The Use of Polygraph in Law Enforcement Internal Affairs Investigations

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Introduction

Utilizing polygraph in law enforcement internal affairs (IA) investigations is a specialized procedure that has received very little attention in polygraph literature. This serious lack of industry standards for the use of polygraph by IA investigators has often led agencies to use examiners who are ill prepared to address the nature and intricacies of internal affairs investigations. In law enforcement literature polygraphs for IA investigations are often seen as ineffective, even being described as “muddying the waters” if the results are inconclusive (Thurnauer, 2002). There is clearly a need for mutual understanding and education. IA investigators must understand the advantages that come with the proper use of polygraph, and examiners must have at least a basic understanding of the legal, procedural, and ethical requirements of an administrative investigation. Lacking this understanding the polygraph process becomes, as advertised, ineffective and even detrimental to the investigation. An understanding of the basic guidelines provided in this article will give a starting point for examiners wanting to bridge that gap when conducting internal affairs polygraph examinations.

IA investigations differ significantly from investigations most polygraph examiners are familiar with, such as background investigations and criminal investigations. The IA investigation only rarely involves criminal activity or what would commonly be termed “police corruption.” The investigations usually involve simple misconduct (policy violations) or even mistakes in judgment stemming from improper training, procedural changes, or a failure to remember a policy or procedure due to infrequent use (Colaprete, 2007). Such issues are seldom as well defined as criminal violations. Also, unlike criminal investigations, the intent of the IA investigation is not to collect evidence of guilt that can be presented at trial (this is by nature an adversarial process); the IA investigation is instead a fact finding process (this is not adversarial in nature). Even those administrative investigations that address criminal acts follow this same philosophy. This should be easily understood by polygraph examiners as it is similar to the examiner’s role as a neutral fact finder in determining truthfulness. Objectivity is essential if IA investigations are to fulfill the diverse responsibilities expected of them, including protecting the public, protecting the employee subject to investigation and other employees, and protecting the agency by correcting procedural problems and removing unfit personnel (Kelley, 2003).

The rights of employees in an IA investigation are also significantly different. Will Aitchison (2000) cites constitutional rights based in the First, Second, Fourth, Fifth, Sixth, Ninth, and Tenth Amendments of the Constitution as basic rights enjoyed by employees. In addition there are federal laws addressing such issues as discrimination, fair labor standards, workers compensation, and disability rights. There are specific state laws addressing the administrative investigation process, and at times, the polygraph process. There is judicial interpretation of Constitutional and state law that specifically address procedural rights. There are also collective bargaining agreements. Any or all of these can and do affect the investigation process. Prior to conducting an examination, examiners must ensure they have a well grounded knowledge of the law in their state and an understanding of the policies and
applicable sections of any collective bargaining agreements for the particular law enforcement agency affecting administrative investigations and polygraph testing.

It is also important to point out that many of the examination techniques currently and commonly being utilized will not stand up to a critical analysis, in view of who is being tested and why, in an IA investigation. It is not the examination itself that is different, but the context. Examiners must understand that context to ensure their work conforms to the distinctive requirements of law enforcement IA investigations.

Types of Examinations

It is important to identify examination categories for clarity in discussing the proper use of polygraph in IA investigations. The United States Department of Justice (2006) identifies three primary categories of polygraph examinations: voluntary examinations, mandatory examinations, and compelled examinations. To be voluntary an examination may be refused with no adverse consequences. Mandatory examinations are required for an individual to be considered for, or stay in, a particular position. Compelled examinations hold the threat of consequences if refused (usually disciplinary, including termination).

Mandatory examinations include pre-employment testing, pre-appointment testing, and periodic discovery testing. Mandatory testing has been challenged, particularly as violating state laws restricting polygraph use in the public sector, but upheld by the courts. For example, a California appeals court (Los Angeles Police Protective League v. City of Los Angeles, 1995) held the use of polygraph before transfer to a sensitive position did not violate the California Public Safety Officers Procedural Bill of Rights Act because there is no compulsory requirement affecting employment status. In Baltimore (Calhoun v. Commissioner of Baltimore Police, 1995), the removal of officers from a specialized unit due to the results of polygraph examinations was held not to violate the Maryland Law Enforcement Officer’s Bill of Rights (McEllistrem, Roth, & Kalser, 2000). These examinations are seldom if ever used specifically in internal affairs investigations but are closely related, and often conducted by internal affairs personnel.

Voluntary examinations are often utilized as a part of the internal affairs investigation process. Polygraph examinations conducted on complainants who do not work for the agency are always voluntary, whether the complainant has requested or been asked to take the examination. Polygraph examinations conducted on employees, however, are only voluntary when the employee has, without being prompted, requested the examination. The examination is never voluntary when prompted, suggested, or asked of an employee. Allowing an employee the option of refusing to take the polygraph examination would not make it voluntary. Due to the very nature of an administrative investigation, the request to submit to a polygraph, or any other scientific or chemical test, makes the employee subject to disciplinary action if refused. It is not relevant that the employer does not intend to enforce any disciplinary action or tells the employee that there would be no disciplinary action taken if the request were refused. The employee would still suspect that the refusal would be taken into consideration in the overall evaluation of the investigation. If the employee subjectively believes that the examination is compelled and the belief is reasonable, then procedural rights are automatically in place (Aitchison, 2000, p. 166). In order to avoid any ethical or potential legal entanglements, it is best to treat all polygraph examinations, conducted on employees as part of an IA investigation, as compelled.

Compelled examinations are by far the most common type of examination given in an IA investigation. Employees who are asked to submit to a polygraph examination as part of an IA investigation, whether they are the subject of the investigation or not (such as a witness, an employee with knowledge of the incident, etc.), are compelled to comply with the request, and to be truthful, or be subject to possible disciplinary action. This requirement to be truthful was supported by the Supreme Court in the case of LaChance v. Erickson (1998). Disciplinary action is not required or appropriate in every case, however, the threat, up to and including termination from employment, is always
present and has been upheld by courts in a long list of jurisdictions except when prohibited by state law. A list of court cases addressing this issue is available on the internet in the AELE Library of Case Summaries at http://www.aele.org/law/Digests/empl157.html.

Procedural Rights

Law enforcement employees always have procedural rights in law enforcement IA investigations; many of them are vested by the U. S. Constitution. The most cited procedural right is based on the Supreme Court ruling in Garrity v. New Jersey (1967). There are volumes of information available on the ruling in this case; however for our purposes, it is sufficient to sum up the ruling in simple terms. The Supreme Court ruled that government agencies have the right to compel employees to make criminally incriminating statements during an administrative investigation under threat of disciplinary action if they refuse or are untruthful. The employee, however, has “use immunity” under the Fifth Amendment of the Constitution. This means that no compelled statement can be used in a criminal action against the employee. The statement can only be used in administrative (primarily disciplinary) decisions.

Although the Garrity ruling is the most famous, it was the clarification of Garrity in Garner v. Broderick (1968) that gave direction to investigators on procedures that are required. The Garner decision provided that use immunity must be afforded prior to criminal questioning. In addition it provided that government employees must answer only those questions that are specifically, directly, and narrowly relating to their official duties or fitness for duty. This effectively eliminated the use of IA investigations for witch hunts or fishing expeditions where nonspecific information is sought by interviewing many or all employees.

Acknowledgement of Rights

The issue of whether the employee’s rights must be provided and an acknowledgement (often called a waiver) signed has not been addressed directly by the Supreme Court. However, six circuit courts have addressed the issue and the circuit court decisions are split on what is required. How the examiner is required to proceed may depend on what court has jurisdictional precedence in his or her state. The Second, Seventh, and Federal Circuits adopt the “duty to advise” approach. Under their rulings a government employer has a duty to advise its employees of their rights and immunities under the Fifth Amendment prior to asking them potentially incriminating questions. The following cases are usually cited for these Circuits:

- Uniformed Sanitation Men Ass’n v. Commissioner of Sanitation of the City of New York, 426 F.2d 619 (2nd Cir.1970).
- Atwell v. Lisle Park District, 286 F.3d 987 (7th Cir. 2002).
- Modrowski v. Dept. of Veterans Affairs, 252 F.3d 1344 (Fed. Cir. 2001).

The Fifth, Eighth, and Eleventh Circuits adopt the “no affirmative tender” approach. Under their rulings there is no affirmative duty to disclose to employees their rights and immunities prior to questioning. These courts believed that a compelled polygraph examination could never be used in a criminal proceeding against the subject even without a grant of use immunity. Therefore any grant of immunity is irrelevant. The following cases are usually cited for these Circuits:

- Gulden v. McCorkle, 680 F.2d 1070 (5th Cir. 1982).
- Hester v. City of Milledgeville, 777 F.2d 1492 (11th Cir. 1985).

These rulings give guidance to examiners in these specified Circuits, but when testing in a jurisdiction not covered by one of these court decisions, the examiner should err on the side of caution and provide a statement of rights. The examiner needs to also investigate any state law or any collective bargaining agreement addressing the issue.

From a purely ethical standpoint, it is best to provide a statement of rights and have
the employee sign an acknowledgement in all cases. The provision of such protections, required or not, can never be questioned and lends confidence to anyone reviewing the investigative processes.

The Polygraph Specific Hester Case

*Hester v. City of Milledgeville* (1985) is of particular interest to examiners as the case revolved around the submission to polygraph examinations. The City was concerned that firefighters were involved in illegal drug activity and required employees to submit to a polygraph examination.

The City Council specified that the tests be “specifically directed and narrowly related to a particular internal investigation,” and that results of the testing could not be used as the “sole basis for taking disciplinary action against any employee.” Interestingly, they provided four forms and required examinees to sign one of the forms prior to the examination. One form provided that the results of the polygraph examination could be used in a judicial proceeding or administrative hearing. Another was a waiver of all state and federal constitutional rights in connection with the examination. The third preserved all constitutional rights and permitted the employee to object to incriminating questions. The fourth was a refusal to submit to the polygraph testing. Only a few employees were tested before a court injunction stopped the process and, although two were deemed deceptive, none were disciplined.

The resulting Circuit Court decision addressed a couple of important polygraph issues. First, the court stated that disciplinary action taken solely on the basis of a polygraph examination would violate an employee’s right to due process. This eliminated the use of polygraph as the sole investigative activity in this Circuit. Second, comparison (control) questions, when used exclusively for improving the accuracy of the test, were ruled not to be a violation of the employee’s constitutional right to privacy. This lent strong support for the use of polygraph in IA investigations.

Noncriminal Investigations

The decisions in *Garrity* and *Broadrick*, as well as the Circuit Court decisions support the fact that protections apply automatically whenever a law enforcement employee is required to answer questions as a condition of employment and that these protections apply to use immunity in criminal cases. This does not mean *Garrity* protections never apply in civil cases. California law, for example, prohibits statements made to be used in subsequent civil proceedings (*Aitchison*, 2000). The provision of rights and a signed acknowledgement should be a requirement when there are state laws and collective bargaining agreements that extend these rights to non-criminal actions. The examiner must be aware of any and all laws and local procedural requirements that apply to IA investigations.

This supports the ethical argument for always providing administrative rights and obtaining a signed acknowledgement prior to any polygraph examination conducted for an IA investigation, regardless of the nature of the investigation.

Administrative Rights Acknowledgement

The contents of administrative rights acknowledgements will vary based on state law and collective bargaining agreements. For example, agencies whose employees are unionized may allow for union representatives in the interview (the *Weingarten* Rule) and there are states where an interviewee has a right to have a legal representative present during a compelled interview (*Colaprete*, 2007). Most government agencies will provide the examiner with a copy of an administrative rights form for their use, if requested. On the following page, as an example, is a two part form that addresses all generally required notifications in an IA investigation. This format is reproduced with the permission of Lieutenant James A. McGee, Commander of the Roswell (GA) Police Department, Office of Professional Standards, Internal Affairs Unit.
PART I

• Allegations of employee misconduct which are referred to __________________ (Name of Internal Affairs Unit or Examiner) must be taken very seriously by all concerned. Under our present system, all complainants are warned that knowingly making false statements may result in their prosecution. Employees are under the same legal duty to be truthful as are complainants. In addition, employees who refuse to cooperate, or who willfully omit material facts from their statements, are subject to disciplinary action, up to and including termination of employment.

• An Administrative Investigation is a fact finding procedure only, and is not involved in recommending disciplinary measures. The _____________’s (Agency or Examiner) concern is with finding the truth in a fair and impartial manner. It is not our desire to cause any individual unnecessary pain or embarrassment.

• Cooperating in an internal investigation does not constitute a waiver of any appeal, grievance, or other legal rights, but the fact that you wish to exercise any rights will not entitle you to a delay or postponement in the investigative or polygraph process.

____________________________________________________________________  _________________
Employee Signature                                          Date

PART II

• You are advised that you are being questioned as part of an official administrative investigation of the ___________________. (Name of Agency). You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by laws and the Constitution of this state and the Constitution of the United States, including the right not to be compelled to incriminate yourself. You are further advised that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to _________________ (Name of Agency) charges which could result in your dismissal from employment with the _________________ (Name of Agency). If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding.

• The _________________ (Name of Agency) will notify you when administrative proceedings have ceased. Should criminal proceedings become necessary, you will be advised of your rights under criminal law at that time. However, these statements may be used against you in relation to subsequent agency charges, including termination.

• You have no right to counsel during an administrative investigation. An administrative investigation shall include, but not be limited to: any interview, interrogation, questioning, polygraph, or other chemical or scientific test. (This section may be deleted or altered based on state law and/or collective bargaining agreements.)

____________________________________________________________________  _________________
Employee Signature                                          Date

Witness
**Refusals**

Refusals to sign the acknowledgement of rights form should always be documented. The documentation of refusal should not stop the polygraph examination unless this is required by agency policy, a collective bargaining agreement, or other rule or law. What is needed is only the presentation of rights. The signed acknowledgement is simply documentation of the delivery which can be accomplished in different ways.

Audio or preferable audio and video recording of the rights review (usually as a part of recording the entire polygraph process) is the preferred way to document a refusal. This memorializes the presentation and refusal in the exact words of the examinee. Some law enforcement agencies utilize a refusal form to document the fact that an examinee refused to sign. Below is a generic refusal form similar to those used currently by law enforcement agencies.

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**CERTIFICATE TO BE COMPLETED IN EVENT OF A REFUSAL**

I, ___________________________________________, hereby certify that on this date, [Examiner Name] in connection with the administrative investigation ____________________________________________ [Reference #] ______________________________________ was advised of his rights in an administrative investigation but refused in my presence to sign the Acknowledgement of Rights form.

Examiner Signature ___________________________ Date ___________________________

Witness ________________________________________

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**Consent**

Consent forms are appropriate for polygraphs conducted in IA investigations when a complainant, who is not an employee, is asked, or has requested, to be tested. Examiners should use whatever consent form that has been determined to be best for their agency or business.

Testing employees for an IA investigation is a different matter. Many examiners, unfamiliar with the IA investigation process, are confronted with employees that refuse to sign their standard consent form stating that they are not voluntarily agreeing to take the test. Any attempt to require the examinee to sign the consent form, especially under threat of insubordination or disobeying a lawful order will not be upheld under judicial scrutiny. Indeed, requiring someone to lie and say that they are voluntarily consenting to the polygraph process when, in fact, they are not, would not be a lawful order and likely be a violation of the examinee’s Fifth Amendment due process rights.

The fact is that consent forms are completely inappropriate in compelled examinations. Consent is, in fact, not needed. The only thing required of the examinee is cooperation. Even when an employee requests the examination there is a compelled aspect to the process. As explained previously, the nature of the administrative investigation in the public sector always involves the threat of consequences if the employee is not truthful. The threat of consequences removes the examination from the voluntary category and eliminates the reason for a consent form.

**Liability**

Although most polygraph examiners use what they call a “consent form” the fact is that most have a short section on consent and
a large section waiving liability. Consent is inappropriate in compelled examinations however liability waivers may not be, especially for the commercial examiner conducting a test for a law enforcement agency.

The issue is complicated. The protections of qualified immunity afforded to reasonable law enforcement actions extends to polygraph examinations conducted by a government agency or by any examiner acting as an agent of the agency. This is supported by many court decisions including the polygraph specific case of Smock v. Nolan (2004) for the 7th Circuit Court of Appeals. In addition, law enforcement examiners usually have some form of liability protection provided by their agency that protects them from liability claims in the performance of their duties. Private examiners, however, are not automatically afforded such agency liability protections and have liability insurance policies for their protection. Insurance policies (and some internal liability protections depending on the agency policy) may require a waiver of liability. Law enforcement examiners should check with their insurance carrier or agency supported attorney (city, county, state, etc.) to determine the need for a liability waiver.

The bottom line is that examiners must have some assurance, prior to conducting an examination, that the examinee has no pre-existing condition that could be affected by the examination. Equally, the examinee must know when waiving liability is required and if the refusal is equal to refusing to submit to the examination in the same way as refusing to respond to questions or refusing to sit and have the attachments placed on their person.

Below is an example of a liability waiver. Parts of the waiver are reproduced with the permission of Daniel E. Sosnowski.

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**ADMINISTRATIVE INVESTIGATION POLYGRAPH LIABILITY WAIVER**

I am aware that this examination is being performed as a part of an administrative investigation of the ______________________ (Agency Name). I am aware that I may discontinue the test at any time and that I am free to leave at any time although I may be subject to disciplinary action if I do so.

I understand that any failure to comply with all the requirements of this examination, including the required signature of this form, is equivalent to a refusal, and will be treated the same.

I certify to the best of my knowledge that I am in good mental and physical condition. I am not aware of any mental or physical condition or ailment I may have which may be impaired by or aggravated by me taking this examination.

I do hereby release and covenant to forever hold free from all harm, liability or damage to me as a result of the examination and opinions the ______________________ (Examiner or Company Name), together with its officers, employees or its agents who may use the results and opinions of this examination. I remise, release, waive and forever discharge the ______________________ (Examiner or Company Name) from any and all action or cause of action, claim or demand, liability or legal actions which I have now or may ever have resulting directly or indirectly or remotely both from taking said examination and the oral and written opinions rendered because of said examination.

I certify that I have read the above information and that I understand its contents.

______________________________
Examinee

______________________________
Date

______________________________
Witness (Polygraph Examiner)
Examiners who decide not to use a liability waiver should use some format to document at least the health certification or to require a health certification from a certified physician or mental health specialist. This provides support for the decision to conduct the examination.

**Testing Procedure**

The testing procedure for IA polygraph examinations should conform to the standards of practice of the American Association of Police Polygraphists (n.d.) and follow the American Polygraph Association (2010) standards for evidentiary tests. IA polygraphs are not simply investigative. The results are often used by the government agency to make decisions regarding culpability and in disciplinary action decisions. In addition, there are ethical considerations in testing law enforcement personnel that warrant following the American Polygraph Association requirements for evidentiary examinations. The following is an overview of the applicable standards:

- **Instrumentation** – The instrument must be in good working order and continuously record: thoracic and abdominal respiration patterns, electrodermal activity, relative changes in pulse rate, pulse amplitude, and relative blood pressure, and physical movements. The instrument should be properly calibrated to manufacturer’s specifications.

- **Location** – The test should be conducted in a location free from distractions that would interfere with the ability of the examinee to appropriately focus during the examination process.

- **Recording** – Audio and video recording of the entire test process is recommended. Testimonial evidence is often the strongest presenter of fact available in an IA investigation. Therefore, the simultaneous audio/video recording provides much stronger testimonial evidence than transcripts of the interview or statements written after the interview (although all these recording media have their place in the investigative file).

- **Background** – Education, work history, and enough personal history to properly develop comparison questions must be obtained during the pretest interview.

- **Medical History** – Medical history, including current legal and illegal drug use that may affect the examination, and particularly medical history addressing stress related illnesses, must be obtained. If an examiner has a reasonable doubt concerning the ability of an examinee to safely undergo an examination, a release from the examinee and his or her physician should be required.

- **Test Issue** – The test should address a single issue. Multiple issues needing to be addressed require multiple tests.

- **Acquaintance (Stimulation) Test** – A known numbers acquaintance test is recommended in IA examinations. It follows the cooperative fact finding theme of the investigation while still allowing the examiner to establish salience, assess responsiveness, and look for possible countermeasures.

- **Test Technique** – IA polygraphs require a validated testing technique with an average accuracy of 90% or greater, excluding inconclusive results, which cannot exceed 20%. Do not deviate from the procedures used to validate the examination. Give special attention to ensuring the use of any established question types, question order, number of charts required, or chart evaluation rules (3-position or 7-position scale).

- **Chart Evaluation** – No IA examination should be evaluated based on fewer than three charts. Determination of deception indicated, no deception indicated, or inconclusive should be based only on the evaluation of the tracings. No extrapolygraphic information should be used in the determination.

- **Post Test** – Interviews after a deceptive evaluation aimed at resolving the inconsistencies of the test is appropriate and expected. Whatever the test
evaluation shows, the results of the examination should be given to the examinee verbally.

- A complete written report should be provided to the internal affairs investigator that includes the examinee’s identifiers (name, badge number, social security number, etc.), any significant information from the pre-test, a list of the relevant test questions and answers given by the examinee, any significant post-test statements, and the examiner’s conclusions based on chart interpretation. Examinees requesting a copy of the report should be referred to the IA investigator as the report is a part of the investigative file.

The use of strong standards gives the greatest result reliability and will hold up under review whether judicial or by an independent outside expert.

Testing Complainants

When an agency wants to test a complainant the reason for the test must be scrutinized. The procedures should never be used to deter a complaint. Continuing an investigation should never depend on whether the complainant takes, or is willing to take, a polygraph examination. There are, however, good reasons to request, or in the case of a complainant employed by the agency, to require that a complainant submit to a polygraph examination. When there are two opposing versions of the incident without outside support for either, a paired testing procedure provides the outside support needed. When complainants change their story repeatedly and/or contradict statements made earlier, a polygraph examination will assist in establishing and validating a complainant’s statement or provide support that the complainant is, at best, unsure of what happened.

There are also outside requirements that may lead to complainant testing. For instance, Texas law (Texas Legal Code - Section 143.124. and Section 614.063.) requires that an agency that wants to give a polygraph examination to a peace officer or firefighter who is the subject of an IA investigation must first test the complainant, and the complainant is required to show no deception. Similar requirements may be in an agency policy or in a collective bargaining agreement. The examiner must keep informed regarding all these issues.

**Internal Affairs Ethics**

Examiners should keep in mind that past misuse and abuse of the polygraph procedure has tainted the public view. There is also little doubt that most courts have a narrow view of its usefulness. Ensuring that all aspects of the examination procedure are conducted with the protection of the rights of the examinee in mind strengthens how courts and/or any other public reviewer will treat the procedure and the specific test. As discussed previously, ensuring that examinees understand their administrative rights, whether required or not, in addition to the zealous protection of all the examinee’s due process rights, supports that goal.

There are also polygraph specific issues that have not been addressed by the court when discussing administrative investigations. Proper examination procedure requires the examiner to delve into an examinee’s medical history. Any admitted use of illegal drugs in this context would have to be reported as misconduct not related to the original complaint. Even legal drug usage that has not been disclosed to the law enforcement employer may be a violation of policy. Most examiners are trained to treat medical information as completely confidential and used for the expressed purpose of determining the examinee’s fitness for testing. IA investigations are different in that they always involve the employee’s fitness for duty. This was recognized by the Supreme Court in their requirement for questions asked during an IA investigation to be specifically directed and narrowly related to the employee’s official duties or fitness for duty (Garner v. Broderick, 1968). Medical issues discovered in the polygraph procedure not only address the examinee’s fitness for testing but also may address the employee’s fitness for duty. Should the examiner reveal such medical information to the IA investigator?

Information discovered when developing comparison questions is very
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similar. The use of comparison questions was generically addressed by the 11th Circuit but comparison questions may give rise to specific issues not addressed by the court. For example, an examinee may admit to significant criminal acts when discussing these questions. The fact that these admissions came out in comparison question discussion does not make them off limits for other purposes. Is the examiner ethically bound to report such admissions? The overriding factor here is the protection of the public. Law enforcement employees are held to a higher standard to offset the increased authority given them by virtue of their duties. Employees who do not live up to that standard, especially involving criminal activity, must be examined closely. The internal affairs investigation is a primary tool law enforcement uses to provide the facts needed for that examination. Commonly examiners who work for the agency are bound by policy, and in some cases law, to reveal such information. Commercial examiners seldom have such guidelines. Still, the ethical issue is the same. We all have an ethical duty to ensure the general safety of the public. Therefore, any information elicited in the investigation, including during the polygraph examination, must be reported and presented for evaluation. Examiners who withhold such information could be allowing or furthering the victimization of individuals who encounter the employee and the public in general.

There are specific ethical standards expected of IA investigators that should be extended to the polygraph examiner conducting an IA examination. First and foremost, examiners are government employees who are being held to a higher standard. Keep all discussions during the interview on a professional level. The general rule is for fair, impartial, and respectful treatment of all persons interviewed. This applies especially to the accused law enforcement officer. On the opposite side of this issue, the courts have dealt harshly with agencies that have conducted what have been termed abusive and coercive interviews. Court rulings leave no doubt that IA interviews should be treated with a higher level of respect for individuals as well as the protection of their due process rights (Colaprete, 2007).

Most law enforcement employees are well versed in interview techniques and may recognize bait techniques and other ploys. The examiner using such techniques often breaks any developed rapport, sometimes irrevocably. Whether living the life of an ethical government employee or not, subjects will have been steeped in the lore of government service to the public and will usually best respond to discussing how their actions have belied that model.

As the goal of an IA investigation is discovery of the facts, there is no need to interrogate examinees. The statements made by the examinee during the pretest and posttest interview in relation to the case facts developed by the IA investigator will present the best picture possible for the agency to made administrative decisions.

Special Considerations

It is unfortunate, but common, for chiefs, sheriffs, and city administrators involved in law enforcement administration to want to use polygraph as the first actions in an investigation. This may be politically motivated or simply an attempt to quickly resolve a sensitive issue. For whatever the reason, the action is misguided and examiners need to use whatever influence they have to guide the administration in properly conducting an investigation prior to using polygraph. Polygraph examinations should never be conducted early in an IA investigation and certainly never “be” the whole of the investigation. As any experienced examiner knows, the more solid information collected and provided to the examiner in advance the better the question formulation and resulting determination of truthfulness. The AAPP Standards and Principles of Practice (n.d.) state it this way: “The effectiveness of the polygraph examination, to a large extent, will be based upon the thoroughness of the investigation, prior to having the person take the examination.” These Principles of Practice address the fact that the examiner and investigator must work together as a team. This allows the polygraph examination to provide information in addition to, or in support of, the findings of the IA investigation.
The polygraph examiner and IA investigator should not be the same person. Examinees should rightfully question the potential for evaluation bias as it is difficult not to develop preconceptions based on interviews and other investigative material collected in the course of the investigation.

Many agencies require IA investigations to use a polygraph examiner that is not employed by the investigating agency. Although this is not always feasible, it does eliminate any claim of bias or undue influence from agency administration.

The examiner should look carefully at who is conducting the investigation. There are agencies who utilize line supervisors to conduct IA investigations with little formal internal affairs training. This can lead to the inclusion of distortions and misrepresentations in the information provided to the examiner.

Examiners must recognize that government employees, particularly law enforcement officers, have aggressive personalities. This is part of what attracts them to the job and makes them attractive candidates. In addition, their training reinforces this personality trait often making them feel they must control every situation. If allowed, they will wear full uniform, weapons, sunglasses, or anything they believe will assist them in controlling the examination. To combat this, examiners should set ground rules for examinees. Plain clothes, if possible, are preferred. If a uniform is worn, look for and ensure the examinee removes any restrictive clothing, especially ballistic vests. Such protective gear will certainly affect the chart interpretation. Weapons are absolutely not allowed. Make examinees remove any sunglasses, hats or caps. If these rules are set up front examinees will be more compliant and it will make the examiner’s job much easier.

It is best to be respectful but firm in the fact that the examiner is in charge and will set the pace for the examination. Interviewing government employees with such a strong personal confidence can be difficult at times. However, they often buy in to techniques such as the use of “What ifs” to undermine self-confidence, personal arguments for telling the truth, and solutions to alleviate fears as proffered by Nathan Gordon and William Fleisher (2006).

Conclusions

Polygraph examiners are not expected to be IA investigators when conducting examinations; however they must be aware of the unique aspects of the administrative investigation process. Most aspects of the administrative investigation, from the application of statutory and case law to the unique ethical aspects of investigating public sector employees, extend through the polygraph process. Consent and liability must be viewed anew when compliance is compelled. Examiners must alter or rewrite old standardized forms. The content of the forms may well differ depending on the judicial jurisdiction, state and local law, and agreements entered into by the particular agency through collective bargaining. Ethical beliefs commonly held in the polygraph profession must be reexamined in the light of the administrative investigation of public service employees and special consideration given to their unique standing in our community.

Once the context of the law enforcement administrative investigation is thoroughly understood, the examiner can conform to its distinctive requirements. It is not the examination, but the context that makes the use of polygraph in IA investigation different.
References


Case Citation


