



POLYGRAPH

The effective use of polygraph for criminal defense representation

WISCONSIN STATE PUBLIC DEFENDERS OFFICE
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MICHAEL H. BRANKS
[HTTP://WWW.WISCONSINLIEDETECTOR.COM/](http://www.wisconsinliedetector.com/)

Introduction to Polygraph



"I don't know much about polygraphs, and I don't know how accurate they are, but I know they scare the hell out of people"

Richard M. Nixon

WISCONSIN STATE PUBLIC DEFENDER



Mission Statement

To enhance the quality of justice throughout Wisconsin by providing high quality, compassionate, and cost-effective legal representation, protecting the rights of the accused, and advocating as a criminal justice partner for effective defender services and a fair and rational criminal justice system.

Vision Statement

Working together, the Wisconsin State Public Defender will lead the way in protecting justice for all.

False Positive
results
the innocent
testing
positive for
deception



Outline for Today

BASIC POLYGRAPH

- Who uses polygraph
- When to ask for a polygraph
- How to request a polygraph
- How to think about the polygraph
- How to help your client think about polygraph
- Test theory (How it works)
- Polygraph accuracy
- Take home points what test results really
- Take home points what the process can mean to your representation & your client



Who uses Polygraph Test

GOVERNMENT

- Military
- Security Agencies
- PCSOT programs
- Law enforcement
- Public Defenders

PRIVATE

- Clinical Psychotherapists
- Cheating spouses
- Fishing and body building tournaments
- Reality Television
- Criminal Defense Attorneys

WHO I PROVIDE SERVICES TO

- YOU
- YOUR STAFF ATTORNEYS
- PRIVATE BAR ATTORNEYS
APPOINTED ON SPD CASES
- OTHER GOVERNMENT
AGENCIES INVOLVED IN
INDIGENT DEFENSE
- INNOCENCE PROJECTS
- PROSECUTORS
- PRIVATE BAR
- CLINICAL PSYCHOTHERAPISTS

WHEN TO ASK:

A Criminal Defense Attorneys use of Polygraph

- Pre charging specific issue tests. Done to influence the D.A. not to charge.
- Pre Trial testing to disprove certain assertions of the alleged victim
- Pre Trial Alibi
- Pre Trial further elicitation of other relevant information the defendant has not shared with counsel or the Police (i.e. existence and identity of un charged co-defendant)
- Pre Trial testing to prove a lesser degree of criminal liability
- Pre trial to prove that there are no more unknown hands on victims
- Pre and post conviction testing to contest either a corrections or law enforcement test
- Or
- To clarify issues not yet in evidence through elicitation of concealed information.
- Monitoring
- Maintenance
- Clinical psycho therapy testing
- 980 (SVP) to clarify involvement in uncharged predicate acts
- **Any time you think the client feels like he needs to be heard about any issue concerning his case or the course of representation.**
- **Utility Polygraphs**

CONFIDENTIAL POLYGRAPH REQUEST

Client: _____

Attorney: _____

Date of Birth: _____

SPD Office: _____

Address: _____

SPD #: _____

Phone: _____

Current Location of Client: _____

Date Opened: _____ Date Requested: _____ Date Required: _____

Charge(s) (Attach Criminal Complaint/Petition): _____

Theory of Defense: _____

Action Requested: _____

Approved: _____

Date: _____

Signature: _____

**MAIL, E-MAIL OR FAX TO REGIONAL ATTORNEY MANAGER
WAUKESHA OFFICE
407 PILOT COURT, STE 500; WAUKESHA, WI 53188
FAX (262) 521-5177**

Polygraph Theory



- Predictable responses in autonomic functions occur when an examinee responds to test stimuli (questions) in a deceptive or truthful manner.
- Reactions to test stimuli can be measured normed for distinct distributions of truthful and deceptive examinees
- Individual examinee's test data can be evaluated for concurrence with decision thresholds for assignment to deceptive or truthful groups

Polygraph Components

- Pneumograph assembly
- Blood pressure cuff
- Electrodermal sensors
- Behavior monitors



Fight, Flight & Freeze (Cannon 1927)

- Massive ,diffuse , and global (non-specific) adrenal and endocrine activation during emergency states.
- Brain does not distinguish between physical and psychological danger
- Epinephrine and Norepinephrine (adrenaline and noradrenaline)
- -Sometimes act as a neurotransmitter in the brain
- - In fight or flight they activate endocrine, circulatory, muscular, and digestive systems
- Cortisol(secreted by adrenal glands)



POLYGRAPH TESTING PHASES

- *PRETEST PHASE-* *LONGEST PORTION*
- *INTEST PHASE-* *DATA COLLECTION
PROCESS*
- *POST-TEST PHASE-* *OPPURTUNITY TO
RESOLVE ANY
REMAINING
INCONSISTENCIES*

QUESTION CONSTRUCTION

THE BI-ZONE FOR DIAGNOSTIC TESTING

- DID YOU DO IT?
- DID YOU DO IT, HUH ?
- DID YOU SHOOT THAT MAN AT THE CLARK GAS STATION?
- LAST NITE, DID YOU SHOOT THAT MAN AT THE CLARK GAS STATION ?

Non- Testable Issues

- Intent
- Fantasy
- Thoughts
- Beliefs
- State of mind
- Future behavior
- Other individuals behavior

LEVEL OF SCIENTIFIC VALIDITY FOR POLYGRAPH

- INCREMENTAL VALIDITY/DIAGNOSTIC VALIDITY
- A POLYGRAPH IS A DECISION SUPPORT TOOL TO ASSIST PROFESSIONALS IN MAKING MORE ACCURATE DECISIONS BY ACCESSING ADDITIONAL INFORMATION
- Q: Do we tend to get more and better information with the use of this tool than we do with out it?
- A: Yes!!! That's incremental validity

Medical, Psychological, (*screening and diagnostic*) tools comparison with Polygraph

Diagnostic Tool	Sensitivity	Specificity	Combined	Studies(N)
Polygraph (Diagnostic)	0.92	0.83	0.88	37
MRI	0.86	0.88	0.87	17
CT	0.83	0.89	0.86	19
X-RAY	0.77	0.85	0.86	12
Polygraph (Screening)	0.59	0.9	0.74	2
DSM-V	0.72	0.68	0.7	1
MMPI	0.68	0.65	0.67	17
MMPI (Screening)	0.7	0.53	0.61	5

Polygraph compared to other Forensic and Diagnostic Tools (Widacki & Horvath(1978))

Diagnostic Tool	correct	Incorrect	Inconclusive	False positive
Polygraph	90%	5%	5%	1.30%
Handwriting	85%	5%	10%	1.40%
Eyewitness	35%	20%	45%	9.10%
Fingerprint	20%	0%	80%	0%

How to help your client think about Polygraph

- A POLYGRAPH IS **A DECISION SUPPORT TOOL** TO ASSIST PROFESSIONALS IN MAKING MORE ACCURATE DECISIONS BY ACCESSING ADDITIONAL INFORMATION
- There is no such thing as a lie detector
- The process is protected by three separate laws
- The results are known only to the defense team unless the defendants authorizes the release
- The should think about the test like you would a CT MRI or X-ray
- It gives decision makers more information to help resolve some issues in the case facts

Inconclusive and no-opinion results

- These are synonymous terms
- No opinion came into use only to clarify the use of “Inconclusive”
- There is no basis for a differential meaning between the two
- It means there is insufficient data of evaluation worthy quality on the charts collected to render a decision either way. If the test were an x-ray it would simply mean we would have captured an “out of focus image” This happens in all forms of diagnostic imaging and testing.

How to think about test results

Polygraph Test Theory

- All tests are math Tests
- All test results are simplified probability statements
- Tests of abnormal phenomena are subject to simple interpretation rules
- (These are Binary rules) that is they = 1 or 0
- In medical diagnostic testing “ you are either positive for herpes or not!”
- Tests of normal phenomena require aggregated correlations to become diagnostic
- - Fever
- - elevated white blood counts

Screening vs. Diagnostic Testing

SCREENING TESTING

- No known incident (no accusation)
- Mixed or single issues
- No evidence to suggest examinee involvement in a behavior or crime
- Broad time frame
- Cost efficient
- Biased towards sensitivity
- (minimizes false negatives)
- A negative result is conclusive

DIAGNOSTIC TESTING

- Known incident or accusation
- Single behavioral issue
- Reason to suspect involvement
- Specific time . Location
- Often costly and invasive
- Biased for specificity
- Minimizes false positives
- Negative results are always conclusive
- Positive results are basis for further action or INVESTIGATION.

What Polygraph can mean to your client

A passed polygraph can mean the dismissal of all charges

A passed polygraph mean a dismissal of some charges

A passed polygraph can mean that the prosecutor is more comfortable accepting a plea

A passed polygraph can mean the prosecutor will decide not to pursue additional charges.

Completing the polygraph process can lead to the client having a more complete memory of events surrounding an incident

Completing the process can make the client more amenable to accepting and understanding a plea offer.

Completing the process can help prepare the client and help the attorney prepare the client to testify on his own behalf.

Completing the process can reassure the client that the defense team is willing explore all avenues of possible defense.

Completing the process can be the beginning of a cathartic journey for the client because he/she chose during the process to accept responsibility for their behaviors .