Polygraph Pro Suite
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Mark Conroy  
Gary F. Davis  
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Walt Goodson  
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V. Cholan Kopparumsolan  
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Sabino Martinez  
James McCloughan  
Brian R. Morris  
Raymond Nelson  
Patrick O’Burke  
Stanley M. Slowik  
Darryl Starks  
Daniel Violette

### Deadlines

This issue closed on May 31, 2016.

Deadline for July/August 2016 issue is July 29

### Submission of Articles

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treasurer@polygraph.org

Seminar Chair
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seminarchair@polygraph.org
IN MEMORIAM
EDWARD “WOODY” J. WOODWARD

The APA regrettably announces the death of Edward “Woody” J. Woodward.

On Monday, April 11, 2016, former Manatee County Sheriff’s Office polygraph, Edward “Woody” Woodward passed away.

Woody was a long time member of the American Polygraph Association and the Florida Polygraph Association. He served on the APA Member Services committee and conducted many background investigations on behalf of the APA.
American Association of Police Polygraphists
39th Annual Training Seminar
June 12-17, 2016 Uncasville, CT

American Polygraph Association
51st Annual Seminar/Worshop
August 28- September 2, 2016
Baltimore, MD

Attention School Directors
If you would like to see your school’s course dates listed here, simply send your upcoming course schedule to editor@polygraph.org
51st Annual Seminar/Workshop

American Polygraph Association

Fortifying the Examiner

August 28 - September 2, 2016

Hilton Baltimore Hotel

Baltimore
Maryland

Michael Gouglé
Program Chair 2016
<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>1:00 - 3:00 PM</td>
<td>SCHOOL DIRECTOR'S MEETING</td>
</tr>
<tr>
<td></td>
<td>(ROOM TO BE ANNOUNCED)</td>
</tr>
<tr>
<td>3:00 - 5:00 PM</td>
<td>APA WELCOME RECEPTION</td>
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<td>6:30 - 8:30 PM</td>
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SUNDAY, AUGUST 28, 2016

CLASSROOM A
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<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>7:30-8:00 AM</td>
<td>Break Sponsored by: <strong>Baltimore Hilton</strong></td>
</tr>
<tr>
<td>8:00-9:30 AM</td>
<td><strong>OPENING CEREMONIES</strong></td>
</tr>
<tr>
<td>Call to Order -</td>
<td>Walt Goodson, APA President</td>
</tr>
<tr>
<td>Master of Ceremonies -</td>
<td>Michael C. Gougler, Seminar Program Chair</td>
</tr>
<tr>
<td>The National Anthem -</td>
<td></td>
</tr>
<tr>
<td>Presentation of Colors -</td>
<td>Baltimore City Police</td>
</tr>
<tr>
<td>Pledge of Allegiance -</td>
<td>Walt Goodson, APA President</td>
</tr>
<tr>
<td>Taps -</td>
<td>Richard Pascuito, APA Member</td>
</tr>
<tr>
<td>Welcome to Baltimore -</td>
<td>Joe Bradley, Chief, FBI Polygraph Program</td>
</tr>
<tr>
<td>Greetings -</td>
<td>Maryland Polygraph Association President</td>
</tr>
<tr>
<td>Invocation -</td>
<td>Barry Cushman, APA Director</td>
</tr>
<tr>
<td>9:30-9:45 AM</td>
<td>Break Sponsored by: <strong>Baltimore Hilton</strong></td>
</tr>
<tr>
<td>9:45-12:00 NOON</td>
<td><strong>APA Standards of Practice</strong></td>
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<tr>
<td>Walt Goodson, APA President</td>
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<tr>
<td>Patrick O'Burke, APA President-Elect</td>
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</tr>
<tr>
<td>12:00 NOON-1:00 PM</td>
<td>Lunch on your own</td>
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<tr>
<td>1:00-5:00 PM</td>
<td><strong>SHIELD: Strength and Honor in Everyday Lawful Decisions</strong></td>
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<tr>
<td>Melvin Allick, Texas DPS</td>
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<tr>
<td>Lacy Wolff, Texas DPS</td>
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<tr>
<td>2:45-3:00 PM</td>
<td>Break Sponsored by:</td>
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<tr>
<td>CONT'D</td>
<td><strong>SHIELD: Strength and Honor in Everyday Lawful Decisions</strong></td>
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<tr>
<td>Sgt. Melvin Allick, Texas DPS</td>
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<td>Lacy Wolff, Texas DPS</td>
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<tr>
<td>7:05 PM</td>
<td><strong>BLUE JAYS vs. ORIOLES</strong></td>
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<td>Tickets $24</td>
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<td>Stadium just across the street</td>
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<td></td>
<td>CLASSROOM A (disponible en Espanol)</td>
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<td></td>
<td>Discussion of Valid Polygraph Principles</td>
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<td></td>
<td>James B. McCloughan, APA Director</td>
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<td>9:45 - 10:00 AM</td>
<td>Break Sponsored By:</td>
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**APA ANNUAL BUSINESS MEETING**

**10:00 AM - 12:00 NOON**

**CLASSROOM A**

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
<th>Speaker(s)</th>
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</thead>
<tbody>
<tr>
<td>12:00 Noon - 1:00 PM</td>
<td>Lunch On Your Own</td>
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<tr>
<td>1:00 - 2:30 PM</td>
<td>PLE Principles</td>
<td>Mark Handler, APA Editor, Pam Shaw, APA Past President</td>
</tr>
<tr>
<td>1:00 - 2:30 PM</td>
<td>Current Issues in PCSOT Testing</td>
<td>Benjamin Blalock, Director, PEAK Credibility Assessment Training Center</td>
</tr>
<tr>
<td>1:00 - 2:30 PM</td>
<td>APA Applicant Screening Model Policy</td>
<td>Barry Cushman, APA Director</td>
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</tbody>
</table>

**POLYGRAPH INSTRUMENTS WORKSHOP**

**2:30 - 4:00 PM**

<table>
<thead>
<tr>
<th>CLASSROOM A</th>
<th>CLASSROOM B</th>
<th>CLASSROOM C</th>
<th>CLASSROOM D</th>
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<tbody>
<tr>
<td>LAFAYETTE INSTRUMENT</td>
<td>LIMESTONE TECHNOLOGIES</td>
<td>AXCITON COMPANY</td>
<td>STOELTING COMPANY</td>
</tr>
</tbody>
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**7:00 - 11:00 PM THE NATIONAL AQUARIUM**

Tour the Aquarium, Hors D' oeuvres, Dinner, Dessert and Cash Bar
Less than a mile from the hotel, transportation on your own
Cost is $45 per person
<table>
<thead>
<tr>
<th>Time</th>
<th>Location</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>7:30 - 8:00 AM</td>
<td>Break Sponsored By:</td>
<td>Classrooms</td>
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<td></td>
<td><strong>CLASSROOM A</strong></td>
<td>8:00 - 12:00 NOON</td>
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<td></td>
<td><strong>CLASSROOM B</strong></td>
<td>8:00 - 10:00 AM</td>
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<td></td>
<td><strong>CLASSROOM C</strong></td>
<td>8:00 - 12:00 NOON</td>
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<tr>
<td></td>
<td>A Panel Discussion</td>
<td>Current Issues:</td>
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<tr>
<td></td>
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<td>Moderator, Gordon Vaughan</td>
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<td>Walt Goodson</td>
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<td>Mark Handler</td>
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<td>Barry Cushman</td>
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<td>Jack Trimarco</td>
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<td>Joe Bradley</td>
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<td><strong>CLASSROOM B</strong></td>
<td>Discussing the Latest Research:</td>
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<td></td>
<td>Addressing Breathing Instructions During a Polygraph Exam</td>
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<td>Dale Austin</td>
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<td>U.S. Customs and Border Protection</td>
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<td>9:45 - 10:00 AM</td>
<td>Break Sponsored By:</td>
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<td><strong>CLASSROOM B</strong></td>
<td>Discussing Common Problems Seen During Polygraph Exams and How To Correct Them</td>
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<td>Dale Austin</td>
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<td>U.S. Customs and Border Protection</td>
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<td>12:00 Noon - 1:00 PM</td>
<td>Lunch On Your Own</td>
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<td>1:00 - 3:00 PM</td>
<td><strong>CLASSROOM B</strong></td>
<td>Interview &amp; Interrogation: The Peace Model</td>
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<td>Andy Griffiths</td>
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<td>England, United Kingdom</td>
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<td>1:00 - 5:00 PM</td>
<td><strong>CLASSROOM B</strong></td>
<td>PCSOT Question Construction &amp; Target Selection</td>
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<td>Guillermo &quot;Gil&quot; Witte</td>
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<td>San Diego Police Department</td>
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<td>2:45 - 3:00 PM</td>
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<td>PCSOT Question Construction &amp; Target Selection</td>
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<td>San Diego Police Department</td>
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<td><strong>CLASSROOM B</strong></td>
<td>APA Examinee Suitability Model Policy</td>
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<td>Raymond I. Nelson</td>
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<td>APA Chairman of the Board</td>
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<td>3:00 - 5:00 PM</td>
<td><strong>CLASSROOM B</strong></td>
<td>Law Enforcement, Federal, and Government Examiners:</td>
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<tr>
<td></td>
<td></td>
<td>Starting a Private Practice and Keeping it Going</td>
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<td>George Baranowski</td>
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<td>PCSOT Question Construction &amp; Target Selection</td>
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<td>Guillermo &quot;Gil&quot; Witte</td>
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<td>San Diego Police Department</td>
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**TEKSAS ASSOCIATION OF POLYGRAPH EXAMINERS**
<table>
<thead>
<tr>
<th>Time</th>
<th>Location A</th>
<th>Location B</th>
<th>Location C</th>
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<tbody>
<tr>
<td>8:00 - 10:00 AM</td>
<td>Quality Assurance</td>
<td>Andy Griffiths</td>
<td>TBA</td>
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<tr>
<td></td>
<td>Lt. Matt Mull, Texas DPS</td>
<td>England, United Kingdom</td>
<td>Domestic Violence Testing &amp; Model Policy</td>
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<td>Lt. Dennis Westerman, Texas DPS</td>
<td>TBA - PCSOT</td>
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<td>Lt. Matt Hicks, Texas DPS</td>
<td>Patrick O'Burke</td>
<td>PCSOT credit</td>
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<td>APA President-Elect</td>
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<td>10:00 - 12:00 NOON</td>
<td>TBA</td>
<td>TBA - PCSOT</td>
<td>PCSOT credit</td>
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<td>Lunch On Your Own</td>
<td>1:00 - 5:00 PM</td>
<td>1:00 - 3:00 PM</td>
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<td>(CONT'D)</td>
<td>Quality Assurance</td>
<td>Discovering Countermeasures</td>
<td>Using Analogies to Elicit Information</td>
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<td>Lt. Matt Mull, Texas DPS</td>
<td>Mark Hander, APA Editor</td>
<td>Dale Austin</td>
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<td>Lt. Dennis Westerman, Texas DPS</td>
<td>Pam Shaw, APA Past President</td>
<td>U.S. Customs and Border Protection</td>
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<td>Lt. Matt Hicks, Texas DPS</td>
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<td>3:00 - 5:00 PM</td>
<td>Psychological Issues that Affect Polygraph Exams</td>
<td>Discovering Countermeasures</td>
<td>Using the Directed Lie Technique in Polygraph Exams</td>
</tr>
<tr>
<td></td>
<td>Tiffany Collier</td>
<td>Mark Hander, APA Editor</td>
<td>Dale Austin</td>
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<td></td>
<td>University of Texas, Permian Basin</td>
<td>Pam Shaw, APA Past President</td>
<td>U.S. Customs and Border Protection</td>
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<tr>
<td>SCHOOL INSPECTOR TRAINING</td>
<td>3:00 - 5:00 PM</td>
<td>(ROOM TO BE ANNOUNCED)</td>
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<tr>
<td>APA ANNUAL BANQUET AND AWARDS</td>
<td></td>
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<tr>
<td>KEYNOTE SPEAKER - RICK DEMPSEY - FORMER BALTIMORE ORIOLES CATCHER</td>
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<td>6:30 - 7:00 PM</td>
<td>COCKTAILS</td>
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<td>7:00 PM</td>
<td>DINNER</td>
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<td>TIME</td>
<td>CLASSROOM A</td>
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<td><strong>8:00 - 12:00 NOON</strong></td>
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<td><strong>CLASSROOM A</strong></td>
<td><strong>Contemporary Polygraph</strong></td>
<td><strong>Examiner Well Being:</strong></td>
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<tr>
<td></td>
<td>(disponible en Español)</td>
<td><strong>Theory: Evidence Based</strong></td>
<td><strong>Dealing with Stress</strong></td>
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<td></td>
<td><strong>8:00 - 12:00 NOON</strong></td>
<td><strong>Answers to Common Questions</strong></td>
<td><strong>Tiffany Collier</strong></td>
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<tr>
<td></td>
<td><strong>Interviewing and Eliciting</strong></td>
<td><strong>Raymond I. Nelson</strong></td>
<td><strong>University of Texas, Permian Basin</strong></td>
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<td></td>
<td><strong>Information from Resistant</strong></td>
<td><strong>APA Chairman of the Board</strong></td>
<td><strong>PCSOT credit</strong></td>
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<td></td>
<td><strong>Subjects</strong></td>
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<td><strong>Lori L. Hauser, PhD, ABPP</strong></td>
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<td><strong>(CONT'D)</strong></td>
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<td>(CONT'D)</td>
<td><strong>Algorithm Development -</strong></td>
<td><strong>Examiner Well Being:</strong></td>
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<td><strong>Interviewing and Eliciting</strong></td>
<td><strong>Artifact Detection via Machine</strong></td>
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<td><strong>Information from Resistant</strong></td>
<td><strong>Learning and Statistical Learning</strong></td>
<td><strong>Tiffany Collier</strong></td>
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<td><strong>Subjects</strong></td>
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51ST ANNUAL APA SEMINAR
AUGUST 28 - SEPTEMBER 2, 2016
HILTON BALTIMORE
401 WEST PRATT STREET
BALTIMORE, MARYLAND 21201
ADVANCED REGISTRATION IS REQUIRED
(All room reservations must be made individually through the hotel's reservation department, or using the On-Line Group Page)
1-800-444-8667 - In house  443-573-8700
(exist On Line Group Page link)
APA FED ID #52-1035722

ROOM RATE: $132.00, Single/Double occupancy, plus taxes (currently 15.5%), all reservations must be guaranteed by a major credit card or advance deposit in the amount of one night's lodging. Reservations not guaranteed will be automatically cancelled at the cut-off date.

CUT-OFF DATE for hotel reservation is 7/15/16 or until APA's room allotment is fulfilled. Number of rooms is limited. Individual departure dates will be reconfirmed upon check-in. (72 HOUR CANCELLATION NOTICE)

REGISTRATION HOURS: Sunday, 8/28/16 10:00am - 5:00pm
Monday, 8/29/16 7:00am

Seminar Sessions: Sunday-Friday, 8/28/16 - 9/2/16 APA Cancellations and Refund Policy: Cancellations received in writing prior to 7/15/16 will receive a full refund.
Registration fee includes professional instruction, seminar materials, refreshment breaks, Sunday Reception and Thursday banquet)

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MONDAY NIGHT 7:05 PM
BLUE JAYS vs. ORIOLES
Tickets $___ each
#___=$___

TUESDAY NIGHT EVENT
TBA

THURSDAY NIGHT BANQUET
___ #attending
___ will not attend
___ vegetarian meal(s)

NAME:_________________________ PHONE:_________________________
ADDRESS:________________________________________________________
CITY:________________________________ STATE:_____________ ZIP:_________
EMAIL:____________________________________________________________
NAME ON BADGE:_____________________________________________________
GUEST NAME ON BADGE:______________________________________________

ADDITIONAL $50 FOR THOSE WHO PAY AT THE SEMINAR

PAYMENT RECEIVED BY JULY 15, 2016
___$400 - MEMBER/APPLICANT
___$550 - NON-MEMBER
___$175 - PER GUEST (Cannot Attend classroom presentations)

(Guest fee includes: Sunday Reception, Guest Brunch Monday and Banquet Thursday)

PAYMENT RECEIVED AFTER JULY 15, 2016
___$450 - MEMBER/APPLICANT
___$600 - NON-MEMBER
___$225 PER GUEST (Cannot Attend classroom presentations)

(Guest fee includes: Sunday Reception, Guest Brunch Monday and Banquet Thursday)

Your nametag is your admission to all events and activities. Please wear it at all times during the conference.

___$100 - Translation Equipment Fee (must be paid to use the translation equipment)

PLEASE MAKE CHECKS PAYABLE TO: APA
REMIT TO: APA, P O BOX 8037, CHATTANOOGA, TN 37414
CREDIT CARD PAYMENTS: Card Number__________________________________
Expiration date:___________ cvv2:________________________
Signature:____________________________________________________________

By signing here, I give my permission for my name and email address to be listed on the APA Mobile App

PLEASE CONTACT THE APA NATIONAL OFFICE IF YOU HAVE QUESTIONS
LISA JACOCKS, MANAGER
1-800-272-8037
manager@polygraph.org
President's Message

Walt Goodson

*Always vote for principle, though you may vote alone, you may cherish the sweetest reflection that your vote is never lost.*  - John Quincy Adams

Fellow examiners, in this magazine you will find valuable information regarding the APA election process and candidates in our upcoming elections. You will be able to cast your electronic ballot from July 3rd to July 9th. Please take the time to vote for the candidate(s) you feel will best advance your principles and core values.

Before last year, I had never visited Baltimore. What a shame! since this time, I have had multiple opportunities to explore the city, and I found it to be rich in history as well as a cultural and food paradise. Baltimoreans are quite proud of their crab cakes. On my most recent trip, I found some more great seafood and a park with beautiful waterfalls and endless miles of hiking, biking and running trails certainly worth exploring. If you have not done so, I urge you to register for our upcoming seminar. The host hotel is the Baltimore Hilton, and it, of course, meets the APA high standards you have come to expect. Having Major League Baseball visible from the conference area, a trip to the National Aquarium and a lineup of informative and entertaining speakers will certainly make this a memorable conference. Additionally, the hotel is less than 15 minutes from the airport and located in the heart of the city you will not spend your valuable time in transit. You can also take light rail from the airport, almost to the hotel doorstep for $1.70 to save a taxi fare. Please take a minute to review the speaker and entertainment lineup in this magazine if you have not done so. I look forward to seeing you there.

In addition to the preparations for our 51st seminar, your Board of Directors and National Office staff has been working to revise APA policies and standard operating procedures that need to be brought up to date. President-elect O’Burke will brief you on some updates to the Post-conviction Sex Offender Testing Operational Policy in his following article. He will also discuss the advantages of raising the APA’s school
accreditation standards to a level that would be recognized by an external professional accrediting body such as the Association of Specialized and Professional Accreditors (ASPA). Such a change could help our schools comply with their local education provider requirements as well as further define our high educational standards. Other items your board is considering are changes to our membership structure to bring it in line with forensic science associations and whether the APA would benefit from a full-time executive staff member. Both of these items will result in changes to the organization which are much too important to implement without careful consideration and feedback from our membership. Thus, we will be openly talking about these changes and possibly submitting motions for your consideration at our annual business meeting.

Finally, I’d like to thank Chief/AAPP President Jim Wardwell, the Connecticut Polygraph Association and the Maryland Polygraph Association for the opportunities to speak and represent the APA at their annual seminars over the last few weeks. You are all class acts! Also, I want to thank our overworked and underpaid editorial staff, Mark and Nayeli, who have once again done an exceptional job of providing you with a professional magazine. I hope you enjoy it!

Thanks for all you do and I hope to see you all very soon.
How to be a Rock Star

I have recently begun asking polygraph examiners if they believe that polygraph as a forensic examination actually works. The implications of the answer are important. This a simple fundamental question that should be framed around whether an adequately competent examiner, using APA Best Practices, can give a valid and accurate test to determine truth or deception. Notice that this question does not address whether an examiner who possesses advanced interview competencies may elicit more information from pre or post-test efforts. Clearly, there are examiners with significantly better interviewing skills who obtain more information than others. My question does not cover that. I am asking whether you believe that polygraph as a forensic examination works to determine truth or deception.

While my question is fundamentally simple, it does cover a lot of territory. There are two big pieces of real estate in this territory that make me cautious. Does the examiner correctly construct a format with appropriate questions, and is the examiner’s interpretation of collected physiology data correct? Having looked at a number of exams sent for quality review, I can state there are some very poorly developed questions, failures to use a validated format, and some very questionable interpretation. I recently saw a PCSOT report where the examiner asked a relevant question about whether the test subject had made a mistake in choosing his wife over another person as a spouse. With the nine other relevant questions, it left me scratching my head. Clearly there are some really bad questions out there, but oddly many questions can still function as they were intended in spite of how poorly structured they seem.

Sadly, it is quite common and seems to lead to examiners supporting how they are a polygraph “rock star” because; they use a certain format, are better at relevant question development, use a better comparison question type, or simply on the number of tests they have conducted. These type of claims are probably not really helping our profession, or the public’s impression of polygraph as a test. This does not downplay the need for standardization in polygraph. We should support that if you follow what you were taught in an accredited polygraph school, and you
adhere to APA Standards of Practice and Model Policies, and you correctly applied a valid TDA method, then you probably arrived at the correct conclusion, regardless of your resume.

As a former narcotics agent for a State Police agency, I found it good after long periods of undercover work to shave, cut your hair and dress like a police investigator. This practice grounded you in accepting and acting like a police officer, and not believing that you were “super narc” or Sonny Crockett from Miami Vice. I will not apologize if you are not old enough to remember this show and have to Google to understand the reference. So it seems appropriate for me to look thru the fog of ego and I accept that I am simply an adequate polygraph examiner, as are my fellow examiners. This fits with my understanding that polygraph is a scientifically valid forensic examination. While my ego tells me I have advanced interview competencies, such skills are separate from conducting a valid polygraph examination and supporting fellow professionals.

There is no reason to believe that any student who finishes my polygraph school and follows the APA Standards of Practice and Model Policies is not fully capable of conducting a valid examination. I tell this to every one of my student graduates. I also believe the same is true for every student who finishes any other accredited polygraph school. To believe anything else is just salesmanship or pride talking. Please pay attention though to that big and critical word “accredited”. When someone says there is an “approved curriculum” it simply describes what the school is planning to do. An “accredited” school means far more; it means that someone can show the school did what it said it was going to do. A former supervisor once told me, “people don’t do what you expect, they do what you inspect”. Accreditation involves inspecting and provides tangible recognition that a training program did what they said. That process provides confidence for the student and to the community.

Most States in the United States have laws regarding post-secondary education training. These various State laws are similar in requiring licensing and regulation of training programs such as polygraph schools. Many States also look to the APA for standards regarding polygraph which helps reduce the chaos. While States have variations in requirements, the need to accredit polygraph schools can be an important component of State licensing and oversight. This becomes even more complex in the international environment.

As such, it is apparent to me that the
APA needs to strengthen the APA’s ability to accredit training programs and be recognized for accrediting effort practices. The APA could do this by utilizing recognized outside accrediting agencies. I have looked at this possibility. It will without question raise the tuition costs for polygraph schools to levels that are unaffordable, or very prohibitive. The more logical and cost effective path seems to be that the APA actually create an ability within the APA to be recognized by others as an accrediting entity.

The most appropriate path for accrediting standards and recognition seems to be joining an organization such as ASPA, the Association of Specialized and Professional Accreditors*. This will allow the APA to follow recognized best practices, train school inspectors properly and be recognized for our accrediting effort. This means our accrediting program will necessarily grow in personnel and the cost involved. However, this would be more cost effective than having some outside entity performing this function. It will also place additional demands on training programs. In the end accreditation recognition strengthens our position as a valid and scientific profession and outweighs these costs. As many of you are aware, all forensic sciences are under intense scrutiny and fully accredited training recognition will be very positive for our profession.

The next challenge I see in standardization has been in how to achieve quality review of polygraph examinations. The APA’s primary method of addressing polygraph standardization has been to provide Standards of Practice and Model Policies, along with advanced training. This begs the question though of how many examiners actually conform to Standards of Practice and Model Policies. Having examiners submit to quality review would identify lack of adherence, but this is complex. Many examiners do not have adequate internal resources for quality review. External review is a challenge where examiners are limited, or where there may be business or ego temptations to go outside the purpose of professional review. Still, I am very much engaged in trying to develop workable solutions for quality review at this time, but the task is not easy.

Another approach is to have examiners begin to consistently use scoring algorithms for test evaluation. This offers promise but does not appear widely practiced. Many examiners I speak to have concerns about using scoring algorithms for various reasons. If one of the concerns is a fear of whether algorithms actually work then we should have scientists develop algorithms that do work. I have personally approached several in the polygraph field, including scientists and instrument manufacturers, about the
need for better scoring algorithms, particularly algorithms that could recognize artifacts. Another concern is that examiners may trust the scoring algorithm and avoid making their own hand score. Conversely, some have no idea what a scoring algorithm is. I think that science can offer solutions that address these concerns but we have to ask and be educated.

I know that this article is long, but I believe that it gives you some idea for my thoughts on the goals of what I want to accomplish in my upcoming term as President. These goals will prioritize more fully developing the school accreditation as a recognized accrediting body, and to develop some process for our membership to consistently apply some methodology for quality review of polygraph examinations. I think that these goals will strengthen our profession and makes us all “Rock Stars”. What are your thoughts? See you in Baltimore where we can talk.

* Link to ASPA website. http://www.aspa-usa.org/about/

Gary F. Davis
VP Private

This is the last time I will be writing to you as your Vice President, Private. As you are aware, the vice president positions have been replaced and are now Members of the Board of Directors. This change makes sense. There is not any real conflict between the needs of Private Examiners, Government Examiners or Law Enforcement Examiners. All your Board Members take an oath to support the association and the policies and standards of the American Polygraph Association. Each Board Member has an obligation to do what is right for the members and support the Association. I hope I have done just that during the past year. I have announced, I am a Candidate for the Board and would appreciate the opportunity to serve you for the next 12 months.

As I read in the News, the number of individuals serving long terms in prison only to be cleared by DNA, I wonder if there is more we as professionals can do. For the past several years, I have conducted pro bono testing on Capital Crimes and those being represented by Project Innocence and Law Schools. In two of those cases the individuals were wrongly convicted and have been subsequently released. One the test was inconclusive when the Prison put me in an area not conducive to valid testing. The other was a clear NDI. During the hearing in Federal Court, the Judge allowed my testimony along with other evidence of prosecutorial misconduct. The result was the inmate was released outright.
I would suggest private examiners, if you are able to join in the effort to identify those wrongly convicted. There are not a lot of resources available to help exonerate those wrongly convicted. And, quite frankly not all who claim to be innocent, in fact innocent. If we as professionals join in and assist those wrongly convicted, we can truly claim to be “Seeking the Truth”.

George H. Baranowski
Director

Keeping Current Is What It Is All About, How About You?

Recently I heard a story about a man who was having trouble with his iPhone. When he pressed the home button to talk to Siri, she wouldn’t talk to him. He’d press the button, ask Siri a question and wait for an answer, but no answer ever came. His grandson told me this story, and told of his grandfather complaining about his defective phone. The grandson said he told his grandfather there was nothing wrong with his phone, but he said his grandfather wouldn’t listen because he was certain something was wrong and was determined to prove it. Apparently he pressed the button and asked Siri, “Why won’t you talk to me?” There was no answer. The grandpa pressed the button again and asked “Siri, how much is two plus two?” And still nothing. He pressed the button, and reportedly said, “Siri, explain to my know-it-all grandson why I do have a problem with my iphone.” And that’s when the grandson said, “Grandpa, your phone is old it doesn’t have Siri.”

To me this story underscores an important point: We all know we have to stay up to date with tools, research and technology. We all need to refresh ourselves from time to time and keep up about what’s going on in our profession. Keeping current is one of the most important motivations in our profession. There’s an old saying by John Maxwell about “A knife will lose its edge without periodic visits to the sharpening stone” and I think the same is true of people.

In my own experience in this field of conducting PCSOT tests, there was a probationer who was transferred from Arizona to my region in Indiana a few years ago, and after he was somewhat settled in his new state, he was sent to me by his new probation officer to have a Maintenance Test conducted. Among the sent paperwork and information that was provided for this new client, was what was called a “maintenance” polygraph test. Are you ready for this? This test had 27 relevant questions, no comparison questions and two neutral questions. On top of that, only one chart was run and the alleged
reported determination was “He told the truth.” (No, this was not a peak-of-tension test). The therapist in Arizona thought this was the most complete test she had ever seen as it covered all the questions she wanted answered. As you probably suspected, this probationer did not do as well with the test at our office as he had done at his previous facility.

I’m sure we all know we need to keep current, to keep up to date, but I want to share another “out of sight example “of this necessity. In this example of not knowing what you’re supposed to be doing, I was asked a couple of years ago by a Deputy Prosecuting Attorney, who is a good friend of mine, to look at a polygraph test that was run by an examiner in another state. This had to do with a case that he was prosecuting. Upon looking at what was provided, I felt there might be a few problems with the test that was run. First, according to the examiner’s report, he had used a “Military Modified General Questions Test (MGQT).” Published research some time ago had noted the Military MGQT version did not produce very positive scientific research results, and was overshadowed quite distinctively by the “Air Force Modified General Questions Test version (AFMGQT).” But perhaps even more questionable were the relevant questions themselves that were apparently asked on the test that was listed in the report. There were clearly two separate issues asked in two of the relevant questions listed. The Deputy Prosecuting Attorney said he was told that the test charts themselves were destroyed and no longer available for some reason, and the comparison questions were not included in the material that was provided. These issues, plus a few more were discussed with the Prosecuting Attorney. I gave my friend what information I could about the matter and wished him luck.

I was not present during the testimony of the examiner when this case went to trial, but apparently the examiner was asked why he had not used the Air Force version of his test format to which the examiner reportedly said he had never heard of that format, and didn’t think it was a problem. He was to have testified that he had been an examiner for over 8 years and alleged that his school instructor had told him that this was the only test format that he would ever need in any of the tests he would run. But more importantly, he was to have said that his polygraph school he attended 8 years ago was the only training that he had ever received and that he had never attended any other training seminar or conference since he had been an examiner. Allegedly he was to have said that he was told by his instructor that he would never need to attend any such conferences. He apparently also admitted that there was a state polygraph organization in his state,
but again said he didn’t think he needed to get involved with them either.

The Deputy Prosecutor told me how he advised that examiner that all professionals need to attend annual conferences and training and that this would include doctors, surgeons, airline pilots and including himself as a prosecuting attorney or as a lawyer. My friend told me that the examiner couldn’t answer the question he asked, which was, “How would you ever know that there was a more scientific test around than the one you use?” Regarding the case, he said that the polygraph examination that was offered was thrown out, and the subject was found guilty. But unfortunately, in a way, this again gives the polygraph community another black eye when it comes to court acceptance of polygraph examinations.

The point being made here is that things change, science changes, technology is ever changing for the betterment of our profession. Attending conferences keeps us up to date, it refreshes our knowledge of the science that is so all important to us. Attending conferences keeps us refreshed, to stay up to date with our tools and technology as well as confidence that we are doing our jobs with the best advice and information available to us. Put another way, the past is a nice place to visit, but you certainly wouldn’t want to live there forever. If you rely on what you’ve learned instead of what you’re learning, or if you bank on what you’ve done instead of what you’re doing, that’s a sure sign you need to make a good positive evaluation of your own guidelines. The American Polygraph Association is having its 51st Annual Seminar/Workshop August 28 through September 2, 2016 at the Hilton Baltimore Hotel. From the reported lineup of topics and speakers, it again provides a most outstanding array of experts and instruction. I find it to be an interesting coincidence that the theme of this year’s APA training seminar mirrors the point of this article, which is titled: “Fortifying the Examiner.” Hope to see you all in Baltimore with your learning caps on.

Steven Duncan
Director

Fellow APA Members, I hope this Board Member Report finds everyone doing well.

It has been a busy couple of months for the Ethics and Grievance Committee. Several Cases have been closed with only a couple of new complaints to investigate. Work is still in progress on a new Ethics and Grievance Committee Policy with hopes of having it ready for presentation to the Board in August.
I have just returned from assisting with a Training Seminar in Denver, Colorado which our friends there had requested APA help with.

I want every Member to know, I am still, as I always have been, available to assist in any way I can. If you have new ideas, questions or complaints, I will be glad to listen and discuss them with you. I am here to represent you.

If I can assist any Member, feel free to call or email me.
APA ELECTION 2016

Join Us!

Keep us moving toward a better future

Volunteer your time and knowledge
2016 APA Election Schedule

APA will hold its annual election for Board offices in July. If you are interested in running for office, please take note of the positions being voted this year:

- President Elect (1 year)
- Director 2 (2 years)
- Director 4 (2 years)
- Director 6 (2 years)
- Director 7 (1 year)
- Director 8 (2 year)

Applicants must specify which of the six offices he or she is a candidate. Candidates may run for only one office per year.

Below are important dates to remember

- **May 1 – May 31:** Period to submit nominations and self-nominations in writing to the National Office. Nominations must include a cover letter specifying for which office the candidate is vying.

- **June 1:** Last day to submit a candidate statement up to 500 words for the APA Magazine and the APA website (editor@polygraph.org)

- **June 1 – 7:** Validation of candidates’ eligibility to hold APA office.

- **June 7:** Candidacy letters published in the order they were received on the APA website and in the APA Magazine.

- **July 2:** Email notification of elections (Ensure your email address is current on the APA website; www.polygraph.org)

- **July 3 – 9:** Electronic elections.

- **July 11:** Posting of results on the APA website.

- **July 31 – August 6:** Runoff elections, if necessary.

- **August 8:** Notification to winners. Posting of final election results.

- **September 1:** Officers sworn in at the APA Annual Banquet.

For additional information, contact Mark Handler at editor@polygraph.org or (859) 539-0705.
APA ELECTIONS 2016

Select the best team
These members were nominated or self-nominated for the following board positions. Their names and candidate statements are listed in the order in which the nomination was received for each position.

**President-Elect**
1. James McCloughan
2. Daniel Mangan

**Director 2**
1. Raymond Nelson

**Director 4**
1. Sabino Martinez Jr.
2. V. Cholan Kopparumsolan

**Director 6**
1. Darryl Starks
2. Brian R. Morris

**Director 7**
1. Gary F. Davis

**Director 8**
1. Daniel Violette
2. Essam Aly Gamal El-Din
Dear fellow members and professionals. It has been my great honor to serve you as director over the last three years. I am humbly asking for your support in my bid for election to the position of president-elect.

For those who don’t know me, I am a fulltime polygraph examiner with the Michigan State Police and hold the rank of detective sergeant. I have been with the department for over 20 years and assigned to the Polygraph Section for over 15 of those years. In addition to testing, I conduct training and research, as may be necessary for the advancement of credibility assessment in the field. Some of the areas I have conducted research and training in are concealed information testing (CIT), countermeasures, and voice stress (e.g. CVSA and LVA).

As your Director 1, I have served as Chair of the Education Accreditation Committee (EAC) and tasked with continually updating and implementing the Education and Training Program Accreditation Manual. For those who don’t know, this manual sets forth the requirements that programs (previously referred to as schools) must meet in order to be
APA accredited. This committee is one of the busiest and not a week goes by where something needs to be accomplished on it. However daunting the task, the committee, its volunteers and the Board of Directors strive to ensure that prospective students of our profession are put first and have the structural building blocks to start out their career on the right foot. I truly believe that our initial and continuing education are our greatest asset to current and future success in our profession.

Recently there has been a common misconception that the president of the APA has greater control over what the APA does. In reality, the APA board is made up of 11 elected representatives of the membership whom all have but one vote on matters that are brought before them, and that includes the president. Because of this, transacting business for the greater good of the profession often takes lengthy discourse and compromise to reach a result that best serves the APA membership. I have learned a great deal about the art of compromise by being a part of many such decisions.

In closing, I will continue to put our profession’s education first, knowing it is the foundation of our profession’s future. I will continue to serve the membership’s best interests in order to strengthen our profession to face current and future challenges by building on core values of Unity, Knowledge, and Excellence. I will strive to do these things with the foresight in mind that ensures that we are proactively addressing future issues and implementing necessary change to help us face them. Thank you for your consideration and support. Should you have any questions or just wish to contact me for further information, you may email me at mcclougj@gmail.com.
Join Me In Making the APA Honest, Ethical and Accountable

Since completing my initial polygraph training under the great Cleve Backster and joining the American Polygraph Association in 2004, I have come to the conclusion that the polygraph industry has a problem with telling the truth about the “test.”

As current events continue to show, polygraph is notoriously unreliable, plagued with structural frailties, and easily defeated (or confounded) by following simple instructions freely available on the Internet.

That’s reality.

If polygraph were a medical procedure I doubt many doctors would use it, for fear of being sued.

Effective polygraph has precious little to do with science; it relies solely on examiner expertise. All of the model policies, industry insider research and wishful thinking in the world will never change that.

A little history... In 1997, the APA proffered a flattering report – The Validity and Reliability of Polygraph Testing – that spawned a lasting perception of near-perfect accuracy. Here’s an excerpt:

The American Polygraph Association has a compendium of research studies available on
the validity and reliability of polygraph testing. The 80 research projects listed...involved 6,380 polygraph examinations or sets of charts from examinations. Researchers conducted 12 studies of the validity of field examinations, following 2,174 field examinations, providing an average accuracy of 98%.

Incredibly, the APA stuck to its 98% accuracy claim until 2011 – ten years after the devastating NAS report condemned polygraph as lacking solid scientific underpinnings – when the APA published a home-grown meta-analytic survey showing 89% accuracy.

Beyond its continued claims of “evidence based” high accuracy, the APA should address these other troubling issues: victimization of innocent parties via false results; a lack of research on examiner vulnerability to countermeasures; and, potentially harmful discrimination within the APA.

Consequently, I am running for APA president elect on this remedial platform:

1. A bill of rights – similar in spirit to those found in the medical and mental health fields -- for polygraph test subjects, designed to elevate informed consent and avoid potential harms

2. Open-book research, including an ongoing countermeasure challenge series integral to APA seminars, designed to reveal polygraph’s real-world accuracy and expose the wide variations in examiner competence

3. Equality for all APA members regarding access to political and educational opportunities, thereby reducing the inequities of a de facto caste society

Realistically, polygraph is mainly about money. While there will always be opportunists in our field, the principled professional will lead by example. That means living up to the recently (and strangely) abandoned APA goal to “Serve the cause of truth with integrity, objectivity and fairness to all persons.”

It is time to eradicate the APA’s self-made legacy of unrealistic expectations, and be forthright about the risks, realities and limitations of polygraph “testing.” As president elect, I will work tirelessly to bring truth, honesty and accountability to the APA, and to the entire polygraph profession. Please join me.

To contact me, or view my qualifications, visit www.polygraphman.com. I invite your inquiries.
The polygraph profession today is different than the polygraph profession of 10 years ago, and the polygraph profession 10 years from now will be different than it is today. Among the most important things we can do to plan for a successful future is to continue to build a cohesive and well-administered organization that is answerable and responsive to issues both within and outside our profession. Effective response to complex external issues will require understanding of those external issues.

The polygraph profession is facing a potential period of transition, including potential changes in accreditation standards for training programs in polygraph and the forensic sciences in general, and potential changes in credentialing standards for practitioners in the both polygraph and the forensic sciences. As we observe the introduction of other commercially available scientific tests for credibility assessment, the polygraph profession can anticipate potential changes in legislative, public, academic/scientific, and legal/courtroom expectations for scientific lie detection. More than ever before, the APA must continue to advance the effectiveness of the polygraph as the most effective scientific approach for lie detection and credibility assessment.
The abilities and experience that I offer include both practical and technical problem solving skills. In addition to my experience as a field polygraph examiner, having thousands of polygraphs in private practice with sexual and violent offenders, I have years of training and experience in behavioral mental health with both dangerous offenders and victims of abuse. I also have training and experience in statistics, data analysis, research and algorithm development. I have published studies and instructional articles on virtually every aspect of the polygraph test, including polygraph techniques, question formulation, post-conviction testing, test data analysis, algorithm scoring, physiology, psychology, and other topics.

I have been a servant of the APA for some years, including past elected roles. I have served as chairperson of the PSCOT Committee and the Research Committee. I contributed written language and conceptual content to the APA Model Policies for PCSOT and Law Enforcement/Public Safety Applicant Screening. In past elected roles, I helped to advance the profession through the adoption of policies for polygraph records retention, examinee suitability, and testing of domestic violence offenders. I have made training opportunities available to advance the knowledge and skills of polygraph professionals across the U.S. and around the world.

My reason for entering the election cycle is simple. I want to serve the profession, and I believe that I offer important value to the discussions, goals, and plans of the incoming APA President and the other members of the Board to help the APA help polygraph professionals to achieve the goal of maximum usefulness to our communities and agencies. The future effectiveness of the APA and the polygraph profession depends on elected leadership that understands the interaction of science, policy and field practice. I believe that my skills and experience can continue to be an important asset to our future.

Thank you for your consideration. Vote. /RN
As a full member of the American Association I am requesting the membership’s vote of confidence in our next election for the Director 4. I have been a member of this great organization for over 10 years. I am a retired Texas Department of Public Safety Polygraph Examiner and had a pleasure of serving as an examiner for 12 of my 20 years of employment with the department. I served under then Captain Mike Gougler and Lieutenant Walt Goodson whom I consider great supervisors and good friends. I bring with me over 15 years of experience and have held office in our local law enforcement association in the past. I wish to serve as a director for reasons that I believe would benefit this great organization and its membership. First and foremost, I am currently a co-director and coordinator for the Veridicus Polygraph International Academy, North American Courses which has been in operation since 2009. Our academy has helped train civilians and law enforcement personnel in the United States and Mexico. In our courses we strongly urge students to become members of APA and stay current with all the new outstanding work of other members. We encourage professionalism attainable only through continuing education which we recommend through organizations such
As a Spanish speaker, I have helped behind the scenes at our seminars during registration without being compensated in any way and was proud to help. My interactions with Spanish speakers, I wished would serve as a reflection of our professionalism that exists in many of our members of the American Polygraph Association. I ask for your vote and hope to continue to represent and help as much as possible.

V. Cholan Kopparumsolan

I seek an opportunity to serve the APA membership because where I am today is thanks to the great people I have met in APA. APA Board and members offered their unwavering support for the setting up of a polygraph school in Singapore, and in doing so enhanced the knowledge and competency of practitioners across Singapore agencies. APA’s training outreach to Singapore and the region evolved into a meaningful partnership resulting in three successful APA Asia Pacific seminars that saw a crowd of regional practitioners from Singapore, Taiwan, Brunei and Korea. These milestones across my membership in APA has spurred me to consider ways to serve, the APA membership.

A brief background of myself – I obtained a Masters in Criminal Justice with a Security Specialization from Michigan State University in 2002 and I am with the MINDEF Centre for Credibility Assessment School, an entity under the Singapore Ministry of Defence.
My running for the APA Board is motivated by two objectives. First, I wish for APA to gain more international recognition. Being an international institution does not imply APA losing its original identity as a American-based professional association. Rather, going international means spreading the APA’s good reputation, integrity and values in and beyond America. We could reach out to communities in Latin-America, Asia and East Asia so they could benefit from the values and wisdom of the APA. My dream is to replicate the success of the APA Asia Pacific Conference to realize APA’s very mission statement - the continued growth of ethical and evidence-based detection of deception through the use of the polygraph. I am excited about upholding rigorous standards and integrity in the polygraph profession because behind each professional’s decision is the life course of a person. Polygraph professionals face immense moral responsibility and the regulation of this profession by a trusted, well-established and reliable body with a more global outlook and outreach such as the APA is key.

My second objective is for professionals such as us to be better prepared for us to usher in change and face emerging challenges. I was inspired by Mr Krapohl’s sentiment shared during a recent Cyber Security conference – that we should focus on integrating other technologies to complete our capability and not compete amongst us to see which is best. I believe we could advance further as a professional body if we go by constructive consensus rather than competition. A change in mindset is needed to integrate new thoughts and technologies. I plan to tap on wisdom of many examiners from diverse domains including legal, academics and treatment-oriented professionals to bring about this change in mind set and bring our understanding of credibility assessment technologies to greater heights. To this end, I hope to shape conversations leading to enhanced credibility assessment capabilities.

I sincerely submit my above-mentioned objectives for the APA and urge you to consider my nomination as the next APA Director. Thank you and God Bless!
TO: The General Membership of the American Polygraph Association

In consideration of the distinguished elected position Director 6, within the American Polygraph Association (APA), please accept my campaign statement of interest for election to the office of Director 6. Having served for the past 2 years as APA Vice-President for Government, 32 years of combined service with the federal government, plus a diversified portfolio which includes private sector, military, federal law enforcement and adjunct instructor experience, my knowledge and expertise brings well-roundedness to the APA membership. With great pride and humility I’m requesting your support and vote, with the hope you will elect me to the position of Director 6.

I currently serve as the Vice-President for Government and I am the General Chairman for the Communications and Public Relations Committee’s. From 1983 to 1989, I proudly served in the US Army as a Military Policeman and later as a Special Agent with Army CID, where I was first introduced to the investigative utility of Polygraph. I began my
career as a Special Agent with The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in 1990 and graduated from The Department of Defense Polygraph Institute (now NCCA) in 1998. From 2004 until my retirement in November 2014, I served as a Supervisory Special Agent-Quality Control Team Leader with ATF’s Polygraph Branch. Since retiring, I have served in various private sector positions including program manager and technical director.

Academically, I hold a Bachelor of Science Degree in Criminal Justice Administration from Park University, Parkville, Missouri; and a Master of Arts Degree in Forensic Psychology from Argosy University, Washington, DC. A member in good standing with the American Polygraph Association since 1998, I’ve attended annual training conferences since that year. Additionally, at the APA Conference’s (Arlington, VA Chicago, Il), and The Federal Inter-Agency Seminar and state association seminars, I have served as a presenter respectively.

If I am re-elected to the new position of Director 6, I hope to continue advancing the cause for:

1- Research based standardization of the polygraph profession.
2- Offering more APA Continuing Education courses throughout the year.
3- Develop and expand Social Media based outreach for the APA Membership
4- Advance the strategic plan of the APA.
5- Increase the APA membership.

Together as dedicated members of the APA, we can make this great organization more efficient and effective. I hope you will agree that my comprehensive background offers knowledge, skills and aptitude, which can support our overall mission and elevate membership. I value highly your review of my submission and hope to secure your support and vote. Thank you for providing me the past opportunity to serve you as Vice-President for Government and I humbly request your continued support for the position of Director 6.

Sincerely,

Darryl Starks
I am grateful to the American Polygraph Association and all of the opportunities membership in this organization has provided me during my career. From being able to attend an accredited polygraph school, the American International Institute of Polygraph in Morrow, Georgia, to membership in state organizations recognized by the APA: Utah, California, and Maryland; the American Polygraph Association has always had a hand in every step of my polygraph career. That is why I have taken this opportunity to participate in the upcoming election and ask for your consideration when you decide how you would like to see this great organization move forward.

I began my polygraph career as a private examiner in the PCSOT arena. I worked side by side with Department of Corrections personnel in California, Utah, Idaho, Wyoming, and Washington. Through my Utah state licensing internship, I was afforded the opportunity to work with both state and local law enforcement and became a member of the American Association of Police Polygraphists. After becoming a full member of the APA, I continued my education and became a Certified Primary Instructor and continue to teach today. Following a number of years as a private and law enforcement examiner, I took the opportunity to pursue another life goal, which was attending law school. I graduated from the University of Idaho College of Law in 2012 and have been admitted to practice law in the state of Utah. Finally, I have recently taken advantage of the opportunity to become a federal examiner and work with another excellent group of polygraph professionals.

Since 2012, I have had the opportunity to speak at over 130 law schools in 42 states the past 4 years discussing how important polygraph is in criminal investigations, pre-employment screenings, and for national security. We face serious challenges in our profession on multiple fronts. We need to do the things that are necessary to strongly protect our well deserved professional reputations. Whether it is validated testing techniques, legal challenges, or other professions questioning our industry, we need board members who understand and have experience in all of the arenas the APA represents. I believe that my experience in working in all three major areas of polygraph, law enforcement, private, and federal, gives me a strong basis for helping build alliances and consensus as an organization, and will help us to protect our profession.

The APA is at the forefront of many areas of polygraph. Whether it is continuing edu-
cation, initial training, or research and development of new techniques and standards, we need someone who can speak for all of the different stakeholders our organization represents. I look forward to this upcoming election and respectfully ask for your support. I hope to have the opportunity to work with our incoming President and the other members of the board. I can be reached at pps-utah@hotmail.com.

Candidate for Director 7

Gary F. Davis

For the past 12 months I have had the honor and privilege of serving on the APA Board of Directors as Vice President-Private. The past year has been an eye opener for me. Your Board is constantly faced with the challenges of an organization as large as the APA. The Board meets not only in person but holds regular Tele conferences to vote school approval, address legal problems that might face the Association and to develop standards of practice and best practices for members of the Association.

As most members know, our profession is under constant scrutiny by those who oppose Credibility Assessment using the Polygraph. One of the greatest challenges we face today are technologies that use completely objective assessments. Until recent years, polygraph outcomes were purely subjective where examiners view the same data differently. As we adapt to computer technology to evaluate physiological reactions to questions, we move away from subjectivity and into totally objective data analysis. Failure to change with technology will doom our profession.

For the past 35 years I have been a member of the APA. I would like to continue to serve our profession by serving on the Board of Directors. If elected, I will continue to represent the issues facing private examiners and our profession in general. I support Standardization, the use of computers to evaluate data and a unified profession seeking the truth and protecting the innocent. I would appreciate the opportunity to serve you as a Board member for the upcoming year. As always, I am available by email; thelieguys@gmail.com or by telephone at 866-535-8969 feel free to contact me with concerns or questions.
I, Daniel Violette, submit myself as a candidate for Director 8 on the American Polygraph Association Board of Directors. I am retired from the United States Air Force and currently employed as a police officer in the City of Westbrook in the State of Maine. I have been a police officer for more than thirteen years and I’m currently assigned as a Detective / Polygraph Examiner in the Criminal Investigations Division of the Westbrook Police Department. I investigate major crimes on a daily basis and I routinely use the polygraph as a tool to further the investigative efforts of my agency.

I received my basic polygraph training from Elmer Criswell and his staff at the Northeast Counterdrug Training Center on Ft. Indiantown Gap in Annville, PA in 2007. I then completed my internship under the watchful eye of my polygraph mentor, the former APA President Barry Cushman. I was issued my first polygraph license by the Commissioner of the Department of Public Safety in the State of Maine in 2008 and I have been a licensed polygraph examiner continuously since that time. I have been a member of the APA since 2008 and I have served as the Vice President- Law Enforcement on the APA
Board of Directors for the past two years.

The time I have spent on the APA Board of Directors has been an educational experience for me because I never knew how much time and energy it actually takes to maintain the day to day operations of our organization. The first year I spent on the APA Board of Directors I served as the Chairman of the Communications & Public Relations Committee under President Raymond Nelson. This past year I have served as the Co-Chairman of the Education Accreditation Committee with Director Jamie McCloughan under President Walt Goodson. Working with the other members of the APA Board of Directors has been a humbling experience for me and I know I will be a much better polygraph examiner in the future because of the experience.

As a Director on the APA Board of Directors I do not plan to try to implement changes, just for the sake of making changes. I plan to continue to work hard to try to understand the results of research, and to try to keep pace with emerging technology as it pertains to the detection of deception. I also hope to continue to provide an active duty law enforcement officer’s perspective to the APA Board of Directors so we, as a group, may determine the best way to use all of the information available to shape our model policies and standards of practices for the future of polygraph. If elected, I would consider it an honor to serve as Director 8 on the APA Board of Directors and I respectfully ask for your vote in the upcoming election.
Dear Friends and Colleagues:

I respectfully request your consideration of my candidacy for American Polygraph Association (APA) Director 8. I believe I am eminently qualified for this position. Please review my qualifications set forth herein.

In 1977, I received my Bachelor of Science degrees in Aviation and Military Science from the Egyptian Air Academy and was designated as rank of Lieutenant Pilot. In 1979, I received my commercial pilot licensed in 1979. In 1981, I received the designation of aviation pilot; and my Airline transport pilot license. In 1982, I received a diploma in Metrology from the Institute of Metrological Authority.

In 1986, I transferred to the security field in Military Intelligence and in 1994 became the chief of the Ministry of Defense Interrogation Management Center. I worked there in the field of interrogation and security for over 19 years. During that time, I personally conducted and supervised over five thousand polygraph examinations, resolving most of them by confession. I have also had an assignment as a cultural counselor in the Egyptian Embassy in Cyprus.

In 1996, I completed my basic polygraph training course at the Academy for Scientific Investigative Training (ASIT), in Philadelphia, Pa.
In 2003, I received a promotion to an Egyptian Military Air Commodore (one star general). In July 2003, after a distinguished career, I retired from the military.

In September 2003, I joined the ASIT team, where I am currently the Assistant Director for the Middle East, Africa and Asia. Over the years I have attended numerous advanced courses in Forensic Psychophysiology and American Polygraph Association (APA) seminars. I am a certified Primary Polygraph Instructor.

In connection with my polygraph career, I have conducted lectures and seminars in Saudi Arabia, United Arab Emirates, Dubai, Jordan, Morocco, Turkey, the Republic of South Africa, the United Kingdom, Lebanon, Philippines, United States of America, Singapore and Oman.

From 2008 to 2011, I was employed by Egypt Air Holding Company as Vice President for security.

I am a proud full member of the APA and many other professional organizations. I have authored professional papers titled Understanding the culture of Terrorism and the Use of the Polygraph as Means of Counter-Terrorism, and New View of Distortion by Using the SAS.

I strongly believe that the future of the APA and the polygraph profession is secure. However, as our profession is growing dynamically worldwide it is important that we demonstrate our inclusiveness of international polygraph professionals. The presence of on the APA Board of an individual such as me who is a bridge between US and international polygraph professionals is very important for the general health of the APA and the profession itself.

If you elect me, I will work tirelessly for the APA to continue to educate, advocate and promote the profession both here and internationally.

I respect fully ask for your vote for APA Director 8. Thanking you in advance.

Respectfully,  
Essam Aly Gamal El-Din
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On Tuesday, July 25, 2006 in the area of Palisades Avenue in Jersey City, New Jersey at approximately 0330 hours there was a report of two males shot multiple times inside a residence. Upon arrival of the patrol units this was confirmed and the shooter(s) were at large. The crime/incident location is described as a multi dwelling house. The shooting occurred in apartment number four.

Emergency Medical Technicians arrived on scene and Paramedics found both males were unresponsive, extremely critical and determined to be in “serious condition”. Both victims were immediately transported to the medical center in Jersey City. Upon arrival at the medical center doctors deemed the gunshot wounds to be life threatening. The Hudson County Prosecutor’s office homicide unit was notified as protocol in life threatening crime incidents. They responded and joined the investigation.

The detectives responded to the active crime scene and on-going investigation. Detectives were able to secure a witness to the incident and recovered items that were to be forensically...
analyzed for DNA. Amongst the items recovered were a cigarette butt, a hat, and a blood soaked T-shirt.

While crime scene technicians were processing the crime scene, the witness was secured and transported to the North District to be interviewed. The witness will be referred to as Jane Doe for purposes of this report and to protect the identity of the witness.

The witness’ statement to the detectives in summary is as follows: Jane Doe stated, that on Tuesday morning she was inside apartment number four with three males, “partying/getting high”. After “hanging out” a few hours Jane decided to go back out into the street to “hang out”. According to Jane, as she was coming down the steps inside the hallway of this multi dwelling, she was approached by two males. Jane described these males as both having their faces covered by some type of mask or shirt. These masked men, both armed with handguns, asked Jane, “who was inside of apartment number four?” Jane advised the masked men that there were three males inside the apartment. She identified the two male victims by nick names. The actors then proceeded to apartment number four and shot two of the males multiple times before making good their escape.

Detectives working the case were able to get a photograph of one of the actors/shooters based upon investigative resources developed during the investigation. This male was positively identified by the witness through a photograph line up administration which included the suspect developed by detectives. At this point a warrant was issued and an arrest was made within four days of the crime/incident.

At this point in the investigation only one actor was arrested and in custody. Investigators were awaiting DNA laboratory results. The twist in the case now occurs as the county Prosecutor’s office is notified that the actor in custody for this shooting incident is an identical twin. Photograph identification would be next to impossible to prove.

Also, due to the actor being an identical twin, any DNA evidence that was recovered would be unable to differentiate between twins because of genetic similarities. This discovery complicated the investigation on the two main evidentiary fronts: witness identification and DNA identification.

To make matters even worse for investigators, the “Star” witness was unable to be located. It was believed that this
was as a result of threats from the actors for her cooperating. Throughout this investigation information learned was that the shooting was a drug and gang territory issue, common in this city.

In late October or early November, the First Deputy Assistant Prosecutor, a big proponent of polygraph, had discussions with me on another polygraph case. She asked me if a Polygraph examination could be utilized in this investigation because of the existing complexities of the case concerning DNA and witness identification. I replied unequivocally, “YES!”

On Thursday, November 16, 2006 the actor/defendant was transported from the County Jail to the Jersey City Police Department, Major Case unit, for the purpose of a Polygraph examination. The actor was accompanied by his Attorney and Investigators of The Hudson County Prosecutor’s office.

At this point the actor/defendant was advised of the polygraph process by me in the presence of his Attorney. Both agreed to the examination.

An MGQT Polygraph examination was conducted by me using the Arther technique on an analog/ink Arther VI instrument. A series of three Specific Accusation tests were run in addition to a stimulation test.

The relevant questions asked during these three tests are as follows:

3K. Do you know for sure who did the shooting on July 25, 2006? (No)
5. Did you do the shooting on July 25, 2006? (No)
8. Did you help in anyway with the shooting on July 25, 2006? (No)
9. Right now can you take me to the gun that was used in the shooting, on July 25, 2006? (No)

Throughout the Polygraph examination there were definite indications that this male had not told the entire truth to the questions asked. As a result of this, the examinee was notified of my OPINION. He subsequently “confessed”.

At this point, a formal statement was taken from the actor in the presence of his Attorney. Remarkably, he positively identified his identical twin brother and another male as the shooters involved in this crime/incident. The examinee’s twin brother advised him of the shooting and reasons for it. Also, he told him who was with him during the shooting. During this interview
it was learned that this in fact was a drug and gang territory issue as previously suspected and “the competition needed to be taken out”. In addition to this information, it was learned that the female (“star”) witness was not going to testify in this investigation in an attempt to subvert the prosecution. Further, the examinee even stated to me that he knew that any DNA evidence that was recovered from the scene would be “useless” because he and his brother are identical twins.

On December 19, 2006, immediately following my interview with the male actor originally arrested in this incident, the examinee went before a Superior Court Judge. There it was determined that as a result of the Polygraph and subsequent confession, as well as new information developed in the case, this actor would be released from custody.

As a result of the Polygraph examination and the preceding interview, two actors were positively identified, subsequently arrested, pled guilty to the charges and were sentenced to New Jersey State Prison for this crime. Both victims miraculously recovered from their multiple gun-shot wounds.

There is no doubt amongst all parties involved in this investigation that this case would not have come to a successful conclusion had it not been for the Polygraph examination. This is another good example of mutual efforts from members of The Jersey City Police Department and The Hudson County Prosecutor’s office.

To protect the identity of all parties involved in this crime/incident the names and identifying characteristics have been omitted.

This Polygraph examination and interview were conducted by me when I was a Detective within The Jersey City Police Department’s Major Case Unit. I have since been promoted to Sergeant within the Major Case Unit and continue to be the department’s lead Polygraph examiner. I was trained in Polygraph by the late Richard “Dick” O. Arther at The National Training Center of Polygraph Science approximately 15 years ago and have had tremendous success with the Polygraph. In the preceding 15 years I have been trained in various methods of polygraph including; Utah, Federal, Empirical Scoring System, etc.. These methodologies are consistent with current standards and the computerized polygraph instrument now utilized by me.

In the words of the late Richard “Dick” O. Arther, the best way to validate a
polygraph is to “GET THAT CONFES-
SION!”

Respectfully

Sergeant Mark Conroy
Certified Polygraph Examiner
Jersey City Police Department

Major Case Unit
Sgt. Mark Conroy, Jersey City Police Department
Sgt. Mark Conroy, Jersey City Police Department
Sgt. Mark Conroy, Jersey City Police Department

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<tr>
<td><strong>Basic Examiner</strong></td>
<td><strong>Polygraph COURSE TUITION $4795!</strong></td>
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<td>♦ Feb - May (San Antonio)</td>
<td>♦ Fully accredited by the American Polygraph Association and approved by the Texas Department of Licensing and Regulation and the American Association of Police Polygraphists. *</td>
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<td>♦ July - Sept. (Las Vegas)</td>
<td>♦ Demonstrated past performance in polygraph training. Our instructors have more than 100 years of combined field experience.</td>
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<td><strong>Validated Interview</strong></td>
<td>♦ Modern &amp; comfortable classroom with audio/video monitored practice labs.</td>
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<td>♦ Forty hours of training in our <em>Validated Interview Technique</em> included during the course.</td>
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<td>♦ Low ratio of students to instructors creates personalized instruction.</td>
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<td><strong>JPCOT/PCSOT</strong></td>
<td>♦ Comfortable and affordable hotels nearby.</td>
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<td>♦ May (San Antonio)</td>
<td>♦ Our Post Conviction Sex Offender Training follows each Basic Course.</td>
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<td>♦ Quality Control support for students following training.</td>
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*The successful completion of an APA accredited polygraph program is only one of the necessary prerequisites for membership in the American Polygraph Association or other organizations.*

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The Phoenix Police Department is looking for a Polygraph Examiner to prepare, administer, and evaluate polygraph examinations for pre-employment screening of Police employees, intra-departmental investigations, and criminal cases. Duties include performing routine maintenance on polygraph equipment, analyzing examination charts, and occasionally serving as an expert court witness. Polygraph Examiners also conduct tests for other jurisdictions, including out-of-state law enforcement agencies and court stipulated cases. Professional knowledge, previously attained techniques, polygraph skills and considerable good judgment must be exercised in all phases of examination and analysis.

This recruitment may be used by any department for any current or future vacancies over the life of the eligible list.

Recruitment dates

Recruitment may close when we have received a sufficient number of qualified applications.

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$27.54 (minimum) - $41.06 (maximum) hourly / $57,283 - $85,405 annually. Appointment can be made above the minimum depending upon qualifications.

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Job requirements

- Three years of experience in public safety investigative work.
- One year of experience administering polygraph examinations, preferably in law enforcement.

Preferred qualifications

- Preference will be given to applicants who are bilingual in Spanish.
- Preference will be given to candidates who are graduates of an accredited polygraph school approved or recognized by the American Polygraph Association (APA) or the American Association of Police Polygraphists (AAPP).
- Only the highest qualified will be posted to the eligible to hire list.

How to apply

Apply online by completing the required information and attaching your cover letter and resume. Please include your experience as it relates to the qualifications stated above.
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City of Phoenix is an equal opportunity employer; our employees demonstrate superior seamless customer service, integrity, and commitment to innovation, efficiency, and fiscally responsible activity.

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Scientific validity is a concept that refers fundamentally to whether a hypothesis or theory correctly explains reality, nature and the universe, or some small part thereof. For practical purposes, validity refers to whether a hypothesis or theory is consistent with other information from other theories and with observable evidence for which the analysis and conclusion can be replicated or reproduced. Validity, and discussions about validity, form the basis of applied practices in all areas of evidence-based practice. In the polygraph profession, as in other professions, our knowledge about the validity of our assumptions and procedures will have a direct influence on our field practices. Because the notion of validity is itself abstract and complex, various definitions of validity have been developed for practical application. Following is a brief description of some common types of validity that are important to the scientific method and the polygraph test.

**Face Validity** is based on commonly accepted opinion or consensus of opinion. Face validity is normally established by qualified professional observation, investigation or experience with an instrument, test or a computer-based test interpretation system. Face validity is based on whether a conclusion or idea makes sense to subject matter experts. Ultimately, face validity is little more than a hypothesis, and a hypothesis is little more than a research question.
Because scientific hypotheses are most often incorrect or in need of further development, face validity is a satisfactory starting place but is an unsatisfactory way to reach scientific conclusions. For example: the fear-hypothesis for the comparison question polygraph suggests the changes in physiological activity are loaded at different types of test stimuli as a function of fear, and holds that guilty persons are afraid of consequences while innocent persons have less to fear. Disregarding the obvious problem that the consequences for innocent persons who are falsely accused are exactly the same as those for guilty persons, the fear hypothesis diverges from reality when considering the effectiveness of directed-lie comparison stimuli and when considering the effectiveness of the polygraph with psychopathic persons who do not experience fear in the same way as non-psychopathic persons.

A more cautious, and less incorrect, hypothesis is that changes in physiological activity are loaded in response to different types of stimuli as a function of deception or truth-telling in response to the relevant target stimuli. This hypothesis appears more consistent with reality and evidence from numerous scientific studies. It is empirically testable and falsifiable, and does not depend on guesswork or mind-reading about the psychology or motivation of the examinee. If correct there will be a statistical correlation between polygraph test results and the criterion states of deception and truth-telling. If incorrect the correlation between the test data and criterion will be random. In general terms, we might cautiously hypothesize that the psychological basis will involve a combination of emotion, cognition and behavioral conditioning relative to the investigation target stimuli. Inquiry into the exact details of the psychological mechanisms underlying recorded physiological responses will involve more involved hypothesis formation and exhaustive psychophysiological research. Ultimately, all face valid hypotheses must be subject to experimental research. It is our obligation to discard false hypothesis that are inconsistent with reality and to continue to develop working theories that are consistent with empirical evidence.

**Content Validity** is a concern to scientific testing, and refers to whether the test content or test items adequate address the subject or phenomena of inter-
est. Content validity is often established through the selection of appropriate content for questions and statements. The results of a questionnaire or survey are considered valid if the questions are appropriate and necessary to identify a specific attribute, state or quality.

In the polygraph context, content validity can refer to whether response features that can be extracted from the recorded physiological data for different types of test stimuli is correlated with the criterion state of deception or truth-telling at statistically significant levels, and whether the combination of different response features is an optimized scientific model or merely an ad-hoc array of response features.

**Content validity** in the polygraph context might also refer to the types of relevant target stimuli that we choose to employ. For example, do we limit polygraph questions to descriptions of behavioral acts or behavioral categories in which the examinee may have been involved, or do we assume that polygraph can also investigate whether the examinee is deceptive or truthful about the behavior of a third person who is not being tested? Behaviorally descriptive polygraph questions depend largely on behavioral action the content of the stimuli. In contrast, attempts at third person lie detection would seem to depend not on the behavior or the third party as the stimulus content but more problematically on the notion that it is mainly the truth content of the answer that determines the loading of responses to different types of polygraph test stimuli. Polygraph studies have so far not investigated this.

**Internal validity** refers to whether a scientific test or experiment has avoided confounding variables that create the potential for an alternative possible explanation for the observed result. Assertions about causality depend on internal validity. In the polygraph context internal validity concerns whether there are other potential causes for observed differences in loading of changes in physiological activity in response to different types of test stimuli. Although polygraph examiners will conduct the examination interview in a manner to eliminate other potential sources of response variance, attributions about deception or truth-telling as a causal basis for response differences is ultimately a matter of whether there is empirical support for this assumption.
Predictive Validity refers to the ability of a test to predict what it is supposed to predict; its ability to predict some future state, result or event. In the polygraph context prediction refers not to predicting a future event or behavior but more generally to the notion of a scientific/probabilistic guess as to deception or truth-telling. Under ideal circumstances using a randomly selected confirmed case reference model, polygraph test results might be said to predict the likelihood of later achieving some external confirmation or the probability that there exists some information to confirm a test results. In a more limited sense, polygraph results might be said to predict whether the examinee is from the population of persons represented by the reference distribution of deceptive or truthful persons.

Concurrent Validity refers to the degree to which the results of a scientific test or experiment concur with other known information about the state, attribute or quality that is being tested. A new testing instrument can be said to be valid if results correlate strongly with a previously validated method for testing or evaluating the same phenomena. Results from new scientific tests for credibility assessment may be compared to polygraph test results as a way of increasing our knowledge about test validity.

Construct Validity refers to the strength of evidence about our assumption that a testing instrument or reference model actually represents or measures the phenomenon being investigated. For example: claims that polygraph measures fear or stress or nervousness are not valid because polygraph recording and testing instrumentation cannot discriminate fear from other emotions and cannot discriminate the presence or absence of these conditions. Similarly: any hypothesis that polygraph measures lies per se would be invalid. Alternatively: an analytic hypothesis that polygraph results are a statistical classifier, intended to estimate or infer the probability of a correct or incorrect classification of an examinee as deceptive or truthful, will be a matter for empirical evidence to support as valid or refute as invalid. Construct validity, in polygraph research, will be concerned not only with the validity of our analytic hypothesis but will also need to address our knowledge about the psychological and physiological mechanisms underlying the recorded responses to test stimuli.
Ecological validity refers to the degree to which methods and context of a study approximate real-world circumstances. Results from studies with high ecological validity are sometimes more easily generalizable, with field studies having generally highest ecological validity. However, field studies are often limited by sampling methodology and cannot provide sufficient experimental control to make conclusions about causality. Results from field studies are often limited to conclusions about correlation. Ecological validity is not a necessary condition to achieve generalizable knowledge, and results from laboratory studies have contributed in numerous important ways to our knowledge in many areas of science and professional practice in the polygraph context and other areas. It is important to avoid confusing ecological validity with external validity.

External validity refers to the extent to which knowledge can be generalized from the research context to real world situations. Ecological validity is helpful but is neither necessary nor sufficient by itself to achieve external validity. External validity can be compromised by small samples, which are known to have greater variability, and non-random sampling, which is known to produce results that do not generalize. External validity in the polygraph context refers to the degree to which we observe real-world test performance that is similar to test performance reported in published studies.

Criterion validity refers to how well a test or model predicts or classifies the phenomena of interest. Criterion validity is closely related to the decision accuracy or precision of a test result. Criterion validity of polygraph test results refers to the degree to which polygraph test results correspond correctly to the external state of deception or truth-telling.

Incremental Validity refers to whether a particular test method or testing instrument provides a measurable improvement compared to decisions or outcomes made with other methods. Applied to the polygraph test, incremental validity refers not only to whether polygraph test results can facilitate more correct conclusions about deception and truth-telling, and not only to whether a polygraph test can produce more information than an interview without a polygraph test, but also includes whether polygraph results and information from the polygraph can be
shown to contribute to more effective case outcomes or more effective professional decisions for the referring professional.

In simple terms, validity refers to the degree to which an idea or conclusion corresponds to evidence from the real world. In the context of a scientific test such as the polygraph, validity refers to whether the test does what it is supposed to do. Those who erroneously believe the polygraph is supposed to measure lies will eventually grapple with the impossibility of achieving a physical measurement of an amorphous phenomena. Physical measurement requires both physical substance and a well-defined unit of physical measurement. In reality, some of the most interesting and important human phenomena are among the most difficult to measure (e.g., personality, intelligence, innate abilities, etc.) The purpose of a scientific test is to measure some very interesting phenomena that cannot be subject to direct physical measurement. Scientific tests do this by using statistical and probabilistic relationships that can be modeled or described for a collection of measurable physical phenomena that serve as a statistical proxy for the amorphous phenomena of interest.

Although sometimes unfortunately laden with moral overtones, credibility assessment tests such as the polygraph are similar to other scientific tests in their purpose – to produce test data for a reproducible probabilistic analysis as a basis of evidence for professional conclusions about some important phenomena (i.e., deception or truth-telling regarding a behavioral issue of concern) for which there is no present opportunity to evaluate through deterministic observation or physical measurement. All test results are statistical statements, and there is at once some probability of a correct conclusion and some probability of an incorrect conclusion. Because they are inherently probabilistic, scientific tests are not expected to be infallible. Instead, scientific tests data is expected only to provide a basis of evidence upon which we can

Ultimately, the validity of a scientific test will be based on the validity of the both the applied theory and the underlying assumptions about the causal mechanisms related to the recorded test data. Although field polygraph technicians will be primarily concerned with the correct execution of procedural rules, experts in the field of polygraph should be expected to possess at least a rudimentary understanding of the various aspects of validity that encompass the polygraph test and scientific testing in general, including recording instrumentation, testing procedures, physiology, psychology and analytic theory.
On May 2, 2016, the Office of Personnel Management (OPM), the federal agency charged with the implementation and administration of employment practices used by federal employers, has published in the Federal Register a new ban-the-box regulation. The OPM says the mandate would “prevent agencies” from soliciting information or discussing criminal activity and adverse credit issues for applicants seeking employment with federal agencies until after a Conditional Offer of Employment (COE) has been made (Federal Register, 2016). Unlike the eleven states that have already passed this type of legislation, there are no statutory exemptions for law enforcement or intelligence agencies, though the OPM says it will consider such exemptions on a “case-by-case” basis. Previously, federal employers, including those using polygraph as part of the background process, had been allowed to determine applicant suitability at any time during the hiring process and often used Optional Form 306 (OF-306), Special Form 86 (SP-86) and various pre-polygraph questionnaires all of which ask about criminal arrests and convictions, various criminal activities and problems with personal finances. The OPM cites as its authority the somewhat cynically titled January 1, 2014 Presidential Memorandum, Enhancing Safeguards
to Prevent Undue Denial of Federal Employment Opportunities to the Unemployed or Those Facing Financial Difficulty Through No Fault of Their Own (Whitehouse Office of the Press Secretary, 2014), as if one’s felony convictions are typically false and therefore not one’s own fault.

The new regulation, 3206-AN25, follows earlier defeat of both legislative (HR 370) and judicial (EEOC v. Kaplan; EEOC v. Freeman) attempts to restrict the evaluation of criminal and financial activity of job applicants in the private sector. These were attempts to attribute the long standing gender and racial statistical disparities in criminal convictions and negative credit events to sexism and racism. Both the federal trial and Appellate Courts have found such claims to be “laughable, distorted, cherry-picked, worthless and an egregious example of scientific dishonesty” (APA Magazine, 2015). It is important, therefore, to note that the new requirements only apply to federal employers and do not effect the hiring practices of state and local government or private employers, only federal agencies. Also, this mandate will still be in the comment phase until July 1, 2016 after which the language of the mandate becomes fixed.

Though clearly a political wedge issue, the new requirements are based upon assumptions well known to be false. Specifically, 3206-AN25 concludes that applicants have only actually done the number and types of crimes appearing on their criminal records. Polygraph examiners who conduct pre-employment interviews and examinations are acutely aware that the minimized admissions made during interviews far exceed what appears on records. It is also well established that while not perfect, a person’s recent, work-related past is the most valid and reliable predictor of what they will do in the recent, work-related future. Since over 90% of all criminal cases are plea and charge bargained and some criminal conviction records are sealed, expunged, pardoned or otherwise made inaccessible, admissions of commissions – not convictions appearing in a manipulated record – have always been a far more accurate method for making future behavioral predictions. OPM Director Beth Cobert, in announcing the new federal requirements, justifies delaying criminal and credit activity evaluations on the basis that “Early inquiries could lead to the premature disqualification of otherwise, eligible candidates, regardless of whether an arrest actually resulted in a conviction…”.”

Unfortunately, there does not appear
to be any basis as to how the OPM came to conclude that polygraph examiners and others involved in the background process are incapable to differentiating between arrests and convictions or why decision outcomes will be any different when objective, work-related disqualifying criteria are applied before or after the COE. Sadly, one certain outcome of the new requirement will be applicants being given false expectations about employment possibilities that can never be realized.

In the early days of pre-employment drug testing, employers would clearly indicate the test requirement in the job announcement and some applicants, believing they would be unable to defeat the drug screen, judiciously applied elsewhere. Today, of course, any self-respecting substance abuser can easily beat the drug test therein explaining why less than 1% of law enforcement job applicants come up positive on the drug test but over 20% make recent, work-related admissions of substance abuse during the polygraph examination. The misleading inference that federal employers are somehow going to ignore objective criminal and credit activity standards if the applicant performs well during the highly subjective procedures OPM is recommending, might be reduced by clearly indicating in the job announcement some of the most common criminal and credit activity disqualifiers. For example, none of the 50 states will certify felons as police officers without a waiver, a condition of employment made clear from the onset that historically has worked legally and efficiently for thousands of government employers. Federal employers, traditionally, have lost some of the most desirable candidates because their size and bureaucratic practices tend to draw out the time needed to evaluate. If you clog up the background pipeline with candidates that will be disqualified anyway, neither the applicant nor the employer is best served. Deferring evaluation of criminal and credit activity to the latter stages of the hiring process most certainly will have this effect.

At the very least, federal employers should insist upon some clarification of what federal Ban-the-Box actually covers. While the states have pretty uniformly limited the “ban” to criminal record checking, 3206-AN25 prohibits “making inquiries into an applicant’s background of the sort asked on the OF-306 or other forms used to conduct suitability investigations for federal employment”. This seems to include not just written applications, Personal History Statements, forms and records
but all types of interviews and polygraph examinations in which criminal and credit activity are discussed, prior to COE. Further complicating matters, while “crime” and “credit” are usually treated as standalone interview target and polygraph questions, most of the remaining interview and polygraph topics can also be viewed as criminal activities, e.g. substance abuse, violence, etc. Therefore, simply removing the crime and credit targets from pre-offer interviews and polygraph examinations would probably not satisfy OPM. If this interpretation is correct, not only will the process take a lot longer but the sheer number of people needing interviews and polygraphs will increase significantly along with the attendant increases in costs and staff. Ironically, the OPM’s new rule is appearing at exactly the same time that other federal agencies are expanding social media backgrounds to obtain security clearances (Wall Street Journal, 2016). While not a certainty, it is highly likely that problems with criminal and credit activities will be revealed during social media scans long before COE’s. This, of course, raises the possibility that OPM will have to further “prevent agencies” from conducting the social media background until after the COE.

One critical point the Administration and OPM appear to have ignored are the federal Appellate Court decisions previously reported in Polygraph: when there are too many Conditions to the Conditional Offer it is not real. These Federal Court decisions essentially indicate that everything except the psychological and medical evaluations should take place before the COE. If not only criminal and credit record checking but written forms and assessment, interviews and polygraphs and perhaps social media backgrounds in which these topics are discovered and discussed must also be deferred post-offer, it creates a nearly identical situation that the Courts have found against.

For those of us who have provided services for large government agencies, Civil Service Commissions and the OPM itself, 32-6-AN25 appears to have many of the undesirable qualities of the long discredited Rule of Three. Under this misguided system, applicants were pre-selected by an entity separate from the Department by which they would be employed using criteria that failed to reflect the unique or independent characteristics of said Department. While this approach sometimes achieves political goals unrelated to competency, it almost always guarantees a decline in work performance. The very idea
that OPM is better situated to assess or create hiring standards and control exceptions to such standards for Departments than the Departments themselves simply defies credibility.

Since there is little to lose, federal law enforcement and intelligence agencies should at least go through the motions of asking OPM for an exemption allowing pre-offer evaluation of criminal and credit activity, including those activities typically included in pre-employment forms, interviews and polygraphs. These same federal agencies should also request to be excluded from subjective interference by outside agencies with regard to setting Qualification and Disqualification standards. Further, each federal employer should request to be the only agency with the authority to grant waivers to their own standards depending upon mitigating circumstances the agency determines to be appropriate. If these requests to the OPM prove unsuccessful, the agency will have at least produced a record should they have to challenge the Administration in Court. In the meantime, federal employers and applicants should expect serious delays in the background process and an unfortunate return to previously discredited practices where Conditional Offers of Employment are neither real or credible.

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A dilemma is defined as: a situation requiring a choice usually between equally undesirable alternatives. The word originates from Greek-Latin and it is a combination of di-, a prefix meaning “two,” with lemma, meaning “a proposition, theme, or subject.” A Moral Dilemma is a situation requiring a decision between two or more conflicting moral or ethical requirements. For example: the police are inquiring you about the whereabouts of your best friend. Revealing his whereabouts might be considered as betrayal of friendship which might be legal but morally wrong while avoiding helping the police might be in some jurisdictions illegal. Polygraph examiners sometimes face moral dilemmas when two contradicting moral values collide, or when the senses of justice contradict professional policies or regulations. Which in return call for the question of what course of action should we take?

The following are a few examples of polygraph examiners’ moral dilemmas based on real life cases:

- Should a private sector practitioner conduct a polygraph test which was requested by criminals when the examiner knows
that the examinee. A drug dealer tested for missing kilo, will be harmed physically upon a deceptive outcome?

Thou the APA Code of Ethics (1.1) state that: “A member shall not conduct a polygraph examination when there is reason to believe the examination is intended to circumvent or defy the law” and no doubt that harming someone physically is illegal, the examiner does not know the test outcome beforehand, so what should s/he do while on the other hand if the examinee will pass the test the results will help her/him.

• A convenient store owner retained your services in order to identify the employee who stole a shipment that was ready to be delivered from the warehouse. During the course of the pretest one of the employees, who later passed the test, admits of stealing some goods from the store in the past. Should the examiner report about it when the scope of the test was a different theft? Thou the APA Code of Ethics (5.1) require that: “A member shall not disclose to any person any irrelevant personal information gained during the course of a polygraph examination which
Misprision - the term misprision describes the failure to report a crime. The crime of misprision still exists in England, but it has never been fully embraced in the United States. The first Congress passed a misprision of felony statute in 1789 that was later codified in 1909 under 18 U.S.C. § 4: “Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.” Almost every state has rejected the crime of misprision of felony. Thus, persons are under no duty to report a crime. The Supreme Court has not completely abandoned the duty to report criminal activity. The federal misprision of felony statute remains on the books, but the crime rarely has been prosecuted. On the state level, most states have either abolished or refused to enact misprision of felony laws. South Carolina is the only state that has prosecuted the misprision of a felony. In State v. Carson, 262 S.E.2d 918, 274 S.C. 316 (1980), … Carson was prosecuted and convicted of misprision of felony and sentenced to three years in prison.

• What should an examiner who was ordered by the court do, when in spite of her/his objection, the stipulation questions might be contaminated to the point of a false result? An indirect solution can be found in the APA Standard of Practice (updated on March 11, 2016) 1.5.1 "Prior to an examination, the examiner shall dedicate sufficient time to identify and discuss the examination issues and potential problem areas.”

• An examinee who was sent to take the test by a lawyer who is your regular client, confessed of being the perpetrator of an open case heinous crime. Should the examiner report about it to the police when legally he is not obligated to do so?
According to Section 262 “Failure to prevent a crime” of the Israeli Penal Code 5737-1977: “Who knew that someone is plotting to do a crime and did not take all reasonable steps to prevent the making or the completion, will be prisoned for two years”7. The section refers to future crimes but not to an occurrence in the past.

- A prominent defense lawyer has sent his client, a fashionable restaurant owner, to verify his claim that he has paid his organic vegetable supplier for a specific delivery. The lawyer requests to delete the polygraph records if the examinee will fail the test. During the pretest the examiner founds out that the supplies of “organic vegetables” were actually marihuana and that the examinee is currently under federal investigation in that matter. Deleting the records maybe considered as tampering with evidence and misprision while keeping them may be considered as a breach of fiduciary duties.

If one knows that one is a target of a Federal investigation, it is illegal under the Sarbanes-Oxley Act to erase one’s browser history intentionally. Khairullozhan Matanov was prosecuted for erasing computer records about his friends, Dzhokhar and Tamerlan Tsarnaev (the Boston Marathon terrorists); he pleaded guilty to a lesser included offense in 2015 and got a 30-month sentence8.

**Conclusion**

If you are missing the solutions to these dilemmas, you are not alone. While IPEA General Assembly was debating the dilemmas and looking for solutions the discussion was passionate and emotional. The pros and cons to each and every solution of the dilemmas extracted fanatical zeal. The members could not agree on a single solution. That suited the leading panel well. They knew beforehand that these dilemmas have no solution but they set the purpose of the debate as a mean of surfacing the issue to the members' consciousness thus raising awareness to the complexity of certain delicate situations. The summing conclusion was that: Although legal requirement and association code of ethics resolve most of the dilemmas there are still some unanswered ethical dilemmas. That in return raises the question of where should we look for an answer: in religious scriptures, philosophical writings, common sense, other professional code of ethics such as: psychologists, medical doctors, accountants, lawyers? The conclusion was that examiner must obey the law and follow the code of ethics requirement, but when an unresolved dilemmas stir they should internalize the fact that there are some
unsettled moral dilemmas out there, which should be solved personally by each examiner in light of her/his conscious, common sense and viewpoint. In other words, if the legal and ethical code does not resolve the dilemma, there are no “school solution” and every examiner is her/his own.

**Endnotes**

2. Code of Ethics American Polygraph Association (Effective September 1, 2015)
3. Ibid, Code of Ethics
4. 18 U.S. Code § 4 - Misprision of felony, [https://www.law.cornell.edu/uscode/text/18/4](https://www.law.cornell.edu/uscode/text/18/4)
6. APA Standard of Practice (updated March 11, 2016)
Quality data acquisition begins with your instrumentation
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✓ 1 adjustable blood pressure cuff, 1 FingerCuff, cardio tubing and Riester
  sphygmomanometer
✓ 1 StingRaySE Piezo electronic CM sensor
✓ OSS and Relative Response Magnitude (RRM) scoring algorithms included
✓ HARM psychometric pre-employment screening instrument included
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I received a courtesy review copy of this book in paperback and read through it with interest. The book is not written in a typical narrative manner, rather it is a very thorough compilation of wrongful convictions cases. The cases are categorized by the known leading causes of wrongful conviction which allows the reader to take these phenomena in one at a time. As I often state, these are documented errors from which we can learn. Otto von Bismark (1815-1898) the first chancellor of the German Empire famously said, “‘Fools learn from experience. I prefer to learn from the experience of others.” Like the “Iron Chancellor” I hope (as much as possible) to learn vicariously, and then share this with the readership. These mistakes were often ‘mistakes of the heart’ and not ‘mistakes of the head’. Many of them resulted from a sincere desire to serve justice well, but that desire at times
Justin Brooks is the Director and Co-Founder of the California Innocence Project at California Western School of Law in San Diego. He is a professor there and has extensive experience in teaching about, defending and presenting wrongful convictions. He does a nice job of categorizing this book so we can learn how to try to avoid similar errors. I will review the book in the manner in which it is chaptered for you, highlighting the take home points. I hope I do it justice. I did not delve too deeply into the last several chapters as they do not have as strong a link to polygraph as do the earlier ones. The interested reader is encouraged to buy this book for a deeper understanding of the case law related to those areas.

Chapter One presents four “Notorious Cases of Wrongful Conviction” beginning with Marion v. Nebraska in 1886. The case of William Jackson Marion reminds us that death is final, even when as a result of a wrongful conviction. Marian was hanged for the murder of one John Cameron. Cameron’s dead body was never found, with good reason, he had fled to Mexico to run away from his wedding. Unfortunately, his return was untimely- four years after Marion’s neck was snapped by the hangman’s noose. There have been several documented cases where suspects were tried, convicted and sentenced to death where the alleged victim returned. The rest of the chapter includes a really interesting no body murder conviction in Australia where ultimately it seemed a dingo really ate the baby victim. The Central Park Jogger case review is excellent and adds much more to the story than most of us have read. It reminds us of the power of the ‘Prisoner’s Dilemma’ and why that technique must be used judiciously. It is a sobering reminder of the concept of tunnel vision and confirmation bias, when judging the suspects’ statements.

The last case reviewed in Chapter One is the “Hurricane” Rubin Carter murder conviction decision from 1985. Perhaps the most interesting part of this whole story has a direct nexus to polygraph. The day after the murder, Carter reportedly ‘failed’ a six-relevant question polygraph test on June 17, 1966 but was released from custody. Carter had two trials, the first in 1967 and a later retrial in 1974. By the time the retrial came, the star eye-witness Alfred Bello, had told several versions of what he had seen. Concerned over his waffling, the Passaic County, N.J. prosecutor’s office hired Len Harleson and Richard Arther to test Bello’s credibility with the polygraph. Arther reported that Bello was truthful when stating that Carter was in the bar when the shootings took place; that Bello was on the street just after...
the shootings and saw Carter there; and that Bello was the first person to go inside the bar after the shootings.

Harrelson’s written report of the test stated that Bello’s testimony at the 1967 trial was true, and that Bello’s retraction was not true. Prosecution did not advise the defense that after the test, but before he submitted his written report, Professor Harrelson told Chief Detective DeSimone that Bello was truthful when he said he was inside the Lafayette Bar prior to and at the time of the shootings. Bello had testified in the 1967 trial he was outside the Lafayette Bar at the time of the shootings, so there was a serious discrepancy between Harrelson’s written report, which affirmed that testimony, and his oral comments to the Chief Detective, which contradicted it. Harrelson apparently never read Bello’s testimony and so was unaware that at the first trial Bello had said he was outside the bar when the shootings occurred. So then at the polygraph Bello told Harrelson that he was inside the bar, Harrelson assumed that Bello was repeating the version to which he had testified at the first trial. Harrleson reportedly concluded Bello told the truth when Bello said he was inside the bar before and during the shooting. The Chief Detective told Harrelson it was impossible for Bello to have been inside the bar at the time of the shooting based on Bello’s prior testimony. So the first oral report and the subsequent written report were different and Bello went on to testify in the second Carter trial. In other words, the prosecution allegedly suppressed the difference in the statements Harrelson made after the polygraph. This Brady violation was one of the chief reasons cited for the N.J. District Court issuing a writ of habeas corpus, one that was later affirmed by the United States Court of Appeals for the Third Circuit. The US Court of Appeals held the results of the polygraph examination process would have been central to the defense since the State relied on Bello’s testimony in the 1976 retrial. It should be noted that an earlier N.J. Supreme Court Hearing State v. Carter, Supreme Court of New Jersey, 91 N.J. 86 (N.J. 1982), examined the same facts and concluded a Brady violation had not occurred with the Harrelson polygraph oral/written report discrepancies. That court agreed the prosecution did not disclose the Harrleson reporting discrepancy to the defense, but felt it did not rise to the level of a Brady violation.

Chapter Two reviews several cases involving “The Great Writ” or the writ of habeas corpus. I had forgotten how such writs work and so will provide a basic overview of them for you before describing the rest of the chapter. Usually it is filed by convicted prisoners or their attorney and it is essen-
tially an order to the warden to deliver that prisoner to the court to determine if a procedural violation occurred. Habeas corpus literally means “you have the body”. The argument is that an inmate is imprisoned unlawfully or under conditions that are illegal. The petitioner has to show that the court ordering the detention or imprisonment made a legal or factual error. In 1996, President Bill Clinton signed a bill, the Antiterrorism and Effective Death Penalty Act (AEDPA) that considerably curtailed these writs. The AEDPA achieved this through establishing deadlines by which a writ can be filed and by giving great deference to the state court findings.

The three case reviewed in chapter two demonstrate how courts look at the difference between claims of actual innocence and claims of procedural errors. Interestingly, actual innocence is not really considered, procedural errors are. This was described in the first case, a U.S. Supreme Court decision about Leonel Herrera, who was convicted of killing two police officers in Texas. In January 1993, the U.S. Supreme Court heard the case and ruled that one had to show there were procedural errors, not simply that they had a claim of actual innocence. Herrera was denied relief and was executed by lethal injection on May 12, 1993, four months after the ruling.

The second and third cases show just how difficult it can be to get relief via the writ. In one case one of the primary pieces of evidence used to convict someone was found to have clearly been fabricated. Lee, the ‘jailhouse snitch’ who produced the written correspondence with the defendant had used a pencil to write questions. The informant later erased the original questions and changed them to address the crime for which the suspect was later convicted. The informant later testified he did so to get a better plea bargain for his crime. Even after handwriting experts agreed the original questions had been erased and the new ones rewritten, numerous court denied relief. The issue was whether there was a procedural violation, not whether the evidence was clearly fabricated. Finally, the U.S. 9th Circuit Court of Appeals wrote in Harold Coleman HALL, Petitioner-Appellant, v. DIRECTOR OF CORRECTIONS; California State Attorney General, Respondents-Appellees. No.02-55758. Decided: September 8, 2003:

“The notes purported to be a series of questions and answers between Lee and Hall; after the trial, however, Lee confessed he had submitted innocent or innocuous questions to Hall and then erased and altered them after Hall had written his answers in order to make them incriminating. Expert testimony confirmed that erasures
had been made on the documents. After hearing testimony regarding the falsification of the jailhouse notes, the state trial judge who had originally tried the case concluded that a new trial was necessary. The California Court of Appeal reversed, finding that Hall had not proven the notes were false, apparently believing the state trial judge had not found falsity either. Today we hold that the California Court of Appeal’s decision was an unreasonable determination of the facts in light of the evidence presented to the state court. The falsification of this material evidence violated Hall’s due process rights, and a new trial is required.”

Chapter Three reviews six cases where wrongful convictions are attributed primarily to ineffective counsel. The first case is a shocking case of three African-American men convicted of rape in Alabama and sentenced to death, all without an attorney until the day of their collective trial. The US Supreme Court ordered the judgements reversed and remanded them back for retrial. The three were part of a group of defendants known as the “Scottsboro Boys” and a timeline of the tragedy of their case can be found at:

http://law2.umkc.edu/faculty/projects/ftrials/scottsboro/SB_chron.html

The second case, a habeas corpus proceeding, originated in Florida and landed at the U.S. Supreme Court. In this 1963 case the defendant was charged with burglary of a pool hall and requested counsel, but was denied. He represented himself, and lost. The U.S. Supreme Court ruled he was entitled to the assistance of counsel under the sixth amendment. The judgement was reversed and remanded back to the Florida Supreme Court. The third case addresses the right to “quality representation” by counsel. This was a death penalty case the U.S. Supreme Court reviewed in 1984. Justice O’CONNOR delivered the opinion of the Court and wrote, “The facts of this case make it clear that counsel’s conduct at and before respondent’s sentencing proceeding cannot be found unreasonable under the above standards. They also make it clear that, even assuming counsel’s conduct was unreasonable, respondent suffered insufficient prejudice to warrant setting aside his death sentence.” That was May 14, 1984. David Leroy Washington was executed two months later in Florida’s electric chair on July 13, 1984. He had confessed to three brutal murders during a two-week crime spree.

The fourth case was decided by the U.S. Court of Appeals, Seventh District, on June 29, 2001. The respondent, Perry Steven Miller, was convicted of rape, torture, and murder of a woman and received a death sentence. Miller petitioned the Seventh Circuit court to determine that his trial counsel fell
below the minimum level of competency and because of this impacted his case in a significant manner. The case Miller v. Anderson, 255 F.3d 455 (7th Cir. June 29, 2001) resulted in a 3-0 vote for a reversal, Habeas granted as to conviction and sentence on grounds of ineffective assistance of trial counsel for failure to call as witnesses hair and DNA experts, and in calling psychologist which allowed impeachment by Miller’s prior convictions. The State of Indiana was ordered to retry or release Miller within 120 days. On Remand, on August 7, 2001, Miller entered a guilty plea to the charges pursuant to a Plea Agreement calling for a 138-year sentence. He was spared the death penalty by his plea bargain and by the considerably egregious errors of his original defense counsel. The U.S. Court of Appeals went so far as to send a copy of their opinion to the Indiana attorney disciplinary authorities for consideration of whether Miller’s original attorney’s actions warrant disciplinary proceedings.

The fifth case was from the Arkansas Supreme Court and was decided on May 10, 2012. This case, State of Arkansas versus Kenneth Harrison, dealt with an appeal by the state for a lower court order for a new trial for Harrison. The Supreme Court upheld the lower court’s order for a new trial for capital murder. The basis of the appeal was that one of the eye-witnesses had a juvenile adjudication for capital murder and Harrison’s attorney never explored this fact. The sixth and final case of chapter three is another U.S. Supreme Court case; Missouri v. Galin E. Frye, decided March 12, 2012. Justice Kennedy wrote the opinion in this case that hinged on whether the ineffective counsel claim extends to plea offers. At question was whether a criminal defendant is entitled to effective counsel during the negotiations and considerations of plea offers that the defense attorney allowed to lapse, resulting in harsher penalties. The U.S. Supreme Court ruled in favor of Frye.

Chapter Four uses five cases to discuss police and prosecutorial misconduct. These cases remain, in my opinion, exceptions that unfortunately resulted in wrongful convictions with serious consequences. These cases provide striking illustrations of how, and the extent to which, things can go wrong when human factors such as overconfidence, ambition, group dynamics or tunnel-vision come to contaminate the proper conduct of an investigation. Each of them offers an opportu-
nity to learn vicariously from the mis-
take of others, and bring one to build up personal and professional safe-
guards to avoid a repeat.

Police officers enjoy a great deal of discretion as well in their day to day work. In many cases they decide who they will arrest, ticket, warn or investigate. Once an investigation starts, they decide how each piece of information informs that investigation. As human beings they are capable of falling to decision-making heuristics and biases. When these are such that they cause exculpatory information to be ignored, serious miscarriages of justice may ensue. The first case reviewed is a 1940 U.S. Supreme Court case in which twenty-five to forty African American men were arrested over a 24-hour period and after five straight days of interrogation, four confessed to a murder. The case of Chambers et al. v. State of Florida was reversed citing a clear violation of the defendants’ fourteenth amendment rights of due process. Interestingly, this was the first of a number of cases that Thurgood Marshall would go on to argue in front of the court, until he joined the High Court in 1967. The State of Florida rescheduled the trial but the four men made “an escape” and were never seen again.

There is no position in the criminal justice system more powerful than that of the prosecutor. For example, prosecutors decide who to charge, whether to charge, what to charge, when to charge, what plea bargain to offer, what type of sentence to recommend, who to call for witnesses, and more. They enjoy a great degree of prosecutorial immunity for their decision-making along the way, as well as considerably larger financial and law enforcement support than does the defense. It also happens to be an appointed or elected position, subject to their constituents’ mood. According to a report published in the May 2002 U.S. Department of Justice, Bureau of Justice Statistics Bulletin, 47 states elect their chief prosecutors and three states appoint them. These women and men are required to balance the power of their office with their ethical and legal standards to ensure fairness in the administration of justice, notwithstanding the need to satisfy their constituents to hopefully get re-elected.

At issue in the second case (from the PA Supreme Court) was whether prosecutorial misconduct alone bars a retrial under the double-jeopardy clause. Previously, double-jeopardy was only in play if the misconduct resulted in a mistrial. In this case the prosecution intentionally withheld evidence (sand found between the dead victim’s toes) from the defense. Also, the prosecution withheld a stipulated testimony
agreement with their chief witness, in return for a reduced sentence. They went so far as to allow the chief witness to perjure himself when denying such an arrangement existed. The PA Supreme Court used this opportunity to clarify the double-jeopardy standard. They ruled it applies when prosecutorial misconduct is intended to provoke a mistrial or when it denies a defendant the right to a fair trial. The case was the basis of a best-selling Joseph Wambaugh book, “Echoes in the Darkness”. An interesting N.Y. Times synopsis of the defendant, Jay C. Smith, may be read at:

http://www.nytimes.com/2009/05/15/us/15smith.html?_r=0

or another excellent article by Philly.com at:


The third case dealt with the slippery-slope of ‘entrapment’ and was decided in 1992 by the U.S. Supreme Court. While difficult to prove, the Supreme Court has drawn some lines in the sand beyond which the government actions will be considered inappropriate, and the suspect had no independent intent in the crime. The forth case is the famous 1963 Brady v. State of Maryland, we often hear when one discusses “Brady material”. In this case, Brady’s co-defendant had admitted to the actual murder, but that statement was withheld from Brady’s attorney until after he was convicted, sentenced and his conviction affirmed by the MD Court of Appeals. Brady’s attorney oved for a new trial after discovering the secreted statement. The MD Court of Appeals ruled the conviction should stand but that Brady (sentenced to death) should be retried on the issue of punishment, not guilt. The U.S. Supreme Court agreed with the MD Court of Appeals that Brady’s Due Process Rights, guaranteed under the Fourteenth Amendment were violated, and remanded the case for a retrial for punishment, not guilt. The fifth and final case dealt with false evidence testimony by the West Virginia State Police Crime Laboratory in 1993. The West Virginia Supreme Court wrote:

“The matters brought before this Court by Judge Holliday are shocking and represent egregious violations of the right of a defendant to a fair trial. They stain our judicial system and mock the ideal of justice under law...”

Chapter Five addresses the largest contributing cause to known wrongful convictions, eyewitness misidentifications. Since eyewitness identification is some of the most powerful evidence admitted at trial, it demands
cautious consideration. Four cases document the tragedies that can occur when eyewitness identification goes wrong, or the issues that arise when poor procedures are followed. One of the most important case relating to eyewitness testimony was decided in the N.J. Supreme Court in 2011- State of N.J. v. Larry R. Henderson. The N.J. Supreme Court made a landmark decision that from thereon requires judges to instruct juries in a particular manner about eyewitness testimony. A discussion of that criteria may be found at:

http://www.judiciary.state.nj.us/press-rel/2012/pr120719a.html

The last eyewitness misidentification case was State of N.C v. Ronald Junior Cotton from 1987. It is the basis for a New York Times bestselling book title “Picking Cotton”. This is an amazing story of forgiveness in the face of a horrible error. More on that may be found at the website:

http://www.pickingcottonbook.com/home.html

Chapter Six addresses the area most related to polygraph examiners, false confessions. Five cases track some of the important case law dealing with this issue. Of the several cases reviewed, the U.S. Supreme Court 1986 case of Major Crane v. Kentucky may well be the most consequential in this respect. At issue here was not the voluntariness of the rights waiver, but rather the voluntariness of the confession. Crane sought to introduce evidence about the environment and methods the police used to secure his confession. He never argued the voluntariness of his confession, only the reliability and credibility. This is important to examiners conducting posttest interviews or interrogations. A voluntary waiver and confession can still be suppressed if the methods are found to be psychologically or physically coercive. Also, the situational or dispositional factors surrounding the confession are likely to be debated by a defense attorney or expert in an effort to cast doubt on the reliability of the confession. The case of Earl Washington, a 22-year-old African-American man with an I.Q. of 69 (that of a 10-year-old child), was particularly disturbing. Washington was wrongfully convicted of rape and murder, sentenced to death row in Virginia, and spent over 17 years in prison – many of them on death row – before he was exonerated. He once came within nine days of execution. It is a stark reminder of how careful we must be when assessing whether a suspect has the requisite intelligence to waive their constitutional rights. I have reviewed a number of other books recently relating to false confessions. I refer the reader to those reviews for a deeper discussion on this known leading cause of wrongful convictions.
Chapter Seven deals with evidentiary standards and science and includes the Daubert v. Merrell Dow 1993 U.S. Supreme Court case that often is discussed when seeking to introduce polygraph evidence. One of the most comprehensive reviews in this area is the chapter by own general counsel, Gordon Vaughn in the Krapohl and Shaw book Fundamentals of Polygraph Practice. My reviews of that book were published some time back in both the APA Magazine and the journal Polygraph. Rather than re-reviewing the relevant case law, I respectfully redirect the reader to the Krapohl & Shaw text review. Gordon Vaugh’s coverage of the Daubert v. Merrell Dow 1993 U.S. Supreme Court case is excellent and has a stronger polygraph nexus. Chapter Eight highlights post-conviction laws as they relate to DNA evidence. Chapter Nine reviews three cases relating to innocence and parole. Chapter Ten has two cases that look at the issue of clemency. The final chapter, Chapter Eleven, covers several cases relating to compensation following a release after wrongful conviction. As I mentioned earlier, I spent considerably less time and typing on the latter chapters. I wanted to whet your appetite for the book by digging deep into the chapters most related to our work.

Summary

I enjoyed the different tack Brooks took to discuss this important topic, using case law. Most books on wrongful conviction highlight causes and cases but Brooks uses the cases to show how legal decisions arose from them. Some of them are so egregious as to cause us to shake our heads and say “Not me.” Other may cause one to pause and think “There but for the grace of God, could have gone I.” One of the more important lessons is to see how legal hindsight came to judge actions of those involved. None of us want to be on the losing end of grossly contributing to a miscarriage of justice and having to live with it or making case law, therefore our moral and professional obligation to learn from every opportunity that present, including the actions of others. The law enforcement professional and life-long learner with a criminal justice interest will undoubtedly benefit from this book, and so will Justice from their reading.
Both Federal Appellate and State Supreme Courts recently determined that convicted sex offenders cannot be required to answer questions during standard Disclosure or Maintenance polygraph examinations without violating Fifth Amendment protections against self-incrimination. Essentially, the Courts found that revocation of probation or denial of supervised release as a consequence of invoking Fifth Amendment rights to be unconstitutionally compulsive because such actions would inflict potent sanctions unless the privilege is surrendered.

**People v. Roberson: Colorado Supreme Court Case No.13SA268, May 16, 2016**

Bryan Roberson was convicted of sexually assaulting his nine year old niece. In a pre-sentence report, the Colorado Probation Department recommended the Roberson participate in a Sex Offender Management Board (SOMB) approved sex offender treatment program that would include event specif-
ic, sexual history disclosure and routine probation compliance or maintenance polygraph examinations. Roberson, who continues to deny the event for which he was convicted, was warned during sentencing that his continued denials could result in “far more serious consequences than sex offender intensive supervision probation (SOISP)”. Roberson appealed his judgement and sentence and, upon advice of counsel, informed both his Probation Officer and treatment providers that he would not speak about anything relevant to his case or that might be used against him if his case went back to trial. During a subsequent PCSOT polygraph examination, Roberson was asked if he had viewed any child pornography or had sexual fantasies regarding minors since being put on probation. Roberson declined to answer these questions, invoking his Fifth Amendment right against self-incrimination. The Probation Department then filed to revoke Roberson’s SOISP. The District Court denied Probation’s request to revoke due to “three controlling factors”:

1. Roberson had invoked his Fifth Amendment right and his fear of self-incrimination was reasonable in light of the Prosecutor’s admission that on retrial he would use any available evidence allowed under the Colorado Rules which therefore would include any admissions to the Maintenance polygraph questions;

2. Roberson’s case was on appeal, he had testified at trial and therefore risked possible new perjury charges; and

3. Roberson had not been granted any use immunity or assurances with regard to information he might provide during treatment.

When the People appealed, the Colorado Supreme Court, hearing the case directly, on the matter of whether Roberson had viewed child pornography since placed on probation, sustained the District Court’s decision that Roberson’s probation should not be revoked because of his lawful invocation of his Fifth Amendment right to remain silent to questions that could lead to self-incrimination. The Supreme Court was unable to determine if questions regarding sexual fantasies would have the same effect and returned this issue back to the District Court for further review.

It is important to note that since Roberson had been sentenced to probation before the issue of self-incrimination arose, the Supreme Court determined that Roberson had established a liberty interest, and “since parole is
more akin to imprisonment than probation is to imprisonment”, hinted that it might reach is different conclusion regarding prisoners undergoing sex offender treatment while incarcerated.

Oddly, on the same date that this opinion was released, the Colorado Supreme Court found that convicted sex offenders who tried to invoke their Fifth Amendment rights by refusing to enroll or participate in a sex offender treatment program could, in fact, have their probation revoked (People v. Ruch, CSC No.13SC587, May 16, 2016). In short, the Supreme Court found that the Fifth Amendment privilege is an option of refusal, not a prohibition of inquiry.

**Von Behren v. U.S.: U.S. Court of Appeals, 10th Circuit No.15-1033, May 10, 2016**

After being convicted of distributing child pornography, Brian Von Behren served 121 months in prison and was about to begin three years of supervised release. At this time, the Colorado Probation Department requested that his release conditions be modified to require Von Behren to participate in a SOMB certified sex offender treatment program that would include sexual history polygraph examinations targeting sexual crimes for which he was never charged. As per SOMB Guidelines, Von Behren was presented with a non-negotiable agreement requiring a non-deceptive sexual history polygraph opinion and entitling the treatment providers to report “any occurrence or potential occurrence of any sexual offense to Human Services, law enforcement, probation, parole, victims, potential victims, parents, spouses, school personnel, employers or other appropriate authorities”. When Von Behren objected, claiming Fifth Amendment protection, the District Court agreed that the sexual history polygraph questions were an unconstitutional violation of his rights and modified the terms of his supervised release to preclude him from having to admit to any criminal activity other than the offense of his conviction. In apparent violation of this order, Von Behren’s treatment provider then demanded that he participate in a sexual history polygraph which would include questions about possible criminal sexual activities not specific to the event of his conviction. When Von Behren again appealed, the Court reversed itself deciding that admissions to sexual history polygraph questions were not a violation of Fifth Amendment protections after all, because Von Behren would not be required to “specify the time, place, victim’s identity or others
involved” and further, therefore, the issue of compulsion need not be considered. The 10th Circuit Court of Appeals, however, reversed again, finding that both the SOMB Agreement terms to be unconstitutionally compulsive and answers to the proposed sexual history polygraph question incriminating, thus a violation of Fifth Amendment protections even if there were no corroborating follow-up questions to any admissions.

**Discussion**

Roberson and Von Behren were both convicted sex offenders facing general question Disclosure and Maintenance polygraph examinations neither actually took. Roberson, however, was on probation at the time the Fifth Amendment issues arose and therefore had a liberty interest while Von Behren was in prison seeking supervised release. Both Courts determined that both offenders faced significant consequences (revocation or denial of probation) by invoking their right against self-incrimination because even uncorroborated admissions to general criminal sexual activity questions created a chain of evidence resulting in an unconstitutional compulsion to waive rights. Colorado Child Abuse reporting procedures (CRS 19-3-207) require County Departments reports of suspected abuse to contain extensive details about the victim, suspect and person reporting the suspected abuse. Clearly then, even if examiners don’t ask admission follow-up questions and/or new criminal charges don’t actually result from such admissions, the Roberson and Von Behren decisions have determined that the mere fact that they could is sufficient to establish an unconstitutional denial of privilege. Also, while the Court in Roberson focused on the proposed polygraph questions, the Court in Von Behren included the SOMB required Agreement which mandated a non-deception polygraph opinion to the proposed polygraph questions. Unfortunately, the media has framed everything as a polygraph issue as in the Denver Post’s *Colorado Sex Offenders Lie Detector Win Could Have Big Impact*. Also, while the Colorado Supreme Court stayed its decision, the federal 10th Circuit has not.

At the heart of these decisions is the inherent conflict between Colorado’s originally expressed desire to rehabilitate sex offenders and the present legislative mandate to improve community safety and protect victims (CRS 19-3-304). Nowhere is this expressed more clearly than the 1998 name change of standards and guidelines authority from the original 1992 Sex Offender Treatment Board to the present Sex Offender Management
Board. The various Colorado statutes requiring individuals and organizations to report suspected child abuse has grown to become very extensive and unequivocal. In contrast, Oregon, which was in the forefront of PCSOT, grants numerous occupational exceptions and allows for a great deal of discretion with regard to who has to report what, to whom, when. Oregon also specifically prohibits the use of polygraph results in parole violation hearings (2013 ORS 144.270 (4)(b)(J)). Similarly, Minnesota recently confirmed that polygraph could be used in treatment, monitoring and evaluating sex offenders but results could not be used as evidence of parole violations (Minnesota Court of Appeals v. Nowacki, A15-1328, May 23, 2016). The Colorado SOMB and treatment providers should not be surprised by this turn of events. As a consultant in the design of the original program, I and others pointed out the need for use immunity as well as the systemic problems with lower general question screening test validity and reliability, the effects of habituation from repeated testing and the use of fantasy and belief therapy questions in structured polygraph examinations. The Roberson and Von Behren decisions do not appear to effect event specific sex offender polygraph examinations. Ironically, the Colorado Probation Department appears to have recognized that there were fundamental conflicts between policy and practice as it already had in place a “modified sort of an appeal group” who could circumvent Disclosure and Maintenance polygraph testing while convictions were being appealed. Even if the Roberson and Von Behren decisions are limited to convicted sex offenders appealing judgements and sentences as well as the incarcerated seeking supervised release, it would not be long before most convicted sex offenders would act to be included in groups exempt from Disclosure and Maintenance testing. Examiners in Colorado and the other states effected by the federal decision (Kansas, Utah, New Mexico, Oklahoma and Wyoming) should seek independent legal consul regarding their liability should they continue to provide polygraph services for SOMB certified sex offender treatment providers should the SOMB, Department of Probation or umbrella treatment agency decide to continue PCSOT Disclosure and Maintenance examinations under the State Court’s stay. Examiners in other jurisdictions should review any applicable child abuse reporting requirements and use immunity clauses in light of the Roberson and Von Behren decisions should similar litigation involve their own polygraph services.
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