keeps them current with trends in polygraph and affords them updated training.

The Topeka Police Department respectfully requests the members of the committee to vote against this bill thus, allowing current law to continue and benefit law enforcement in Kansas.



American Association of Police Polygraphists, Inc.

18160 Cottonwood Road, #503, Sunriver, OR 97707 • Business: (888) 743-5479 • Fax: (541) 598-7332
EMAIL: ljpoly@aol.com

PRESIDENT:

John P. Mata
3201 University Blvd. SE, Suite 103
Albuquerque, NM 87106-5601
Business: (505) 346-7752
FAX: (505) 346-7757
EMAIL: e9chief@aol.com

VICE PRESIDENT:

Gordon W. Moore
Texas Dept. of Public Safety
P.O. Box 4087
Austin, TX 78773-0001
Business: (512) 424-5912
FAX: (512) 424-5766
EMAIL: gwmoore1@juno.com

SECRETARY:

Robert C. Heard
San Bernardino County Sheriff's Dept
P.O. Box 2155
Upland, CA 91785-2155
Business: (909) 387-0625
FAX: (909) 931-5736
EMAIL: bobheard@prodigy.net

TREASURER:

Linda J. Quinonez
18160 Cottonwood Road, #503
Sunriver, OR 97707
Business: (888) 743-5479
FAX: (541) 593-3883
EMAIL: ljpoly@aol.com

CHAIRPERSON OF THE BOARD:

Billy J. Rakes
100 S. Hughey Avenue
Orlando, FL 32801
Phone: (407) 246-2425
FAX: (407) 246-2624

REGION I AND QUALITY CONTROL DIRECTOR:

David M. Renzelman
3901 W. 43rd Avenue
Kennewick, WA 99337
Business: (509) 372-2582
Pager: (888) 363-0874
FAX: (509) 372-3427
EMAIL: lie2me@3-cities.com

REGION II DIRECTOR:

Michael G. Mann
Overland Park Police Department
12400 Foster
Overland Park, KS 66213
Business: (913) 327-6908
FAX: (913) 327-5730
EMAIL: mgmann@opkansas.org

REGION III DIRECTOR:

William J. Majeski
385 Atwood Place
Wyckoff, NJ 07481
Business: (201) 891-0073
FAX: (201) 891-1312
EMAIL: majeski@worldnet.att.net

REGION IV DIRECTOR:

B. Morris Covin
La Porte Police Department
P.O. Box 729
Deer Park, TX 77536
Business: (713) 923-9997
FAX: (713) 923-2203
EMAIL: mcovin@flash.net

REGION V DIRECTOR:

David L. Miller
DOD Polygraph Institute (DODPI)
804 W. 64th Street
Anniston, AL 36206
EMAIL: dlmlknp@aol.com

EDITOR:

Ronald L. Fox
3201 University Blvd. SE, Suite 103
Albuquerque, NM 87106-5601
Business: (505) 346-7752
FAX: (505) 346-7757
EMAIL: pddfox@aol.com

Testimony: House Bill 2725, Kansas Polygraph Protection Act

From: Michael G. Mann, Region II Director
American Association of Police Polygraphists (AAPP)
Certified Police Polygraph Examiner, Overland Park, KS
Police Department

Kansas Association of Chiefs of Police
Bob Rodriguez, President and Chief of Police, Emporia,
Kansas

Date: March 6, 2000

On behalf of the members of the American Association of Police Polygraphists and John Mata, President of AAPP, and the Kansas Association of Chiefs of Police and Bob Rodriguez, President of KACP, I would like to express our serious concern and total opposition to House Bill 2725, the "Kansas Polygraph Protection Act."

The AAPP is a national association representing polygraph examiners who are current or former employees, of an investigative or intelligence agency on a federal, state or local level of government, salaried or contracted, to provide polygraph service for a duly constituted law enforcement organization. The AAPP represents approximately 750 polygraph examiners dedicated to:

- ◆ Encouraging and developing cooperation among all American law enforcement organizations in the application and utilization of accepted polygraph technique.
- ◆ Developing the highest standards of proficiency in the polygraph profession by fostering and encouraging scientific training and research through advanced study and progressive techniques.
- ◆ Promoting and maintaining the highest standards of ethics, integrity, honor and conduct in the polygraph profession.
- ◆ Providing an opportunity and forum for the exchange of information regarding polygraph experiences, studies and research.
- ◆ Cooperating with other national, regional and state associations and other professional organizations in matters of mutual interest and of benefit to the polygraph profession.

House Fed. &
State Affairs

Date 3/6/00

Attachment No. 10

Page 1 of 2

The AAPP believes that scientific evidence strongly supports the high validity and reliability of the use of polygraph. Further, it is the belief of the AAPP and KACP that the use and acceptance of polygraph by the courts, legal community and law enforcement agencies have increased due to the awareness of scientific research studies. The scientific evidence supporting the use of specific issue and pre-employment/security clearance polygraph testing is well documented in the archives of the Department of Defense Polygraph Institute (DoDPI). Dr. Gordon Barland, with the DoDPI serves as the chairman for AAPP Research Committee and operates as the point of contact for research studies on the validity and reliability of polygraph testing.

In addition to supporting the continued scientific research on polygraph the AAPP also fully endorses the significant strides being made by the American Society for Testing Materials (ASTM) in its efforts to develop standards for the entire polygraph profession. ASTM is one of the largest voluntary standards development organizations in the world. This organization supports numerous technical standard-writing committees for the development of consensus standards for materials, products, services and the promotion of related knowledge.

In 1998 ASTM officially established a permanent committee (E-52) for polygraph (Forensic Psychophysiology) to establish standards for the profession. Presently there are seven subcommittees that have established or are developing standards in the following areas: Research, Instrumentation, Quality Control, Examiner Education and Training, Psychophysiological Detection of Deception, Terminology, and Ethics in Administration of Polygraph. The AAPP and KACP believe that we must continue to undertake all measures to ensure that properly trained examiners conduct polygraph examinations utilizing standardized techniques.

In December of 1988 the Employee Polygraph Protection Act (EPPA) became law. This federal law establishes guidelines for polygraph testing and imposes restrictions on most private employers. Even though local, state and federal governmental agencies (such as police departments and criminal justice organizations) are exempted from the legislation, the AAPP and KACP clearly understand the essential elements of the law and the profound statement for standardization, professionalism and accountability being sent to the entire polygraph profession through the legislation. The AAPP recognizes the positive benefits of EPPA, and along with KACP believe that the legislation lends ample protection to the citizen from the possible misuse of polygraph.

In closing, I again want to clearly state that the American Association of Police Polygraphists and the Kansas Association of Chiefs of Police stand shoulder to shoulder in voicing the strongest opposition possible for House Bill 2725. The use of specific issue and pre-employment/security clearance polygraph examination provides invaluable assistance to the government in resolving criminal matters, and maintaining employment standards critically necessary for public trust positions. The AAPP and KACP fully support the continued use of polygraph testing in the state of Kansas, and together are dedicated to maintaining the highest standards of education, research, supervision and training in the discipline of polygraph.

House Fed. &
State Affairs
Date 3/6/00
Attachment No. 10
Page 2 of 2

DAVID E. President
Riley County Police Department
Manhattan, Kansas 66502

DOUG MURPHY, President-Elect
Cherryvale Police Department
Cherryvale, Kansas 67335

DAVE BURGER, Vice-President
Lenexa Police Department
Lenexa, Kansas 66215

ALVIN THIMMESCH
Secretary-Treasurer
Kansas Peace Officers' Association
Wichita, Kansas 67201

BILL RICE
Sergeant at Arms
Arkansas City Police Department, Retired
Arkansas City, KS 67005

BOARD OF GOVERNORS

GOVERNORS AT LARGE

RON GOULD
Kansas Law Enforcement Training Center
Hutchinson, Kansas 67504
BILL SECK
Federal Bureau of Investigation
Wichita, Kansas 67201
LARRY THOMAS
Kansas Bureau of Investigation
Topeka, Kansas 66612
HOWARD KAHLER
Florence Police Department
Florence, Kansas 66851

GOVERNORS

DISTRICT 1

LOREN ANDERSON
Sheriff, Douglas County
Lawrence, Kansas 66044
JAMES "BUD" BURKE
AT&SFRR Police
Kansas City, Kansas 66101
TIM CRONIN
Ottawa Police Department
Ottawa, Kansas 66067

DISTRICT 2

RANDY THOMAS
Lyon County Sheriff's Office
Emporia, Kansas 66801
JOSH KYLE
Riley County Police Department
Manhattan, Kansas 66502
NATE SPARKS
Kansas Highway Patrol
Junction City, Kansas 66441

DISTRICT 3

DAVE SMITH
Ellsworth Police Department
Ellsworth, Kansas 67439
KELLY E. KEMP
Clay County Sheriff's Office
Clay Center, Kansas 67432
WILEY KERR
Kansas Bureau of Investigation
Clay Center, Kansas 67432

DISTRICT 4

LAWRENCE YOUNGER
Hays Police Department
Hays, Kansas 67601
TROY THOMSON
Norton County Sheriff's Office
Norton, Kansas 67654
JERRY BUMP
Ks. Dept. of Wildlife and Parks
Hays, Kansas 67601

DISTRICT 5

RAY MORGAN
Kearney County Sheriff's Office
Lakin, Kansas 67860
DENNIS SHARP
KS Dept. of Wildlife and Parks
Holcomb, Kansas 67851
DAVID RUPP
Garden City Police Department
Garden City, Kansas 67846

DISTRICT 6

WARREN S. PETERSON
Barton County Sheriff's Office
Great Bend, Kansas 67530
BOYCE MOSES
Kansas Law Enforcement Training Center
Hutchinson, Kansas 67504
TIM DRISCOLL
St. John Police Department
St. John, Kansas 67530

DISTRICT 7

CRAIG KING
Cowley County Sheriff's Office
Winfield, Kansas 67156
TOM PRUNIER
Derby Police Department
Derby, Kansas 67037
SCOTT MAYFIELD
Kansas Highway Patrol
Wichita, Kansas 67226

DISTRICT 8

LOWELL PARKER
Greenwood County Sheriff
Eureka, Kansas 67045
CHARLES D. WARD
KS Dept. of Wildlife and Parks
Chanute, Kansas 66720
JAMES J. KILBY
Iola Police Department
Iola, Kansas 66749

Kansas Peace Officers' Association

INCORPORATED

TELEPHONE 316-946-KPOA

FAX 316-946-0570

P.O. BOX 2592 • WICHITA, KANSAS 67201



March 6, 2000

Testimony before the Kansas House Federal and State Affairs Committee in opposition to HB 2725, the proposed Kansas Polygraph Protection Act.

Mr. Chairman and members of the committee:

My name is David Burger, I am a Captain with the Lenexa, Kansas Police Department and also serve as this year's Vice President of the Kansas Peace Officers' Association. On behalf of KPOA, I want to thank you for holding this hearing on House Bill 2725.

Being acquainted with many of the conferees in attendance here today in opposition to this bill, I will defer to their testimony to describe the virtues of polygraph and how Kansas law enforcement uses it in their criminal investigations, pre-employment screening, and examination of internal affairs issues. I have only a brief statement to make on behalf of the 3,700 members of the Kansas Peace Officers' Association, the majority of whom include the use of polygraph in their investigative pursuits.

This is a reliable tool, with a proven record of effectiveness. In the Federal Polygraph Protection Act, the United States exempted itself, State and local governments from many of its prohibitions including pre-employment and employment testing.

Demonstrations and descriptions of isolated instances cannot tell the whole story of polygraph. No one here will claim it to be perfection. The men and women who conduct these examinations will agree that countermeasures, when applied by a "voluntary" participant will skew results and that they can identify those countermeasures. The reported result then is that the subject was not cooperative and the examination is ruled inconclusive.

House Fed. &
State Affairs

Date 3/6/00

Attachment No. 11

Page 1 of 2

In Unity There Is Strength

Perhaps you are aware of the terrible situation in Los Angeles wherein a scandalous internal corruption investigation is under way in the police department. Over the weekend, the Deputy Chief in charge of that investigation complained that he could trace the current problem to the fact that the Los Angeles Police Department is the only major city police department that doesn't allow the use of polygraph in pre-employment screening. Whether or not L.A.P.D is in fact the only one...the point remains the same.

The portions of Kansas House Bill 2725 that allow the polygraph examiner to testify only against himself are hideous and worthy of not much comment beyond that.

KPOA respectfully urges that you NOT pass this bill out favorably. To do so, we feel, would send the mixed message to Kansas law enforcement that they are expected to more to fight crime and corruption on behalf of Kansans and to do it with fewer tools.

Respectfully submitted



Captain David A. Burger
Vice President

House Fed. &
State Affairs

Date 3/6/00

Attachment No. 11

Page 2 of 2



Sgt. Rusty James
Polygraph Examiner
Lenexa Police Department
12500 W. 87th Parkway
Lenexa, KS 66216
Phone: (913) 477-7300

TESTIMONY OPPOSING HOUSE BILL No. 2725

I am employed by the Lenexa Police Department as a Polygraph Examiner. I have been a Polygraph Examiner for over ten years. The Lenexa Police Department, and the majority of the other departments in the Metro area, utilize polygraph examinations as a part of the pre-employment screening process, for investigations within the departments, and in criminal investigations.

The Lenexa Police Department opposes this legislation for a number of reasons. The polygraph is a valuable tool for law enforcement, and this bill would severely restrict the use of polygraph testing in Kansas.

Police employees have access to vast amounts of information, much of it private or confidential. Officers are required to be of the highest integrity. This is essential for the safety of our communities. During the pre-employment screening process, the polygraph test is one of the tools that is used to verify the integrity of potential employees. The polygraph test can be the most valuable tool at our disposal. We must be able to verify the information provided by potential employees. Polygraph testing often reveals much more information than even the most thorough background investigation. We owe it to the citizens of our community to verify the integrity of our police officers.

The polygraph is also a valuable tool for use in internal investigations. When allegations are made, it is essential that the Department investigate them thoroughly and completely. For this purpose, polygraph testing helps to substantiate complaints, or to clear officers of any wrongdoing. We owe this to our employees, and to the citizens of our community.

Polygraph testing is also used in the investigation of criminal offenses, both misdemeanor and felony. Polygraph tests are requested by Investigators, the District Attorney, the suspects, and others. We feel that the tests are a reliable way to determine the truthfulness of suspects, witnesses, and victims. It is essential that we have this tool available to us for use in criminal investigations as needed.

House Bill N. 2725 has a number of restrictions that would be placed on law enforcement. This bill also places restrictions on the testing that could make it unlikely that a thorough, complete polygraph test could be conducted.

The bill states that "it is unlawful for any person, unless authorized by law to use or to employ a polygraph, or to ask another to take a polygraph, or to offer to give another a polygraph examination." However, it does not state what law is applicable.

The bill limits the use of polygraph testing to felony investigations. Although the majority of our criminal polygraph tests are conducted as a part of a felony investigation, it sometimes becomes necessary to utilize the tests during the investigation of misdemeanor crimes. Polygraph testing can be a valuable tool for use in the investigations of all types of crimes, not just felonies.

The bill states that an attorney may be present when a polygraph test is conducted. The language of the bill is not specific concerning the presence of an attorney. However, it is not practical to have an attorney, or anyone else, present in the polygraph room during the interview and test.

The Lenexa Police Department currently has the ability to videotape and audio tape polygraph tests. However, there is only one view recorded. Requiring that two views be recorded places an unnecessary burden on the Department. We have limitations on space and environment in the polygraph room. Not to mention the added cost to purchase, install, and maintain the additional equipment. This bill would place an unfunded mandate on departments to comply.

The bill limits the time that is allowed for a polygraph test to 90 minutes. Depending on the type of case and the information needed for the test, it can take almost that long to complete a thorough interview. This would force the examiners to stop the test without completing it, or to shorten the interview process. In either instance, the result would be a test that certainly would not benefit the subject taking the test.

The Lenexa Police Department has procedures in place that insure that tests are voluntary. The subjects are always told that they can stop the test at any time and leave the examination room. Again, these procedures serve to insure that the tests are voluntary, and to insure the subject's rights.

This bill appears to focus more on penalizing polygraph examiners and law enforcement officers than on guaranteeing the rights of subjects that may be tested. There is considerable information in this bill directed towards the penalties for violation.

House Fed. &
State Affairs
Date 3/6/00
Attachment No. 12
Page 2 of 3

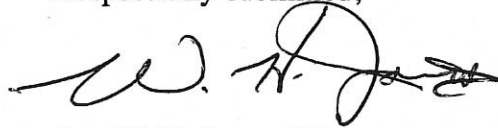
The language of the bill states that the polygraph examiner's opinions and interpretations of the results of an examination are not admissible, unless it is used in proceedings against the examiner. I believe that a truthful, or innocent, subject would like to have the interpretations of the examiner available for use on their behalf.

It is essential that we be able to conduct thorough, complete investigations, whether they are pre-employment, administrative internal, or criminal. The polygraph test is a valuable tool in those investigations. House Bill No. 2725 undermines our efforts in those regards.

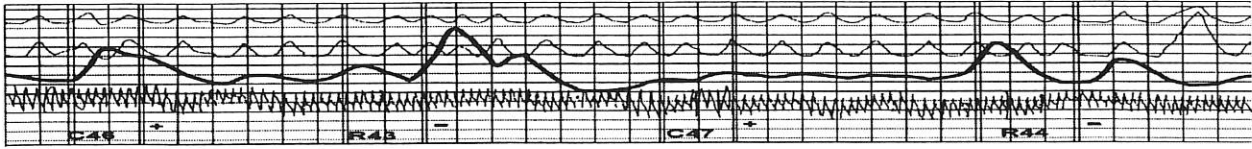
As a police department, we owe it to the citizens of our community, and to the citizens of this State, to insure the integrity of our officers. We also owe it to them to conduct criminal investigations in such a manner to identify guilty suspects, and to verify the truthfulness of all parties involved in criminal investigations.

I would ask for your assistance by voting against House Bill No. 2725.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "W. H. James III", with a stylized flourish at the end.

Sgt. W.H. James III
Polygraph Examiner



FORENSIC ASSESSMENTS, INC.

GARY F. DAVIS, CLI

PSYCHOPHYSIOLOGICAL DETECTION OF DECEPTION

P O Box 6, Vassar, Kansas 66543 (785) 828-3306 / 1427 West Douglas, Wichita, Kansas 67213 (316) 262-1721

Email: thelieguys@yahoo.com / pixkbi@yahoo.com

March 6, 2000

Mr. Chairman and Members of the Committee:

My name is Gary Davis. I am a Forensic Polygraph Examiner with offices in Wichita, Kansas and Vassar, Kansas. I served 15 years in Law Enforcement with both the Sedgwick County Sheriff's Office and the Kansas Bureau of Investigation. In 1982, I left the Kansas Bureau of Investigation and entered private practice as a polygraph examiner.

I am a member of the American Polygraph Association and a member of the Board of Directors of both the National Polygraph Association and the Kansas Polygraph Association. I have been Certified as a Forensic Law Enforcement Polygraph Examiner by the American Association of Police Polygraphists. I am Licensed as a Polygraph Examiner by the State of Oklahoma and the State of Nebraska. In addition, I practice in the States of Missouri, Colorado and Idaho where licensing is not required. In Kansas, I am licensed as a Private Investigator. I was the original Chairperson of the Kansas Board of Polygraph Examiners prior to the elimination of the Board.

I received my basic polygraph training at the University of Houston, Houston, Texas. I have over 1,000 hours of continuing education in the field of Polygraphy. I have conducted over 10,000 polygraph tests. I have served as Intern Supervisor for new law enforcement polygraph examiners and testified about competency before the Oklahoma Board of Polygraph Examiners.

I have testified as an Expert in the District Courts of the State of Kansas and the United States District Courts on polygraph testing and the results of those tests. I have lectured at colleges and universities throughout the state on polygraph testing and use of polygraph results.

My current client base of 23 law enforcement agencies includes the Kansas Highway Patrol, Garden City Police Department, Cloud County Sheriff's Office, and Kearney County Sheriff's Office. I provide polygraph service to the Public Defenders System in Kansas and Missouri. I conduct tests for the Death Penalty Defense Units in both Kansas and Missouri. I test for the Federal Public Defender.

Member:

American Polygraph Association
 Kansas Polygraph Association
 Oklahoma Polygraph Association

National Polygraph Association
 National Association of Legal Investigators
 Kansas Peace Officers Association

American Association of Police Polygraphists

National Association of Polygraph Specialists in Sex Offender Testing/Monitoring

Certified Forensic Law Enforcement Polygraph Examiner

Certified Legal Investigator (R)

Licensed:

Oklahoma Polygraph Examiner
 Nebraska Polygraph Examiner
 Kansas Private Investigator

House Fed. &

State Affairs

Date 3/6/00

Attachment No. 13

Page 1 of 5

I currently test for eleven Sex Offender Treatment programs located in Kansas, Oklahoma and Missouri. I test for the Missouri Department of Probation and Parole and the District Courts of the State of Kansas. I regularly conduct polygraph tests for Kansas Department of Social and Rehabilitation Services, and attorneys throughout the Midwest.

I, am here today to speak in opposition to House Bill 2725.

After reading the bill, I was unsure what problem the bill was to address. Federal Law enacted in 1989 regulates polygraph testing in the private sector. Complaints are investigated by the United States Department of Labor.

This bill appears on its surface to be an attempt to render law enforcement and public safety impotent.

Scientific Basis of Polygraph Testing:

The theory of polygraph testing is based on the well established scientific principal of "flight or fight" when threatened. Human beings possess the ability to protect themselves from perceived physical or psychological threat without conscious effort. A good example of the body defending itself occurs when the driver of a car hits the brakes as a child darts from the curb. The reactions are dramatic including changes in breathing, changes in the ability of the skin to conduct electricity, changes in blood pressure and changes in the motility of the blood. The reactions are instantaneous and involuntary.

It is the psychophysiological changes associated with "fight or flight" that occur during the testing process that permit the examiner to form an opinion of truthfulness to the relevant questions. These reactions are permanently recorded by the polygraph instrument.

During the testing process, the examiner, introduces stimuli in the form of questions. The polygraph subject reacts to those questions that pose the greatest threat to their well being at that point in time. It is these changes that are recorded by the polygraph instrument and used by the examiner to form an opinion.

The instrumentation does not "detect" lies. Rather, the examiner forms an opinion about truthfulness or deception to relevant questions by comparing reactions occurring during the test. The data gathered during the polygraph test can be evaluated by any trained examiner and the same opinion will be given.

History:

The use of polygraph testing began at the Berkley Police Department, Berkley, California in the 1920's when Leonarde Keeler and William Marston began assessing truthfulness using psychophysiological reactions. In the early days, instrumentation was rudimentary and test techniques limited. As time passed, the instrumentation improved as did Question Techniques. Today, the Polygraph Instrument is a sophisticated computer based recording device. Some of these computerized instruments are configured with algorithms that have demonstrated an accuracy rate of more than 90%.

Validity and Reliability:

While polygraph testing is controversial, substantial research has been conducted on the validity and reliability of the technique. Much of the research has been done by Dr. David Raskin, Ph. D. at the University of Utah, Salt Lake City, Utah. Dr. Raskin's research found that a properly administered polygraph test will have an error rate of less than 10%. His

House Fed. &
State Affairs
Date 3/6/00
Attachment No. 13
Page 2 of 5

research has been replicated and additional research is on going at the Department of Defense Polygraph Institute. There, scientists continually research methods of detecting deception and evaluate current methodologies. Over 200 scientific studies have been published specifically relating to the accuracy of polygraph testing.

The United States Department of Justice conducted research on Forensic Evidence. The researchers concluded polygraph test results were as reliable as any other Forensic Evidence. Polygraph tests were more reliable than handwriting analysis and "eye witness" testimony.

Contemporary use of Polygraph Testing:

Originally, Law Enforcement was the primary user of polygraph testing. As businesses began experiencing internal thefts and other problems they turned to polygraph testing to assist in protection of their business assets.

It was the increasing use of polygraph testing by businesses that led to an increase in examiners and substantial problems in the field. In 1989, Congress recognized the abuses occurring with a minority of practicing polygraph examiners and passed the Employee Polygraph Protection Act (EPPA).

EPPA regulated the use of polygraph testing by the business community. Strict standards were set governing when testing could be used. Businesses desiring polygraph tests, were required to establish "reasonable cause" to believe an employee participated in an economic loss. The employee was afforded protection in the form of Notification that no adverse employment action would occur based solely on the polygraph test. The employee was entitled to receive copies of the polygraph charts, question formulation sheet, and the written report. The terms of the EPPA are enforced by the United States Department of Labor.

Congress recognized there were some industries whose exposure to covert penetration or internal theft were so great, an exemption should be granted. Those industries include the Nuclear Power Industry, Government Contractors, Armored Car Services, and the Pharmaceutical Industry.

In addition, the Congress recognized the importance of polygraph testing to Government Agencies. A blanket exemption was granted for all Federal, state, city, and county branches of Government.

Today the largest user of polygraph testing remains the Law Enforcement Community. In Kansas, the Kansas Bureau of Investigation, Emporia Police Department, Salina Police Department, Wichita Police Department, Leavenworth Police Department, Overland Park Police Department, Haysville Police Department, Olathe Police Department, Kansas Fire Marshal, and Coffey County Sheriff's Department have staff examiners. The Sexual Predator Unit at Larned State Hospital has a staff examiner to assist in treatment of those committed to the unit.

My firm provides polygraph testing to Law Enforcement Agencies without staff examiners. We currently test for the Kansas Highway Patrol, Garden City Police Department, Cloud County Sheriff's Office, Derby Police Department, Newton Police Department, Butler County Sheriff's Office and other agencies on a case by case basis.

Law Enforcement Agencies use polygraph testing to assist with investigating crime. They often use Pre-employment testing during the hiring process. The purpose of these tests is

Hunter
State No. _____
Date 3/16/00
Attachment No. 13
Page 3 of 5

to identify high risk applicants before they become high risk employees. The Law Enforcement Pre-employment polygraph test addresses the kind of variant behaviors not usually uncovered during traditional background investigations.

During testing, we have found applicants involved in child molesting, child pornography, bestiality, thefts, robbery, use and sale of illegal drugs and other serious crimes. Some of these applicants were already employed as Law Enforcement Officers in other agencies and continued to engage in high risk behavior.

Judicial use of polygraph testing is also increasing. The courts have found the polygraph a useful tool in resolving disputes. Most often the tests involve allegations of sexual abuse made during a domestic case. The number of individuals accused of molesting by a former spouse grows annually. When the allegations are made, the accused loses access to his/her children and runs the risk of losing custody or visitation. The polygraph test is the only way to substantiate the allegation or clear the accused.

Judges in Sedgwick County often order probationers to undergo periodic polygraph testing to insure compliance with terms and conditions of probation. Usually the probationer has been convicted of child sexual abuse and the court departed downward from sentencing guidelines.

Because child molesting is life's "dirty little secret" the polygraph test is the only way to determine if an individual has molested a child. There are those who claim "children don't lie when telling of abuse." That is usually true. However, mistakes are made when an adult incorrectly interprets what a child says. Children because of their limited experience, describe things differently than an adult. When an adult misinterprets what the child says, false accusations may occur.

I recall one case where a non custodial parent was accused of "rubbing strawberries" on his daughter's privates and then hurting her. At the request of a court, we conducted a polygraph test on the accused and found no indication of deception. Further investigation determined the child suffered from chigger bites during her visitation and he treated her with Calamine Lotion. It is likely, the pink color of the lotion combined with the unfamiliar smell, reminded the little girl of strawberries. Hence, the report to her mother.

The fastest growing use of polygraph testing is the monitoring of behavior of sex offenders. The Association for the Treatment of Sexual Abusers considers the use of polygraph testing to be a "Standard of Treatment." There are a number of treatment providers that would stop treating these dangerous offenders if deprived of polygraph testing. We currently test approximately 800 sex offenders each year.

Today fifteen states use polygraph testing as part of the probation/parole process. Missouri and Colorado both require polygraph tests of offenders placed on probation or parole. As the research develops, states using polygraph are finding a reduction in recidivism and serious parole violations. The current theory is that the longer a probationer or parolee can be deterred from re-offending, the greater chance for rehabilitation.

Over the years, I have been told on numerous occasions by criminal probationers and parolees that they had considered committing a new offense. But, the knowledge that a polygraph test was going to occur stopped the behavior. In the real world it is the fear of getting caught that deters crime. Not, the penalty. If offenders thought they were going to get caught, they wouldn't commit the crime.

House Fed. &
State Affairs
Date 3/6/00
Attachment No. 13
Page 4 of 5

Dr. Stan Abrams, Ph.D., a practicing clinical psychologist and polygraph examiner in Oregon, describes the use of polygraph testing with criminal defendants to be highly effective because the process serves as an "artificial conscience".

The use of polygraph testing by courts and corrections increases public protection. Not only does the testing process deter crime, those who do reoffend are identified earlier and the appropriate remedial action taken.

In 1999, while testing for Missouri Department of Probation and Parole, I tested a convicted sex offender who had been released on probation the Wednesday prior to the test. On Thursday the offender sexually molested a young boy. On the next Monday the offender appeared for testing and failed. During the post test interview, the offender identified the new victim and confessed to re-offending. The offender told the probation officer, had he known about the polygraph test, he would not have re-offended.

The polygraph technique is not perfect. As with any endeavor involving human beings, mistakes are made. We only have to look to the 13 capital murder defendants on death row in Illinois cleared by DNA and other forensic evidence. This is a clear indication we must work harder and smarter to protect the innocent and identify the guilty. Polygraph testing is an important part of the investigative process.

The use of polygraph testing in court is expanding. Mostly the use involves proceeding before the court rather than a jury. I testify regularly in state and Federal Courts. Often, the only evidence of wrong doing or lack of wrong doing is the polygraph test.

Based upon my experience, I believe House Bill 2725 should not be enacted into law. The Bill would reduce public protection by eliminating the most effective investigative tool used by Law Enforcement, child protective services, courts and sex offender treatment programs.

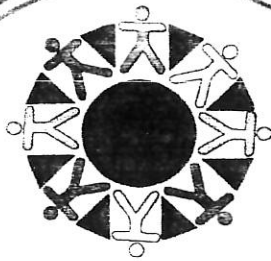
The ability to monitor and control sex offenders would be eliminated. We would be unable to monitor the behavior of those individuals who prey on our most vulnerable citizens, children and the elderly.

I ask that this legislation not pass out of committee.

Respectively Submitted:

Gary F. Davis, Cli
Forensic Polygraph Examiner

House Fed. &
State Affairs
Date 3/6/00
Attachment No. 13
Page 5 of 5



Fax: (417) 781-3881
E-mail: gail@talleytech.com
www.gailsounseling.com

Bringing Peace to Troubled Lives
> Successful Family Solutions
> Phoenix Program

Gail Roberson's Counseling Center

2502 North Rangeline Rd • Joplin, MO 64801
(417) 781-4552

(14)

The Phoenix Program

Just as the Phoenix arose from the ashes to embrace a New Life, Sexual Offenders learn in the Phoenix Program to reconstruct their lives into a path of Good and Right Action and Personal Integrity by offering Restitution to those affected by their crime of Sexual Abuse.

Community Safety

Restitution to Aide in healing victims' wounds of Sexual Abuse

Restructuring the lives of Sexual Offenders to be productive, constructive members of society

House Fed. &
State Affairs

Date _____
Attachment No. 14
Page 1 of 30

To whom it may concern,

March 5, 2000

My name is Joe Burress. In 1993 I was convicted in Kansas for my sexual crime to a child. I was given five years probation and told to attend a sex offender treatment program. I have since completed my probation in September 1998. And chose to continue in the program to complete many things I feel are not finished in my treatment. When I started in 1993 at a treatment center in Pittsburg, Kansas I was told that part of my responsibility to stay in treatment was to pay for on going polygraphs, and at that time they were given every six months and on demand, as the therapist felt necessary to check on my wiliness to maintain a open and honest relationship with the group and my therapist. As my treatment went through 1993 and into 1994, I was facing my life and the real damages I had caused my victim and her family. As well as my own family of whom I know now are victims of sexual crimes and my choice to commit the crime of sexual abuse brought back to them all of the night mares of their childhood.

I was in a depressed state of mind, with self-pity, and blaming others for my life problems. I did not want to face the truth of my life. And fought against the process of unlearning and relearning information I had programmed into my thought and beliefs that, "I want, what I want, when I want it!" This is a powerful force on any person, but for a criminal this becomes a driving force, one that supports all past and present behaviors. I wanted to get away from the group and the therapist, and the contract I chose to sign. But in my heart I did not want to have any more victims. My actions and behaviors did not show my intentions, and the polygraph showed that I was doing high risk behaviors.

I was viewed, by my therapist, as very high risk at that time and also based on my testing on a PPG machine, which shows my sexual arousal patterns and fantasies about sex to children. I was given the choice to take polygraphs every month to insure that my risk to the community was lowered and to give me an opportunity to change my behaviors and thought process. I would have taken any other offer, if that offer did not have jail involved in it. But that was my only other choice.

I know that I have had a sex offender thought process since I was 8 or 9 and my crime to my victim started even before she was born with her mother. I gained her trust as well as my entire family, to the point that even after disclosure and my confession there was friends and family who felt I was framed and also felt that I would have never done what I was charged with. I did plead guilty and the polygraph confirmed my guilt.

The polygraph is a powerful tool, to add to all other tool therapist have, to put pressures on offenders to change. I know that my lying was something I did well, after years of practice I could not tell what was the truth or the lie. The truth was so painful that I would lie even when I knew the truth would not affect me. If there had not been the threat of being caught in my lies and deception, during therapy, I know that I would be the same person I was and without a doubt I would have more victims.

I went for a year with monthly polygraphs, then every three months, to every six months in 1996 and I maintained that level of monitoring till 1998 when I was off probation and I chose

House Fed. &
State Affairs
Date _____

Attachment No. 14
Page 2 of 30

to stay in treatment. I recognize that I will, for the rest of my life, be a risk to the community. And to maintain on going treatment I consent to pay for and be tested by polygraph once a year as long as I stay in the group. This gives me peace and a feeling that I have accomplished change in my life and the testing is an ongoing clarification to victims, family members, the community, group members, my therapist, and all those I come into contact with in my life.

These are my feelings and I know I do not want to lose the opportunity to take polygraphs and continue in therapy. Because without the polygraphs my liability and risk to the community as a sex offender, treated or not would be too high for any therapist to take the risk, that I may claim another victim. I know in my heart I do not want another victim and I am doing work each day to ensure that I do not. But to those around me and especially those who are most at risk the polygraph is the one tool that may give fore warning of a high-risk behavior or action. And give an opportunity for someone to step in and redirect or stop further opportunity for a victim to be claimed.

This is only accomplished with knowledge and for an offender to continue his or her crime they must keep knowledge for others nonexistent. I have seen many offenders in the past seven years of treatment and the one thing in common with all is the need to lie. I know now that this takes one of three forms, or all three. 1: Lying by omission or leaving out parts, 2: lying by fact stacking or arranging the facts to give the impression that they are telling the truth, 3: out and out lying, and I am always amazed at how steadfast an offender will stand behind his or her lie even with overwhelming facts to the contrary.

This was one of my strongest traits as an offender I could hold out as long as it took to convince those around me that I was telling the truth. And was not challenged till I was given my first polygraph. I know now that if an offender truly is working to change and has nothing to hide they do not fight against the agreement to take a polygraph. Just the opposite, the offenders, including myself, look forward to the test, as it validates our good and right actions and behaviors and gives us self-confidence to continue working on our selves. To establish strong empathy and a real conscience, as the polygraph can be viewed as an artificial conscience.

The offender needs to view taking the polygraph as a form of consequence for doing something that many put him or her back on the path to re-offend. Much the way a non-offender uses their own conscience to stop them from doing an act that would give them discomfort and deep feelings of remorse.

If the offender has already gotten on the path to re-offend, I know that there will be a lot of static and whining as to the validity of the test, or the offender tries to get other offenders to back the belief that if enough fuss can be made, he or she may get out of taking the test. Offenders also use the system by getting lawyers, probation officers, family members, or any one that would add to their cause to avoid being exposed.

I am speaking out to say that the criminal plays life by their own set of rules and when they are caught, convicted, and sent into the criminal system they try to invoke their own rules there too. If you think of life and living with others as a game, with rules to follow. Those rules are

enforced to the most part by everyone conscience, the need to protect self and others, and the consequences of going against those laws.

Offenders by their very actions do not have this felling, and therefore commit crimes on vulnerable individuals, believing that they can avoid those consequences, or just not get caught.

The polygraph is the reaforey for the offenders' game, and there are rules to follow for the offender to maintain freedom in the community based treatment programs. If the offender follows the strict rule designed to protect the community then there is nothing to fear from the polygraph.

I know that law enforcement officers are required to take polygraphs as well as government employees and many other places in the working community. Holding myself to be accountable, as well as all offenders who chose to change and have no more victims, by way of honesty and polygraphs validation, is not going against my rights and those offenders who take the rights of victims with our crimes.

I will fight to expose my self, as well as offenders who try to hide behind their lies and use the laws, or try to change the laws to help them continue their criminal thoughts and behaviors. And I am asking that those who can make a difference join me in saying, "NO MORE VICTIMS".

Sincerely,

Joe Burress



March 5, 2000

Thank you Honorable Legislators! I would like to thank you for allowing me the opportunity to speak to you today, it is an honor.

The topic at hand is Polygraphs, and it is a topic that concerns me! I will be speaking about the effects they have had on my life. While in treatment, as person in the community, I was monitored by polygraphs.

I have been married for 16 years now to my loving and caring wife Teresa!

My crime happened over 11 years ago. I was prosecuted in the sate of Missouri in 1995. I have just completed 5 years of probation and an intense therapy group, known as the Phoenix program, with Gail Roberson as my primary therapist. I completed the sex offender treatment program on January 2, 2000.

My crime was Deviant Sexual Assault which carried a 7 year sentence and was reduced to 5 years on probation and completion of a sex offender treatment program which was ATSA based. My victim was my niece, who was age 14 at the time of my offense. This is some of my history and now is why I stand here today.

This ATSA based program gave me the tools I needed to change my life. A lot of looking into the mirror and seeing the person I was inside. Looking at all the people who were hurt by my crime: my victim, my wife, my son, other family members, and most of all the community. I lost their trust as a part of that community and as a part of my family.

At first the polygraph was used in my treatment to check my past and to establish an open and honest line of communication with my probation officer and my therapist.

I did not like them at first, I was scared and very nervous on my first one. After that first polygraph, I decided that this was not so bad. When it was used, one year later to show my innocence when an allegation came up, I recognized that it was a positive tool.

I feel that to eliminate them would be taking a valuable tool away from the community and from good treatment programs.

They help deter me (the offender) from doing anything wrong while you are taking them regularly in treatment. That protects the community and also sets up a boundary for offenders.

One thing I have noticed while in treatment and taking regularly scheduled polygraphs, the only people who don't want to take them or complain about them are those who have something to hide!

These are a few examples of the uses of polygraphs, and I am sure you have heard many more today.

To have a good treatment program, I feel that community safety is first priority, and one way to monitor a sex offender in the community that I believe is a must is the polygraph.

It was used to monitor my activities in the community and for the safety of the community. One time I and three others were going to be charged with harassing my victim. Through my probation officer and my therapist, the polygraph test was used to show my innocence in the harassing phone calls my victim was receiving at that time.

The polygraph helped to prove my innocence and this was the point in which I also recognized them as a tool in my life. As long as I was doing what I needed to be doing, I had nothing to fear from a polygraph test. I took them every six months, as required by the program.

I am still clean and still take them on a yearly basis; for my self, for the security of the community, and for the therapist who treats me- Gail Roberson.

House Fed. &

State Affairs

Date _____

Attachment No. 14

Page 5 of 30

Even though I am no longer on probation and have completed the requirements of the program, I am still a member of the Phoenix program as a peer member. I play an active role in the program. They say that it takes an offender to recognize an offender. As a treated offender who has completed the program, I participate and offer guidance and recommendations to help others in treatment. I voice my concerns to help protect the community from individuals who remain in the community but may be high risk individuals from my perspective.

With polygraph testing, those concerns can be determined to be assumptions or they can be shown to be reality. Without the polygraph, you will be robbing your communities and treatment programs of a tool for monitoring offender behavior while in community based treatment.

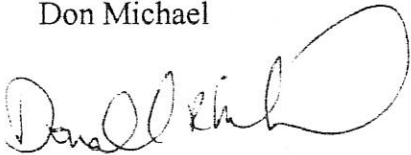
I believe that without the polygraph this would weaken programs and I feel would possibly set up more victims for possible harm from unmonitored offenders in community based treatment.

My group motto is this: No More Victims! Please do not take that chance by eliminating polygraphs testing from sex offender or any other community based offender programs.

Thank you for your time and consideration of my concerns.

Sincerely,

Don Michael

A handwritten signature in cursive script that reads "Don Michael". The signature is written in dark ink and is positioned below the typed name.

House Fed. &
State Affairs

Date _____

Attachment No. 14

Page 6 of 30

March 4, 2000

Kansas House of Representatives

Honorable Legislator:

My name is Frank Kuhn. I am a convicted sex offender in treatment and on parole. One of the requirements for my treatment program is the use of regularly scheduled polygraph evaluations. I am concerned that you may be giving consideration to dismissing the use of polygraphs in the treatment of sexual offenders.

Initially, like most criminally minded individuals, I was intimidated and opposed to the polygraph and the cost associated with it. I have since had a complete change of heart concerning this issue. I believe that the use of polygraphs keep me the offender and you the community safe.

The use of polygraphs are an important outside boundary for me the offender in changing my thoughts and behaviors. They are not only indications of whether or not I abide by the guidelines set out to help me change my thought patterns and behaviors while in the process of therapeutic change, they are also used to validate the fact that I am not behaving in a manner that would lead to re-offending. They are helping me to change from a man who chose to molest two innocent and vulnerable children into a man of decent thought and action.

I hope that you understand that if an offender like myself is to be allowed to live in the community, possibly your community, it is in the best interest of the community that the use of polygraphs in sex offender treatment continue. They are there to deter high-risk behavior and to promote honest and open participation in therapy. To those like me, who chose to work toward good and right action, a polygraph is a tool that is of help. Speaking as a sex offender and a man who has committed criminal acts, the only person who may fear a polygraph is the man who has something to hide.

Polygraphs not only check up on my behavior, they also are there to protect me from possible allegations or accusations of any offenses that might occur in the future that registered offenders may be suspected of. I know of occasions, from other group members, where polygraphs served to validate that they in fact did not commit other crimes. I have with

House Fed. &

State Affairs

Date _____

Attachment No. 14

Page 7 of 30

polygraphs a tool to back up my choice to no longer live the life of a sexual deviant.

Please consider my concern as you weigh the decision set before you. Disallowing the use of polygraphs in sex offender treatment will put the safety of the community in jeopardy; they will also hinder the process of changing lives such as mine. I believe that they work and I believe that they help in keeping the communities safer for the law abiding public and the sex offender in treatment who is working to change.

In closing, my actions changed many lives for all time. If a hundred polygraphs can prevent one sexual crime, are they not indeed worth it? Ask a victim or the parent of a victim.

Respectfully,



Frank Kuhn

House Fed. &
State Affairs
Date _____

Attachment No. 14
Page 8 of 30

March 4, 2000

Dear Legislator,

My name is Tim, and I am a registered sex offender, in the state of Missouri, who has been in an A.T.S.A. based treatment program, for the last 5 years. I have learned the importance and value of the usage of polygraphs, pertaining to me the offender, my victims, primary and secondary, and the community.

Having spent years of developing character defects and deviant criminal behavior, I know how tempting it would have been to choose to do things that would have put my position in the program, as well as my probation directions and guidelines at risk, or even being revoked.

For me, polygraphs were a deterrent to stay on track, to do what was required of me, until that requirement became a personal want, to change the criminal being, I had become, when I committed the crime of Deviate Sexual Assault, to my daughter, who was 14 years old, when I abused her. In treatment, I have learned the importance of safety for the primary victim, as well as the secondary victims, by not allowing the offender to have any type of contact with them. I have seen in my five years of treatment, many offenders, who were concerned with only what they wanted and choose to have contact with their victims, thus creating more traumatic experiences for them (the victim), to have to deal and live with.

The no contact rule is also a treatment issue for the progress of the offender, and I have seen where polygraphs given, have revealed an offender, who was having contact and who was redirected, and got back on track, for the good of the victim, and the offender.

I have seen the use of polygraphs work for the safety and the benefit of the community, cases where offenders were acting out in the community in a high risk fashion or pattern, or what we call a relapse path to reoffend. But, these actions and behaviors, being discovered by polygraphs worked, by either getting the offender back on track and back in compliance with the program, as well as Probation and Parole, and if the offender did not come back into compliance, then they are taken completely out of the equation, eliminating any risk of re-offending and putting the community in danger.

I have also seen and personally experienced how a polygraph can prove an offender's innocence.

During my first two years of treatment, I was accused of crossing state lines, harassment, and stalking my victim. A warrant had been issued for my arrest. My probation officer talked to the investigating officers and requested that I have the opportunity to prove my innocence by taking a polygraph, and answering questions concerning the accusations made about me. They agreed and after taking the polygraph,

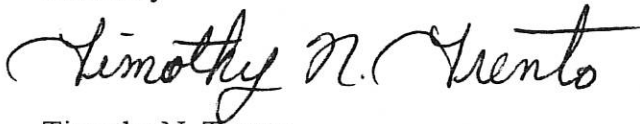
House Fed. &
State Affairs
Date _____
Attachment No. 14
Page 9 of 30

which showed I was telling the truth, and had not crossed state lines, and had not been stocking my victim. The warrant was dismissed.

I believe the use of polygraphs is essential in the treatment of sex offenders for continued progress, but also for any criminal incident to provide information, to prove the guilt or innocence of the individual in question.

To dismiss the use of Polygraphs, I feel is a step backward in the fight to stop crime, first in Kansas, and then whichever other states choose to follow.

Thank You.
Sincerely



Timothy N. Trento

House Fed. &
State Affairs

Date _____

Attachment No. _____

Page 10 of 30 14

3-4-2000

To whom this may concern:

I am surprised as to the problem of polygraphs. They are a check and balance for both the innocent & guilty.

I am a significant other of a sex offender & to do away with polygraphs just scares me to death for the offender. But also for the public.

As a more offender how am I to prove I am innocent of something if I am accused of something wrong.

This is a safety check for everyone so please keep polygraphs going for the safety of everyone.

Thank you
Debbie Lane

A voice for the public.

House Fed. &
State Affairs

Date _____

Attachment No. 14

Page 11 of 30

To the Legislature of Kansas

I am a sex offender living in Southeast Kansas. I have learned that today there is to be a vote on whether a Polygraph may or may not be used in the training of sex offenders. As a sex offender I know we are extremely selfish, very ~~secret~~ secretive, dishonest and disrespectful. Because this is true I very strongly feel the need to address this issue. There are offenders who want to change and those who don't. I choose to make every change I can that I may become a better person. The change process is very long, hard and painful. The one tool that ~~has helped~~ ^{has helped} me the most has been the polygraph.

House Fed. &
State Affairs

Date
Attachment No. 14
Page 12 of 30

It has exposed my secretiveness, selfishness

and has repeatedly forced me to be honest with myself my therapist and the group that works together to help each other. I can understand how its use would be frustrating and uncomfortable for the person that doesn't want to change. In spite of this it is the most useful tool professionals have to help them bring about changes in thinking and behavior so badly needed and the long painful journey to change. There for it is my belief that to withhold this excellent tool is a vote to strangle the efforts of all professionals, to aid and abet criminals and to make it virtually impossible to help any offender ^{wanting to} make the change. Therefore I urgently and respectfully ^{ask} that in your voting you sustain

House Fed. &
State Affairs

Date
Attachment No. 14
Page 13 of 30

the use of the polygraph. Respectively
an offender who after 4 years of training
deeply appreciates the ~~privilege~~ privilege
of the use of the polygraph on my road
to change.

Your Offender in Southeast Kansas.

Albert Billingsley

3-4-00

Page - 1

Dear Legislator:

My name is James Rogers, I'm a sex offender.

I am presently into my fourth year in a good sex offender treatment program in Missouri.

I have been told some troubling news that polygraphs may be done away with in Kansas. I feel that if Kansas does indeed do away with polygraphs, that it will compromise community safety. I admit that when I first came into the program in 1996, I didn't like the idea of polygraphs, or the cost, at 150.⁰⁰ a session.

Now, into my fourth year in treatment I see polygraphs as a necessity for community safety, as well as my own safety. Not only does it hold me accountable for my behavior it also acts as a deterrent to remind me of consequences should I relapse

House Fed. &
State Affairs

Date 3/6/00

Attachment No. 14

Page 15 of 30

(next page)

I do not wish to hurt any more people, or claim any more victims. Not only am I working to provide restitution, and repair the damage that I've done to my victims, I am also working to restore honesty, and integrity into my life so I can once again be a respectable and productive citizen in the community.

I also see the polygraph as a protector for me, because if a crime is committed, and should someone accuse me, and I know that I am truly innocent, then the polygraph will validate my innocence. I feel a certain amount of safety and security in having regular polygraphs. So Dear legislators, I hope and pray that you will think this decision through, and keep the polygraph's intact.

I thank you for the chance and privilege of stating my concerns.

Sincerely,

James M. Rogers

House Fed. &
State Affairs

Date 3/6/00

Attachment No. 14

Page 16 of 30

To:

Kansas House of Represent

Dear Legislator or To Whom it Concerns:

My name is Robert Tanner and I am a sex offender from Joplin, Missouri.

I hear that a sex offender from Kansas has challenged the use of having polygraphs. He appears to be against having them. What is he afraid of and what is he trying to hide or get away with? I personally feel that if you are living a life of good/right action then you shouldn't be afraid of taking them. Yes polygraphs cost. They cost me \$150.00 every 6 months, but I don't hide anything from my polygrapher. If a problem exists, then he is going to see it. It is better to address the problem out front than to have a bigger problem later. I am concerned about your state possibly losing polygraphs if this is passed. I hear Kansas usually gets all the new laws made for sex offenders, you guys set the pace for everyone else; all other states. What if this passes and polygraphs don't exist anymore. What if Missouri follows your decision. Let's say at some time an incident comes up involving a sexual crime that is very bad and I am accused of it. If I wasn't, only a polygraph could possibly save me from jail time. If polygraphs don't exist for Kansas, it will be the same for all us eventually.

What I am trying to say is polygraphs are important. If you aren't lying, the offender has nothing to worry about. I tried in the past

House Fed. &
State Affairs

Date: 3/16/08

Attachment No. 14

Page 1 of 1

30

before full disclosure of my crime to hide what I had done. The polygraph helped me get honest and stop hiding in the "dark" or so to speak. Please keep the polygraphs or we may lose an important tool to do battle against sex offenders.

Thankyou for taking the time to read my letter, it is appreciated.

Sincerely,

Robert Tanner

House Fed. &
State Affairs

Date 3/6/00

Attachment No. 14

Page 18 of 30

Dear Legislators

3-4-00

My name is James Hill I am a Sex Offender.

I am writing in this letter my opinion of the use of Poly-Graphs of Sex Offenders. I feel that Poly-Graphs are good to have in the Treatment of a sex offender, in that they keep sex offenders accountable for their where-A-Boys in the Community. Also Poly-Graphs hold sex offenders accountable for their Actions and Behaviors while at Home and in the Community.

I feel the Poly-Graph is just one way the offender can let his or her victim know what is really going on with them and their Behaviors and Actions.

I do know that Poly-Graphs have saved some offenders from Jail or Prison when they were falsely accused of inappropriate behaviors in the community.

It turned out these offenders done nothing wrong.

And without this Poly-Graph could very well, today be sitting in Prison or Jail. I personally feel the Poly-Graph should be continued to be used as a part of a sex offenders

Treatment Program. I am also afraid that without the use of Poly-Graphs sex offenders are going to be given a much freer reign on our community, therefore possibly creating more victims.

Thank You for hearing me out. And considering keeping Poly-Graphs for Sex offenders.

Sincerely,

House Fed. &
State Affairs

Date 3/6/00

Attachment No.

Page 19 of 30

3/6/00
James Hill, Jr.

3/4/2000

DEAR LEGISLATION

I AM BRENT THOMAS A SEX OFFENDER IN MISSOURI THAT IS A MEMBER OF THE PHOENIX PROGRAM IN JOPLIN MISSOURI. I HAVE BEEN IN THIS PROGRAM FOR 7 YRS + I HAVE SEEN THAT PROGRAM MEMBER HAVE BEEN PROTECTED BY THE POLYGRAPH BUT I VE ALSO SEEN HOW THE POLYGRAPH HAS INFORMED THE PROBATION PAROLE & OUR THERAPIST OF CERTAIN HIGH RISK SITUATION THAT OFFENDER HAVE IN THE COMMUNITEE & PUTS THE COMMUNITEE AT HIGH RISK. BEHAVIORAL PATTERNS HAVE BEEN MONITORED OR ALERTED TO CAUSE OF THE POLYGRAPH. I MYSELF FOR ONE BEING A SEX OFFENDER THAT HAS BEEN CAUGHT IN HIGH RISK SITUATION IN THE PAST. I FEEL THAT BY TAKING AWAY THE POLYGRAPH IS A BACK STEP IN THE STATE OF KANSAS OF WANTING COMMUNITEE TO BE MORE SAFE. I AGREE WITH SOME LAWS THAT HAVE BEEN PASSED BY KANSAS + IF THIS POLYGRAPH ISSUE IS PASSED THIS ONLY OPENS IT UP FOR OTHER STATES TO FOLLOW. THE POLYGRAPH PROTECTS COMMUNITEE + THE POLYGRAPH PROTECTS ME THIS IS LIKE A INSURANCE FOR MYSELF + FAMILY. I HAVE A SIGNIFICANT OTHER THAT ALSO SUPPORTS THIS PROGRAM + HAS STATED THAT TAKING AWAY THE POLYGRAPH IS VERY WRONG.

THANK YOU VERY MUCH
BRENT THOMAS

House of Representatives
State Affairs

Date 3/6/00
Attachment No. 14
Page 20 of 30

Dear Legislator,

My name is Timothy Mills and I am a 20 year old sex offender in the state of Missouri. I have been in Gail Roberson's Counseling Ctr. for 1 year and 2 months. I have only taken 2 polygraphs. My last polygraph was on December 8, 1999.

As you know you are asked a series of questions. One of the questions was do I see myself as a honest man, I said yes. After the polygraph was done Gary Davis asked me what was going through my mind as he asked the question. I said you don't know if I am being honest or not if it wasn't for the polygraph. That made me think more about myself and what was really going on in my life and inside of me.

I think polygraphs are a good thing because it keeps me in check and it might help me someday if I am ever accused of another crime.

Thank

You

Timothy Mills

Dear Legislature,

~~Kevin~~ My name is Kevin,
I am a ~~sex~~ sex offender. I did a serious
case of sexual abuse to my adoptive
daughter. I did secretive bed touching
and had sexual deviant behavior, I am
now in a treatment program and working
the program. I feel that polygraph are
a must in order to keep the community
safe and keep a offender on the right
track or not reoffending. Polygraph keep
the offender on the right track with probation
and parole. Polygraph help to make sure
the offender is staying clear of alcohol and
drugs. Polygraph also protect offender of
being falsely accuse of something they didn't
do. The main reason for polygraph is that
it make sure that there is no more victim of
sexual abuse. The offender also establish
a open and honest relationship with other
I have taken polygraph number of time
and I feel that I have no problem taking
polygraph because I have nothing to hide.

Sincerely

Kevin J. Edwards

House Fed. &
State Affairs

Date 3/6/00

Attachment No. 14

Page 22 of 30

3-4-2000

Legislator,

Hi my name is alan ~~carpenter~~ I am a sex offender I believe.
Polygraphs + ^{sex} offenders needs to go
hand in hand because it detects and
protects. I Live in Joplin mo, and I'm
in counseling here in town and it is
in the Best of Interest to keep Polyg.
for offenders so there would be no
secrets or behaviors kept from the
counselors or parole officers and society
in general, thank you for reading my
letter.

alan Duane carpenter

3-4-2000

Dear House sub committee
I'm a sex offender and
I truly know that
polygraphs should
aply to sex offenders
for community safety

Jed Poyer

Dear Legislator

MY NAME IS JOHN GREGORY I am a convicted Child sex offender. I feel the use of Polygraph Testing has valid purpose for community safety as well as for ^{me} the offender. When I was first convicted I did not like to take the tests, I was still trying to keep my dirty little secrets. But as time went on & the more I learned, I found that Poly graphs have ~~to~~ helped me be more honest with myself as well as others.

AS it stands now I don't mind taking the Test AS it helps those that are helping me get my life back on track.

Thank you!

John Gregory

March 3, 2000

Honorable Legislator,

Greetings, my name is Teresa Michael, my husband is a sex offender. Therefore, I will always be the wife of a sex offender. I am here today, to share my concerns about the use of polygraph tests for sex offenders.

Holding the offender to be accountable and honest at all times is a task that is not always easy to accomplish. I was lied to and deceived at one time by a man whom I love. Only to find out he was a man capable of and did commit a crime of sexual abuse, which caused me to totally lose trust in him. Polygraph testing holds a lot of extra weight to be honest, not only with yourself but with those around you.

I think back to the first several polygraphs my husband took, I was very nervous, almost scared of them. Each time I feared that something new might come up that I did not know about. At that time, I thought I was told everything about the crime he had committed. I was relieved each time they came back as being truthful and honest. This allowed me to slowly regain my trust in my husband, which he had totally shattered in one instant of a moment in time. I wanted to believe him but the trust had to be rebuilt one step at a time, backed by one Polygraph at a time. The Polygraph truly helped to rebuild that trust and honesty for me, as a wife of an offender, and a community member concerned for the safety of others.

I do speak with honesty today, knowing that my husband will hear every word said. However, that is part of truth and honesty and living with life as you have created. I know that many of these words will be hurtful to my husband. However, he has taken accountability for his crime. He chose to change his life from the inside out and ultimately accepts the repercussions that may come.

I have been married to my husband Don, for sixteen years. He confessed to and was convicted of a sexual abuse crime in 1995, five years ago. For the past five years he has been involved in an intense therapy program for sex offenders, of which I have been a supporting participant during that same five years. My husband was released from probation early this year 2000. We both continue in an after care program, still to this day by our own choice.

During the time my husband was on probation, there were several times that the extra pressure of knowing a Polygraph test would be just around the corner, kept him from doing things he knew he should not be doing. Just as an example, I would suggest that we go out to eat somewhere, after all no body would know. But, he was always very strict on following the boundaries, guidelines, and restrictions; he was given to follow while in his treatment program, because, he chose to change his life.

I appreciated the Polygraph test when my husband was allowed to take a polygraph one time to prove his innocence of an accusation against him. Rather than being arrested for

House Fed. &
State Affairs
Date 3/6/00
Attachment No. 14
Page 26 of 30

something, he did not do. The Polygraph does not have to be something you fear, unless of course you really have something to hide. In fact, the Polygraph test can be a benefit to you.

There are many issues to be considered when discussing sex offenders. One real issue is do sex offenders belong in the community or not. I feel and am thankful that some offenders, such as my husband, are allowed the opportunity for community treatment, others might not be allowed. But, for those who are given the privilege of community based treatment, they should have strong treatment programs, firm restrictions and monitoring systems, which include the use of polygraph testing on a regular basis. This is necessary for control and change for the safety of each of you, your loved ones and me as a community member.

As the wife of a man who committed a sex crime I have trembled and often feared the thought of laws changing in regards to sex offenders. For several years now, I have listened to new laws coming out all the time. From what I have heard, Kansas has been a real leader in setting laws against sex crimes. By passing a law restricting the use of polygraph test in the treatment of sex offenders I feel you are going against several of the laws that have been established to protect the safety of us the community from becoming victims of sexual crimes.

Don't lessen the restraints by doing away with the Polygraph testing, in fact, I might encourage you to establish very strict rules and guidelines for those on probation or parole of sexual offenses while in a community based treatment to bring about a safer community and a true life change for the offender. Therefore, all of us being safer and able to sleep more soundly at night.

Please, do not remove the extra tool of the polygraph test that can be used to possibly help protect your son or daughter, mother or father, husband or wife, sister or brother, your next door neighbors child, or even yourself from becoming a future victim of crimes.

Sincerely,



Teresa D. Michael
Significant Other of a Sex Offender



—www.gailscounseling.com—
gail@gailscounseling.com
Fax: (417)781-3881

—Gail Roberson's Counseling Center Inc.—
2502 N. Rangeline Joplin, MO 64801 (417)781-4552

—Bringing Peace To Trouble Lives—
•Successful Family Solutions
•Phoenix Program

March 4, 2000

TO: Kansas House of Representatives
Sub-Committee on Polygraphing Sexual Abusers

RE: Use of Polygraphs for Assessment and Treatment of Sexual Abusers

Honorable Committee Members:

For the past 10 years, I have specialized in the treatment of Abusive Sexuality. In Kansas, I am a Licensed Masters Level Psychologist, and in Missouri, I am a Licensed Professional Counselor. For the past 10 years, I have utilized polygraphs in the Assessment and Treatment of sexual abusers, or 'alleged' sexual abusers, according to the Guidelines set forth by Association for the Treatment of Sexual Abusers, (ATSA), (Attachment A). I started the first ATSA-based sexual abuser treatment programs in SE Kansas, Mental Health Centers, and have been in private practice in SW Missouri since 1993. I now offer sexual abuser treatment services to the four-state-area of Kansas, Missouri, Oklahoma, and Arkansas.

As a young Clinician, aspiring to treat sexual abusers in 1990, I shadow-trained with Jan Hindman, an internationally recognized expert in the assessment and treatment of sexual abusers, and who currently Chairs the Ethics Committee for ATSA. From Ms. Hindman, I learned that one of the first and most important components in working with sexual abusers is the use of physiological measures to hold the sexual abuser accountable for his/her behavior in the interest of community safety and victim restitution.

One primary trait held in common by sexual abusers is that their basic character is to color situations so that they can hide the extent of their criminal behavior to avoid prosecution or accountability in treatment. Based on the potential unreliability of self-report among sexual abusers, the use of polygraphy has become widespread in the identification, treatment, and management of sexual abusers. Several studies have linked the history of sexually deviant behavior and deviant sexual arousal to risk and recidivism. Therefore, instruments that promote the collection of data in these areas are deemed to

House Fed. &
State Affairs
Date 3/6/00
Attachment No. 14
Page 28 of 30

have significant clinical value (ATSA Guidelines, Section 15). ATSA recognizes that the use of the polygraph with sexual abusers goes to the prevention of sexual assault through effective management of sexual abusers. Therefore, the necessity of mandatory polygraphs for sexual abusers is clearly of utmost importance to community safety.

In taking a sexual abuser client's sexual history, the polygraph provides the ability to elicit information not available through traditional interviewing techniques. The polygraph is a standard component of a psychosexual assessment. It is with confidence then that an appropriate treatment plan can be written in the interest of community protection and to facilitate effective treatment interventions with the sexual abuser to lower his/her risk to re-offend (ATSA Guidelines, Appendix C, 1a).

Polygraphs can also be helpful in confronting a client who denies deviant sexual behavior, deviant sexual fantasies, and/or deviant sexual arousal (ATSA Guidelines, 15.08). One sexual abuser, convicted of raping a 12 year old child, denied that he was sexually attracted to children, and he should be exempt from the program's standard 'no contact with children' criteria. Polygraph showed that the sexual abuser had in his possession, clothing worn by the victim during the rape scene, which he had taken as a souvenir. When this was confronted in the group process, the abuser disclosed, not only had he been masturbating to fantasies of the rape scene, using the victim's clothing, but he was also planning to abduct a child, (whom he had already identified), and abscond to California, where his brother lives. Because the polygraph was available as a treatment tool, perhaps a child is alive today who may have been lost to us otherwise.

Polygraphs are useful in monitoring treatment and compliance and progress (ATSA Guidelines 15.09; Appendix C, 1c). This became very evident to me during the very first year I treated sexual abusers. One of my first sexual abuser clients, who I believed to be in compliance with treatment rules designed to protect the community, clearly taught me this lesson. Jay was a 25-year-old sexual abuser in one of our first sexual abuser programs in SE Kansas. Jay had molested his stepdaughter, and was sentenced to 5 years, suspended to serve 5 years Probation, and Court-Ordered to successfully complete our five year-sexual abuser treatment program. He was to have No Contact with children or vulnerable individuals by nature of his crime until his treatment team believed he presented low risk for re-offense. Jay worked hard in treatment, completed assignments, and remained in apparent compliance with the rigid treatment guidelines he agreed to follow in order to successfully complete treatment. When Jay sat for his first Maintenance Polygraph, the Polygraph Examiner requested to meet with the victim's grandmother, who was his victim's primary care taker. I was quite disturbed at such an unusual request. However, when the polygraph examiner met with the child's grandmother, he asked if she had been getting 'hang up phone calls'. She replied that she had. When he asked if she had observed Jay driving past her home, again, she replied 'Yes.' Then, he asked if there was any chance that Jay had a picture of the victim in his possession. The victim's grandmother replied that he in fact had never returned the 'family photo album'! My view of this sexual abuser's 'progress in treatment' now took on a much different light. He had broken the basic treatment guidelines designed for community protection, and I thought he was in complete compliance and was lowering his risk to re-offend. In fact, Jay was 'cruising', which means he was in the planning stages, just looking for an opportunity to re-offend his victim! When confronted with the

State Affairs

Date 3/6/00

Attachment No. 14

Page 29 of 30

information gathered on polygraph and in interview with his victim's grandmother, Jay admitted that he in fact had been fantasizing for quite some time about molesting this child. He had been calling the grandmother's home, hoping the child would answer, and he had been driving past the home (which by the way, was across the State line, and 50 miles away), hoping to see this child in the yard so he could abduct her. As I said, this taught me the value of polygraph in treatment of sexual abusers, and it is then that I stated I would never attempt to assess or treat another sexual abuser without the benefit of polygraph.

In the case that sexual abusers are accused of specific high-risk behaviors, such as having contact with a child, stalking, or re-offending, the sexual abuser is under suspicion. Until the matter is resolved through polygraph, the sexual abuser is at risk of termination from the treatment program, and possible revocation of his/her probation or parole. Should the polygraph show the sexual abuser's innocence, then he/she is given the privilege of continuing community-based treatment. Should the polygraph show problematic behavior, appropriate action can be taken to protect the community and specific vulnerable individuals (ATSA Guidelines, Appendix C, 1b). For example, it was reported that a sexual abuser, known to be a client of the program was seen driving past schools. Polygraph showed that in fact, this sexual abuser had developed a 'route', and was in the process of choosing his next victim by keeping a record of certain children's whereabouts. Because of this information generated by the polygraph, this sexual abuser's Parole was violated, and he was returned to prison. Because of the polygraph, again, our community was safer, our treatment program was still in good standing with a 0% recidivism rate, and a child was spared the agony of sexual abuse.

Finally, but surely not least, polygraphs provide a very special peace of mind to family members of the sexual abuser and to those who have suffered because of his/her crime. Primary and secondary victims of sexual abuse remain unresolved until they have answers about the crime and the criminal who committed the crime against them. Polygraphs provide information to those directly or indirectly harmed by the act of sexual abuse by validating their disclosures, addressing their concerns, and alleviating their fears. Not only can the polygraph provide initial validation for the victim and others close to the victim but can provide assurance that the sexual abuser has lowered his/her risk to re-offend.

As a provider of sexual abuse treatment, the motto of The Phoenix Sexual Abuser Treatment Program is NO MORE VICTIMS. Without the use of the polygraph, it is my belief that recidivism rates will surely increase, and more importantly, without the polygraph, we will not have the instrumentation to detect it! It is in your power, by your vote, to provide a measure of safety to the communities of Kansas. I ask that you also cast your vote for NO MORE VICTIMS!

Respectfully Submitted,

Gail Roberson, LMLP, LPC

House Fed. &
State Affairs
Date 3/6/00
Attachment No. 14
Page 30 of 30

COFFEY COUNTY SHERIFF'S OFFICE
605 NEDSHO ST., PO BOX 226
BURLINGTON, KANSAS 66839
PHONE (316) 364-2123
FAX (316) 364-5758
IN KANSAS TOLL FREE (800) 362-0638



LAW ENFORCEMENT BEYOND 2000

RANDY L. ROGERS
SHERIFF
KENNETH RONEY, UNDERSHERIFF
JOHN LIDCELL, CHIEF DEPUTY

March 6, 2000

To: Federal and State Affairs Committee
Re: House Bill 2725

I would address this committee in opposition of House Bill 2725, which sets out guidelines for the administering of polygraphs. In presenting my testimony I come to you from a law enforcement officers point of view. During my 13 year career I have used the polygraph during the course of an Investigation many times. The polygraph is a very useful tool to law enforcement. If the proposed legislation were to become law, polygraphs would become non existent due to liability and unfair exposure to lawsuits.

When people are asked or hear about someone being asked to take a polygraph the first thought that comes to mind is that we are using the polygraph to determine ones guilt. This is not always true. On many occasions I have requested that the victim of a crime take a polygraph for confirmation of a reported crime when little or no physical evidence existed. I have also had occasion to ask a suspect charged with a crime to take a polygraph to support his claim of Innocence and in fact upon the suspect taking the polygraph it was determined that he was truthful and indeed had not committed the crime as charged. The charges were then dismissed. This would be a good example in which the polygraph saved an innocent man from the court process, tax dollars and perhaps wrongful conviction. I am sure that there are many more stories from law enforcement along the same lines. The polygraph is a valuable tool and if lost would greatly hamper the ability of law enforcement to investigate crimes.

I believe in my polygraph examiner and in our discussions he states that if the proposed legislation were to become law that he would not be able to administer a thorough complete polygraph. I would have no choice but to eliminate polygraphs as an administrator due to the costs of conforming to this proposed legislation. I am sure that this would be the case throughout the state.

On behalf of the Kansas Sheriff's Association we are in opposition of this proposed legislation.

Thank You

Randy L. Rogers
Coffey County Sheriff
Member, Board of Directors, Kansas Sheriff's Association

House Fed. &
State Affairs
Date 3/6/00
Attachment No. 15
Page 1 of 1

INVESTIGATIONS, LLC

Licensed Private Investigators

1427 WEST DOUGLAS, WICHITA, KANSAS 67213



Forensic Polygraph Examiners

PHONE (316) 262-1721

FAX (316) 262-3189

DATE: March 6, 2000

TO: Tony Powers, Chairman,
State and Federal Affairs House Committee

SUBJECT: Proposed Polygraph Legislation

REF: House Bill 2725

FROM: Donald L. Williams,
Certified Forensic Polygraph Examiner

POLYGRAPH EXAMINER CERTIFICATION APPROVED BY: American Polygraph Association American Association of Police Polygraphists Department of Defense Polygraph Institute Polygraph Committee On Offender Testing, State of Texas	PRIVATE INVESTIGATOR LICENSED BY: Kansas Attorney General	PROFESSIONAL AFFILIATIONS: American Polygraph Association American Association of Police Polygraphists Kansas Polygraph Association Academy Of Licensed Professional Investigators
	PRIVATE INVESTIGATOR CERTIFIED BY: Academy of Private Investigators	

INVESTIGATIONS, LLC

Providing Services For The Following Business Communities And Governmental Agencies: Armored Car Services - Auto Dealers - Bank/Financial Services - Chemical Manufacturers - Home/Institutional Child Care - Cleaning Services - Convalescence Centers - Construction Industry -Discount Store Chains - Home Health Care - Hospitals - Hotels - Insurance - Law Enforcement Agencies - Legal Profession - Manufacturers - Municipalities - Nursing Home/Senior Living Centers - Petroleum/Refining Industry - Retailers - School Districts - Security Firms - Shipping Businesses - Sports Competitions - Theater Chains - Warehousing Distributors

My name is Don Williams, in addition to being Licensed by the Kansas Attorney General as a Private Detective, I am a Forensic Polygraph Examiner with offices in Wichita, Kansas, and practice in Kansas, Colorado and Idaho.

I received my basic polygraph training at Western Oregon State University and as a result of advanced training and certification by examination, have been designated a Certified Clinical Polygraph Examiner, which certification is approved by: The American Polygraph Association; The American Association of Police Polygraphists; The Department of Defense Polygraph Institute; and, The Joint Polygraph Committee on Offender Testing, The State of Texas.

I am also board certified Forensic Law Enforcement Polygraph Examiner, this certification is awarded by The American Association of Police Polygraphists.

Our firm provides polygraph services to the business community, the legal profession and fourteen law enforcement agencies and municipalities.

POLYGRAPH-GENERAL

Well established scientific principles provide the basis for the modern polygraph examination. The parent science is Psychophysiology. A recognized specialty within the field of Psychology which deals with the interplay between physiology and psychology. It is based on, and applies scientific principles. The polygraph instrument was not invented for, nor is it limited to, use in detecting deception. It is a scientific instrument long used in the psychophysiology field to measure and record simultaneously a number of physical reactions to measure changes in people's bodies that relate to psychological states.

THREE TYPES OF POLYGRAPH EXAMINATIONS

1. **Pre-Employment Polygraph** - On December 27, 1988, the Employee Polygraph Protection Act became

law. This federal law established guidelines for polygraph testing and imposed restrictions on most private employers. Who may use:

a) Any government entity, including the U.S. Government, any state, any county, any city, or village. "According to a recent survey, over 60% of the large police departments in the U.S. use polygraph testing in the pre-employment screening process. Police agencies have found that polygraph testing is a very effective means by which to identify high risk candidates. For example, in case studies carried out in Illinois, Ohio, Maryland and Florida it was found that out of 3,576 police applicants given pre-employment polygraph examinations, 58% (2,068) were identified as high risk candidates for police work in that they had behavioral histories of involvement in activities such as thefts, burglaries, robberies, the use and sale of illegal drugs, bribery, car thefts, and various sexual offenses.

The value of the polygraph testing process is further illustrated by the fact that in most of these cases, the applicants had already successfully passed a series of mental, physical and psychological tests, as well as credit and background investigations." (*American Polygraph Association Newsletter, Volume 32, Number 6, November 1999*)

b) Certain security service employers, including: Armored car personnel; Fire and burglar alarm installation and repair personnel; Security guards employed to protect proprietary equipment and data, nuclear facilities, industries upon which our national defense may depend; persons applying for employment in jobs that will entail handling pharmaceutical drugs (direct contact); pharmaceutical manufacturers, transporters, distributors, retailers of controlled substances; Certain security contract persons engaged to perform services for some federal agencies, such as CIA or FBI, can be tested under the pre-employment exemptions of The Employee Polygraph Protection Act.

2. Pre-Conviction Polygraph - Refers to standard applications of polygraph testing traditionally dealing with specific allegations (criminal or civil) currently under investigation or indictment, that involve conflicting positions or statements, the outcome of which is pending; and, for which some type of punishment is likely if the guilt of or deception by the examinee is established.

Who uses: The Law Enforcement community and attorneys use polygraph testing as an investigative aid to: a) Verify the statements of victims; b) Establish the credibility of witnesses; c) To evaluate the truthfulness of suspects.

"The most valuable aspect of the investigative use of polygraph testing is to help exonerate the innocent person who is surrounded by circumstantial evidence. It is particularly valuable in those investigations that rely only on testimonial evidence. At the same time, polygraph testing is very helpful in investigations involving multiple suspects by narrowing the focus of the investigation. Regardless of the circumstances in which polygraph testing is used, the test results are not the sole basis on which decisions are made; rather polygraph results are used in conjunction with other screening or investigative information". (*American Polygraph Association Newsletter, Volume 32, Number 6, November 1999*)

3. Post-Conviction Polygraph - A developing field often referred to as "Clinical Polygraph Examination". Refers to the testing of individuals (post-conviction) while under court supervision (probation, deferred adjudication, parole). Currently it is utilized primarily with sex offender populations under supervision, the defined purposes being to establish and verify disclosure about issues prior to the date of conviction; and, to monitor activities and behaviors of the probationer after supervision began.

Who uses: "Prosecutors and judges often make decisions about offenders who have much longer histories and many more victims than is revealed at the time of plea agreement or sentencing. Therapists who work with sexual abusers have learned that crimes discovered by the criminal justice system often do not accurately portray the true deviant sexual history..."

The following data summarize the differences between the self-reported sexual histories of adult offenders seen for treatment between 1980 and 1982 (N = 40), before Hindman [Oregon therapist Jan Hindman, president of the Association for the Behavioral Treatment of Sexual Abusers, 911 SW Third St, Ontario, OR 97914 (503) 889-8938], began polygraphing, and the sexual histories of adult

MARCH 6, 2000.

Testimony of Donald L. Williams, Certified Forensic Polygrapher, Investigations, LLC, 1427 W. Douglas, Wichita, Kansas
Ref: HB 2725, POLYGRAPH BILL. STATE AND FEDERAL AFFAIRS COMMITTEE
HOUSE OF REPRESENTATIVES, THE STATE OF KANSAS.

2

House Fed. &

State Affairs

Date 3/6/00

Attachment No. 16

Page 2 of 5

offenders seen between 1982 and 1988 (n = 129) who were polygraphed.

Adult Offenders	Pre-1982 Self-Report	Post-1982 Self-Report Plus Polygraph
Average Numbers of Victims:		
Admitted at Arrest	1.17	1.3
Admitted at History	1.5	9.0
Experiencing Abuse as Children	67%	29%
Committing Abuse as Children	21%	71%

The data clearly show that when these convicted sexual offenders knew they were going to be subjected to polygraph scrutiny and believed there would be a negative consequence (jail) if they were not truthful, they admitted *six times* as many victims as the self-report group". (*National District Attorneys Association NDDA Bulletin, Volume 7, Number 4, page 1*)

Clearly, the polygraph is a very effective tool to assist:

1. Government and Business in screening employee applicants for government, law enforcement, and certain security service positions in the private area.
2. Law Enforcement by focusing an on-going investigation through the corroboration or contradiction of claims alleged against a person.
3. Society by protecting the community through supervision/incarceration of the sex offender; to deter criminal behavior through the administration of sanctions; and, to encourage positive changes in the offender's behavior.

THE SEARCH FOR TRUTH

In 1975, the **Rand Corp.** concluded through research that the single most important factor directly effecting the outcome of any investigation was the quality of information obtained from the witness or victim of the event" (*Walters, S., "Kinesic Interview and Interrogation", C.R.C. Press, 1996, pp. 1*)

A polygraph examination is a search for truth - In truth there is Justice.

Truth Defined: That which is not for or against anything - truth simply is.

Truth can be assimilated, validated, corroborated and verified.

Truth is Agreement with Reality.

The search for truth and attempts at uncovering falsehood has been a universal and almost constant endeavor that has dated back to ancient times... (*Abrams, S., "A Polygraph Handbook For Attorneys", Lexington Books, 1986, pp. 11*)

The system that is the most effective in distinguishing truth from deception, and is being used today in more countries, and in the most technologically advanced countries is the **Polygraph**. "... [70 of the 198] countries [in the world] us[e] the polygraph ... [America]; Argentina; Australia; Bolivia; Bosnia; Brazil; Brunei; Bulgaria, Canada; China; Colombia; Croatia; Czech Republic; Dominican Republic; [Dubai]; Ecuador; Egypt; El Salvador; Estonia; France; Germany; Ghana; Great Britain; Guatemala; Guyana; Honduras; Hungary; India; Indonesia; Israel; Italy; Jamaica; Japan; Jordan; Kenya; Korea [South]; Kuwait; Lebanon; Lithuania; Macedonia; Malaysia; Mexico; Moldova; Morocco; Nigeria; Norway; Pakistan; Panama; Peru; Philippines; Poland; Romania; Russia; Saudi Arabia; Serbia; Singapore; Slovakia; Slovenia; South Africa; Spain; Switzerland; Taiwan; Thailand; Trinidad & Tobago; Tunisia; Turkey; Ukraine; United Arab Emir.; Uruguay; Venezuela". (*American Association of Police Polygraphists, Journal, July 1999, pp. 59-60*).

There has never been any doubt that life contains deception. Deception is characterized as a moral wrong, but it is part of almost everyone's existence. [How many have been told that small children don't lie-if they say they have been sexually molested, they HAVE been? Lying is very much a part of childhood but continues throughout the adult years as well. Deception is found in the lowest reaches of human life up to the highest

MARCH 6, 2000.

Testimony of Donald L. Williams, Certified Forensic Polygrapher, Investigations, LLC, 1427 W. Douglas, Wichita, KS 67213
Ref: HB 2725, POLYGRAPH BILL. STATE AND FEDERAL AFFAIRS COMMITTEE
HOUSE OF REPRESENTATIVES, THE STATE OF KANSAS.

3

House Fed. &

State Affairs

Date 3/6/00

Attachment No. 16

Page 3 of 5

levels of politics [President **Bill Clinton** and his many instances], business [**Tobacco Companies**], sports [**O.J. Simpson**], the law [L.A. Det. **Mark Fermin**], and even religion [**Jimmy Swaggart** and **Jim Baker**]. Certainly, there is no reason to assume that it is different in other societies or professions.

It has long been recognized that swearing to God that one will tell the whole truth does NOT preclude the commission of perjury in court [**Bill Clinton-"I did not have sex with that women, Monica Lewinsky"**]. As far back as 1906, Freud indicated that "There is a growing recognition of the untrustworthiness of statements made by witnesses"-(*Freud, S., "Psycho-analysis and the Ascertaining of the Truth in Courts of Law" in E. Jones (ed.), Sigmund Freud Collected Papers, Vol. 2 (N.Y.: Basic Books, 1959) pp. 13-24.*). Lies often cannot be exposed by even an experienced trial lawyer, and juries tend to accept lies as factual ["If the glove doesn't fit you must acquit" - **O.J. Simpson** trial].

Through out history, attempts have been made to find an approach that can successfully differentiate between truth and deception. Word association tests, hypnosis, truth serums, voice stress analysis have all been tried but with few positive results. Only polygraph has stood the test of time. After almost 100 years of research and use in the criminal realm, it remains the most effective means of determining truth telling and lying.

A study of particular interest regarding the comparative accuracy of polygraph evidence compared to other evidence traditionally admitted in trial was published in the Journal of Forensic Science in 1978. In that study, a mock crime was conducted in which evidence was taken from fingerprint experts, polygraph experts, handwriting experts, and eyewitnesses. Accuracy of each of these types of evidence was as follows: **fingerprint** experts-100% accurate; **polygraph** experts-95% accurate; **handwriting** experts-94% accurate; **eyewitnesses**-64% accurate. While fingerprint evidence was obviously the most accurate, it had a failing of having sufficient fingerprints to establish identify in 80% of the cases. (*Vaughan, G., General Counsel American Polygraph Association, APA Newsletter, 31, (5X1998)*)

Much use is being made of polygraphy by law enforcement agencies in every state. Testing results have been admitted into evidence on a stipulated basis in most states. In some states [Kansas for one] test results have been admitted over the objection of the state. At the federal level, polygraph has been admitted in at least 10 of the 11 circuits.

Polygraph is used by many law enforcement agencies to screen applicants before hiring them.

All federal law enforcement agencies use polygraph: The F.B.I., Secret Service, U.S. Army CID, U.S. Marine Corps CID, Air Force OSI, Navy NCIS, U.S. Customs, U.S. Marshal's, Defense Criminal Investigation Service, Internal Revenue Service, U.S. Capitol Police, Food & Drug Administration, Department of Energy, Metropolitan Police of the District of Columbia. Also using polygraph: The Treasury Dept., Postal Dept., Defense Dept., Dept. of Energy, C.I.A., D.E.A., N.S.A. and others.

POLYGRAPH-HOW USEFUL

Regarding the forensic disciplines:1) **Firearms**: Analysis of firearms, bullets, cartridge casings - tool mark identification, 2) **Illicit drugs**: Forensic examination of substances - street drugs and prescription drugs of abuse, 3) **Latent Prints**: Forensic examination -to ascertain if identifiable latent prints could be matched to a suspect, 4) **[Polygraph]**: Psychophysiological Detection of Deception, 5) **Questioned Documents**: Forensic examination of handwriting - hand printing - typewriting - erasures, obliteration's, alterations, composition of major types of - inks, paper - charred documents, 6) **Serology**: Forensic analysis of blood - bloodstains - biological matter (sperm cells, saliva, saliva, perspiration, etc., and DNA, 7) **Trace Evidence**: Forensic analysis of hair fibers, paint, flammable's, soil, dust, and minute particles, objects, and liquids, 8) **Photographic**: [Involves special processes which vary but include infrared photography, videotape restoration, enlargements, or special film development] (*Light, G., & Schwartz, J., "The Relative Utility of Forensic Disciplines", American Polygraph Association, Quarterly Publication, 1999 Polygraph, Volume 28, Number 3, pp. 250-251*)[Excerpts]

In a report by the **U.S. Army Criminal Investigation Command** of 1069 cases, they published ... "The PDD (Psychophysiological Detection of Deception) **[polygraph]** discipline provided the investigator with (89%) opinions that contained positive results and the laboratory disciplines provided positive results in (74%) [of] examinations. The **[polygraph]** discipline was the most utilized and effective of the individual [forensic] disciplines, there were no instances in which the findings of one discipline contradicted the results of any other

MARCH 6, 2000.

Testimony of Donald L. Williams, Certified Forensic Polygrapher, Investigations, LLC, 1427 W. Douglas, Wichita, KS 67213
Ref: HB 2725, POLYGRAPH BILL. STATE AND FEDERAL AFFAIRS COMMITTEE
HOUSE OF REPRESENTATIVES, THE STATE OF KANSAS.

4

House Fed. &
State Affairs

Date 3/6/00
Attachment No. 16
Page 4 of 5

discipline. (Light, G., & Schwartz, J., "The Relative Utility of Forensic Disciplines", American Polygraph Association, Quarterly Publication, 1999 Polygraph, Volume 28, Number 3, pp. 240) [Excerpts]

"The interdisciplinary solve rate involving both PDD [polygraph] and laboratory examinations was 86%. The solve rate for investigations involving only laboratory disciplines was 81%. The solve rate for investigations involving only the [polygraph] was 82%. (Light, G., & Schwartz, J., "The Relative Utility of Forensic Disciplines", American Polygraph Association, Quarterly Publication, 1999 Polygraph, Volume 28, Number 3, pp. 244) [Excerpts]

"Widacki and Horvath [researchers] found [polygraph] and handwriting examinations resulted in a high accuracy (90% and 85%, respectively) while rendering a positive result with subjects in 95% and 94% of the examinations. Other research (Raskin & Podlesney, 1979; Patrick & Iacono, 1988) also found the validity of [polygraph] to be over 90%, when professionally trained [polygraph] examiners utilizing standardized procedures conducted a [polygraph] examination." (Light, G., & Schwartz, J., "The Relative Utility of Forensic Disciplines", American Polygraph Association, Quarterly Publication, 1999 Polygraph, Volume 28, Number 3, pp. 246-247)

CONCLUSION

All those present on this honorable committee today are dedicated to serve and to protect Kansas citizens, however, if HB 2725 becomes law, polygraph will be rendered impotent, and the good citizens of Kansas will become more vulnerable to the problem citizens of Kansas by being more exposed to crimes of violence, thefts, burglaries, robberies, the results of the use and sale of illegal drugs, car thefts, and various sexual offenses.

I respectfully request that you vote down HB 2725.

MARCH 6, 2000.

Testimony of Donald L. Williams, Certified Forensic Polygrapher, Investigations, LLC, 1427 W. Douglas, Wichita, KS
Ref: HB 2725, POLYGRAPH BILL, STATE AND FEDERAL AFFAIRS COMMITTEE
HOUSE OF REPRESENTATIVES, THE STATE OF KANSAS.

House Fed. &
State Affairs

Date 3/6/00

Attachment No. 16

Page 5 of 5