THE CASE FOR POLYGRAPH TESTING OF SEX OFFENDERS

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Abstract

Purpose: To describe the issues associated with the post-conviction testing of sex offenders (CST).

Arguments: PCSOT is used widely in sex offender treatment and supervision programmes, but it is not without controversy. Much of the criticism of PCSOT, however, arises because of confusion between it and other applications of polygraphy. It is argued that the evidence for accuracy and utility, although not definitive, is sufficient to justify the use of PCSOT. Ethical issues are also addressed.

Conclusion: Whatever the pros and cons of polygraph use in other settings, PCSOT can make a valuable contribution to sex offender treatment and management.
Introduction

In the United States polygraph testing is used widely in the treatment and supervision of sex offenders. Up-to-date figures are difficult to come by, but surveys carried out in the late 1990s and early 2000s estimated that at that time polygraphy was incorporated as part of sex offender supervision by probation and parole agencies in 30 to 35 states (English, et al., 2000; Consigli, 2001), while 70 per cent of surveyed adult sex offender community treatment programmes, and nearly half of those involving adolescents, were thought to make use of it (McGrath, Cumming, & Burchard, 2003). In England legislation was passed in 2007 enabling a national trial of mandatory testing by the probation service.

Polygraph testing of convicted sex offenders has two main aims: to enhance treatment and to improve supervision. In terms of the former, it is claimed that polygraphy provides fuller and more accurate information about an offender’s history, paraphilic interests and offence behaviour, enabling treatment need to be better identified and targeted (Emerick & Dutton, 1993; English, et al., 2000; Grubin, et al., 2004; Heil, Ahlmeyer & Simons, 2003; Hindman & Peters, 2001). In respect of supervision, polygraphy is used to assist in monitoring behaviour and adherence to relapse-prevention plans, with supporters arguing that it both acts as a deterrent to reoffending and aids in the detection of reoffending when it occurs (Abrams & Ogard, 1986; Grubin, et al., 2004; Madsen, Parsons & Grubin, 2004).

Polygraph testing of convicted sex offenders, however, has its critics. Polygraphy itself, of course, is highly controversial, with longstanding arguments regarding its validity, usefulness, and ethics still unresolved (British Psychological Society, 2004; Fiedler, Schmid & Stahl, 2002; Grubin & Madsen, 2005; National Research Council, 2003). Although much of this debate has focused on its use in criminal, security, and employment settings, sex offender testing has not escaped attention (Cross & Saxe, 2001; Branaman & Gallagher, 2005). Criticisms of the use of polygraphy with convicted sex offenders tend to fall into three broad categories:

- concerns regarding the testing formats employed
• the lack of a robust evidence base
• ethical issues

Thus, while some, mostly coming from a practitioner perspective, argue strongly for post-conviction polygraph testing of sex offenders on clinical grounds, others, often from academic backgrounds, remain to be convinced that the gains are real and the risks properly understood. Is the widespread and growing use of post conviction sex offender polygraph testing justified, or is it smoke and mirrors that provide illusory benefits?

It will be argued here that much of the criticism of sex offender polygraph testing arises from confusion between it and other applications of polygraphy, with examples of questionable practice sometimes used to censure the technique altogether. For their part, it is also not uncommon for proponents of post conviction sex offender testing to outrun the evidence that is available. Putting pro and anti polygraph ideologies aside (which, although often unspoken, cloud the debate), the issue to be addressed is the extent to which, when delivered under proper protocols, polygraph testing can make an important contribution to sex offender management and public protection.

Polygraph testing

The polygraph is often described as a lie detector. Its use is based on the notion that lying induces a ‘stress response’ in the automatic nervous system, a part of the Central Nervous System that is largely outside conscious control and which regulates the body’s internal environment. Whether this stress response is the result of a fear of deception, orientation to an issue of emotional salience and ‘threat’ to the individual, the increased cognitive processing required for deception, or some other mechanism is unclear, but the effect can be observed in a number of peripheral physiological processes, specifically changes in cardiovascular activity, breathing, and sweating. The core of the polygraph examination, therefore, involves individuals being asked a series of questions while activity in these systems is recorded, with certain reactions said to be indicative of deception.
Critics of polygraphy rightly point out that this autonomic nervous system ‘stress response’ is not unique to deception, nor is it always engendered by it (Saxe & Ben-Shakhar, 1999), a point Ben-Shakar (2008) makes again. In other words, although called a ‘lie detector’, the polygraph does not directly detect or measure ‘lying’. The extent to which deception can be inferred from the polygraph examination, therefore, is dependent on the degree to which the examiner can ensure that the arousal engendered by the questions being asked is caused by deception rather than some other factor. This dependence on examiner competence, and the associated implication of a lack of standardisation in polygraph testing, has been put forward as a reason for rejecting the ‘scientific’ standing of polygraphy (British Psychological Society, 1986), although the need for competent examiners, technicians, or whatever, as well as standardised technique, is common to scientific and psychological investigations generally – the question to be answered is not whether polygraphy delivers this at present, but whether it is capable of doing so. No evidence has been presented to show that it does not, and there is no reason to believe that with proper protocols and quality assurance measures in place it cannot.

The most definitive review of polygraphy testing to date, carried out on behalf of the National Academies of Science in the United States, concluded that “polygraph tests can discriminate lying from truth telling at rates well above chance, though well below perfection” (National Research Council, 2003, p. 4); polygraph accuracy was estimated in this review to be in the region of 80 to 90%. In spite of Ben-Shakar’s (2008) concerns, there would therefore appear to be a meaningful association between what the polygraph records and deception. And though the review argued that this level of accuracy is too poor for polygraphy to be used effectively as a means of security vetting, where the base rate of deception is likely to be low (one hopes that there are not many spies working in federal agencies), it was suggested that polygraphy is viable when the underlying rate of deception is 10% or higher – a rate which most observers, even those critical of polygraphy, would accept is readily exceeded in sex offender populations (British Psychological Society, 2004).

There are, however, different types of polygraph test format, not all of which are dependent on lying at all, and between which accuracy varies. For example,
examinations referred to as ‘peak of attention’ and ‘concealed information’ tests rely on recording differential responses to emotionally salient information, and are probably best thought of as recognition tests. In sex offender examinations, the format most commonly employed is called the ‘comparison question’ or ‘control question’ test (CQT), where differential responses to so-called relevant and comparison questions are evaluated.

As Ben-Shakhar’s (2008) arguments against post-conviction sex offender testing are based almost entirely on his criticisms of the CQT, it is worth briefly examining his claims. First, as he has written previously (Ben-Shakhar, 2002; Saxe and Ben-Shakhar, 1999), he states that there is a lack of theory to explain how it might work. It is not the case, however, that there are no theories to explain it – there are tenable theories, albeit unproven ones (see, for example, Kleiner, 2002; we are also exploring a theoretical model based on autobiographical memory, emotional salience, and the ‘cognitive load’ associated with deception that might be tested with fMRI). Regardless, the existence of a theoretical explanation is not a necessary requirement for a technique to be used, providing it works (in this respect it is of interest that Ben-Shakhar does not seem troubled by the absence of theory to explain the GKT, a polygraph format of which he approves). Although the CQT is generally thought to be less accurate than other test formats, the evidence suggests that its accuracy rate, while not well established, is still substantially greater than chance (National Research Council, 2003); the question for post-conviction sex offender testing, which will be addressed below, is whether it is accurate enough.

Second, Ben-Shakhar (2008) claims that the CQT can not be standardised, and because of this it does not qualify as a test in any formal sense. The issue of standardisation has already been commented on above. Additionally, however, tests are not always as highly ‘objective’ as he believes. For example, few would argue that Single Photon Emission Computed Tomography (SPECT) is not a valid scientific procedure, but the Society of Nuclear Medicine Brain Imaging Council (1996) notes that variance can be caused by differences in instrumentation, subjects’ behavioural states, timing, the length of scan, analytic methods and quality control. It cautions about the uncertain relationship between images and dysfunction. Much the same can be said for polygraphy.
Third, Ben-Shakhar (2008) refers to the risks of contamination bias in interpreting polygraph examinations. By this he means that information other than that contained in the polygraph charts, including pre-test expectations, may be used in reaching decisions regarding outcome, although he does not present much evidence to demonstrate that this occurs to any great extent in practice. Regardless, this is something that can be mitigated by having charts reviewed by blind scorers.

Fourth, and what would be fatal to the CQT if it were the case, is Ben-Shakhar’s (2008) assertion that there is no empirical evidence for the efficacy of CQT, with the implication that it does not work. As referred to above, however, the National Research Council review (2003) concluded that the CQT can in fact distinguish between deception and truth telling at rates significantly greater than chance. Moreover, the one study he cites as meeting his requirements for a fully valid trial of the CQT (on which he was a co-author), in that it was able to establish ‘real life’ testing conditions while at the same time being in a position to determine ‘ground truth’, reported accuracy rates between 80 and 90%, a finding consistent with the National Research Council review (Ginton, et al, 1982).

Lastly, Ben-Shakhar (2008), having argued that the CQT does not work, then somewhat contradictorily goes on to suggest that it does work but is vulnerable to countermeasures, that is, physical or psychological techniques that enable individuals to appear to be answering truthfully when they are in fact being deceptive. Such methods exist, and individuals can be trained to use them; indeed, there are websites on the internet that offer advice of varying quality about them. To succeed, however, an individual needs more than theory – he must also have feedback on his responses when attached to the polygraph (Honts, Hodes & Raskin, 1985), something that is not readily available, at least not to sex offenders in the post-conviction setting.

**Post-conviction sex offender testing (PCSOT)**

Polygraphy tends to be associated with criminal investigation, security vetting, and pre-employment screening (as well as with a range of more populist applications such
as testing the fidelity of spouses and as a gimmick on daytime television). The emphasis in these settings is on whether or not the individual has ‘passed’ the lie detector. Because of this, the question of accuracy is paramount, as are the error rates of individual examiners (which are typically unknown). The dynamics of sex offender testing, however, are very different from those inherent in investigative settings. Sex offenders who undergo polygraph testing in the context of treatment and supervision have all been convicted of offences – hence the reference to this type of polygraph examination as Post Conviction Sex Offender Testing (PCSOT). Unlike the investigative environment, the focus is not on passing or failing the polygraph, but on facilitating disclosures that assist in treatment and supervision, and enhancing engagement.

PCSOT, therefore, differs from investigative uses of polygraphy in a number of fundamental ways. Investigative polygraphy is confrontational and interrogative in nature and involves one-off examinations, with negative outcome associated with significant consequences, such as going to prison, being made subject to further investigation or getting fired, or not getting a job. The aim is to obtain a confession or a clear ‘pass’ or ‘fail’. In contrast, when carried out correctly, PCSOT examiners interview rather than interrogate (in this respect, Ben-Shakhar (2008) is mistaken in his reference to PCSOT examiners as “interrogators”). Offenders are (or should be) tested at regular intervals, and rather than being punished for their disclosures, they are more likely to be rewarded with positive feedback for the progress they are making (Holden, 2000). Crucially, the polygraph result itself, while not immaterial, is less important than the information provided by the offender, which can be useful regardless of test outcome. Because no action should be taken simply on the basis of a passed or failed polygraph test alone, accuracy rates in the region of 80% are sufficient to inform treatment and management without dominating it – a wrong result does not have the impact it can have in an investigative setting.

In PCSOT, one of four types of test is employed, depending on circumstances:

**Sexual History Disclosure:** the purpose of this test is to obtain a fuller account of an offender’s sexual history, including the range of deviant behaviours in which he has engaged, the age at which these commenced, and a more accurate sex offence history.
Although the offender provides a lengthy account, he is only questioned about selected aspects of it when attached to the polygraph. This information is useful both in enabling a better understanding of an offender’s risk, and in clarifying treatment targets.

**Maintenance:** this is a screening type of test relating to an offender’s compliance with the requirements of treatment and supervision. Maintenance tests cover a number of issues, and are repeated at regular intervals, with the aims of detecting any behaviours indicative of increased risk, and deterring the offender from engaging in risky behaviours in the first place. The primary purpose of maintenance testing is to prevent reoffending rather than to detect reoffences after they have occurred.

**Denial, or Index Offence Disclosure:** this test seeks to gain from the offender a fuller account of the circumstances associated with his index offence, often with the aim of overcoming minimization or denial, including claims of poor recall. This information is then used to better inform treatment providers about risk factors which contribute to offending. Some critics believe that this information would be obtained anyway in the course of treatment, but whether or not this is the case, supporters of PCSOT argue that the disclosures come much earlier in treatment when polygraphy is used (Salter, 1995).

**Specific Issue:** these tests, also called monitoring exams, look at single issues about which there may be concern, for example, whether an offender has had contact with a previous victim. In some jurisdictions (although not in England) they focus on whether a new offence has been committed. Some examiners argue that it is important to separate out tests which deal with general issues (that is, maintenance exams) from those focussing on specific matters that are likely to be more arousing to the offender, as the latter can ‘overwhelm’ responsivity to the former, reducing test accuracy (Holden, 2000).

Sex history disclosure and maintenance testing form the majority of tests undertaken in PCSOT. These tests are, in effect, screening in nature: there is no specific, known event that is being asked about, and a range of material is covered. Although the development of comparison questions is more difficult than in ‘specific issue’ tests, it
is not nearly as problematic as Ben-Shakhar (2008) makes out, with examiners, for example, taking care to develop questions covering differing time periods. However, less is known about the accuracy of screening tests compared with ‘specific issue’ testing (National Research Council, 2003). Thus, not only is PCSOT seen by some, including Ben-Shakhar, to be compromised by its CQT format as discussed above, but it also suffers from being ‘multi-issue’ and less well defined than other applications, with a knock-on effect on accuracy.

Because many of the disclosures made in PCSOT are in any case difficult if not impossible to verify (for example, how can one determine whether or not an offender has been masturbating to deviant fantasies?) accuracy in PCSOT is particularly difficult to determine. Two independent studies approached this question through anonymous surveys with sex offenders in the US who had undergone polygraphy, one group from programmes based in Georgia (Grubin & Madsen, 2006), the other from programmes 3000 miles away in California (Kokish, Levenson, & Blasingame, 2005). Offenders were asked about their experiences of being wrongly accused of deception, and also of instances where deception had been missed. The findings were very similar, with responses from offenders in both studies suggesting an accuracy rate for PCSOT between 80 and 90%. Thus, in spite of their methodological weaknesses (as the surveys were anonymous, answers could not be compared with actual test results, which Ben-Shakhar (2008) appears to have misunderstood), the results from these two studies are consistent with accuracy estimates for other testing formats (National Research Council, 2003).

So long as PCSOT accuracy is substantially greater than chance, the fact that its error rate may be as high as 20% is not critical. As referred to above, the primary focus of PCSOT is not on the result of the polygraph examination itself, but on enhancing the disclosure of information relevant to treatment and supervision, and on encouraging engagement with therapists and supervisors. Test results are not considered in isolation, but are interpreted in the context of a range of other information that is known about the offender – a ‘failed’ test, in the absence of disclosures or other concerns may indicate that further scrutiny is required, and a ‘passed’ one may offer reassurance, but in neither case should a ‘wrong’ outcome on its own lead to definitive, but mistaken, decisions. In PCSOT, polygraphy is probably better thought
of as a truth facilitator than a lie detector. Provided that it achieves this, the potentially reduced accuracy inherent in PCSOT becomes less of an issue than it would otherwise appear to be.

There is, however, genuine concern that offenders will make false confessions in the context of the polygraph exam, either to ‘explain’ an erroneous deception-indicated test or to please the examiner (British Psychological Society, 2004). Although there is only limited research which has looked at this, the two surveys referred to above in respect of PCSOT accuracy also asked offenders whether they had ever made false disclosures in a polygraph test (Kokish, Levenson, & Blasingame, 2005; Grubin & Madsen, 2006). Again the findings were similar, with under 10% of offenders indicating they had done so. The issue, therefore, is real, but it does not seem to be a major problem.

Related to the question of false disclosure is whether sex offenders can ‘beat’ the polygraph using techniques that allow them to portray themselves as answering the polygrapher’s questions truthfully when they are in fact being deceptive, or withholding information. As referred to above, such methods exist, but they require training to implement, including feedback when attached to the polygraph (Honts, Hodes & Raskin, 1985). While perhaps available to spies, most sex offenders do not have access to this type of resource. Having said this, can some offenders ‘beat’ the polygraph? Almost certainly. But many more offenders ‘beat’ therapists and supervisors in programmes where polygraphy is not used. And as indicated above, so long as polygraph results are not used in isolation, the effect of these false negatives when they do occur should not be great.

It is also worth commenting on Ben-Shakhar’s (2008) belief that the “different definition of what constitute sexual contacts” held by some sex offenders increases the risk of false negative outcomes. The cognitive distortions of sex offenders should have no bearing on polygraph testing – test questions ask about specific behaviours, for example, whether the offender has had unsupervised contact with a child, or whether he touched a woman’s breast, that are not dependent on their perception of what is right, permissible, or constitutes a sexual offence.
The evidence base for PCSOT

Regardless of the accuracy of PCSOT, the more fundamental question is whether or not it contributes to sex offender treatment and supervision. The vast majority of research regarding PCSOT is directed to this issue. The difficulty is that methodological limitations of many of the studies limit the robustness of their conclusions.

Research reports involving PCSOT generally describe large increases in self disclosures regarding previous numbers and types of sex offence victims and types of offences committed (Ahlmeyer, et al, 2000; English, et al, 2000; Heil, Ahlmeyer, & Simons, 2003), continued masturbation to deviant fantasies and engagement in high risk behaviours (Grubin, et al, 2004; Harrison & Kirkpatrick, 2000; Madsen, Parsons, & Grubin, 2004), a lower age of onset of sexually deviant behaviour (Ahlmeyer, et al, 2000; Wilcox, 2000), and reductions in claims by offenders regarding their own histories of sexual abuse (Hindman & Peters, 2001). In terms of supervision, reductions in high risk behaviour and in recidivism are described (Abrams & Ogard, 1986; Edson, 1991; England, et al, 2001; Harrison & Kirkpatrick, 2000), as well as increased reporting of relevant behaviours to supervising probation officers (Grubin, et al, 2004). Offenders themselves have also reported it to be helpful (Grubin & Madsen, 2006; Kokish, Levenson & Blasingham, 2005; Harrison & Kirkpatrick, 2000).

In general, however, these studies typically involve small numbers of offenders, rarely include appropriate, well-matched comparison groups (instead relying on comparisons between offenders taking part in programmes before and after polygraphy is introduced, or with offenders who have refused polygraphy), and are often contaminated by other factors, such as an inability to separate out the effects of treatment from those of polygraphy. For example, sample sizes in most of the disclosure studies referred to above range from 12 to 60; although larger sample sizes have been reported, for instance in the evaluation of programmes in Colorado where PCSOT is mandated (Heil, Ahlmeyer & Simons, 2003), outcomes are based on
increased disclosure by offenders pre and post polygraph rather than on comparisons with non-polygraphed offenders.

A large trial of PCSOT in England involving sex offenders managed by the probation service addressed some of these methodological issues (Grubin, 2006). In this study, polygraphy was introduced on a voluntary basis to sex offenders taking part in programmes in 10 probation areas, with polygraphed offenders compared with sex offenders in four probation areas where polygraphy was not introduced. Over two years, 347 sex offenders attended for testing, 33% of whom (n=116) were tested on two or more occasions. The testing uptake rate was 43%, and the retest rate 47%. Feedback from probation officers was received in respect of just over two thirds of all the tests that were carried out. The comparison sample comprised 180 offenders, representing about 60% of sex offenders in treatment programmes in the non-polygraph sites.

In brief, probation officers reported that new disclosures relevant to treatment or supervision were made in 70% of first tests, which compared with 14% of non-polygraphed offenders making such disclosures over the previous six months. A similar difference was found in respect of retests. The disclosures made by polygraphed offenders were rated as ‘medium,’ (that is, relating to behaviours indicative of increased risk) or ‘high’ (actual breaches or offences) in over 40% of cases. The odds of a polygraphed offender making a disclosure relevant to his treatment or supervision were 14 times greater than they were for non-polygraphed offenders. Because offenders in both groups were in various but similar stages of treatment, it is unlikely that this increase in disclosure related to progress in treatment.

Two examples of disclosures made during the study give a sense of their nature:

A 30 year old man with no previous offending history was convicted of the indecent assault of his 10 year old stepdaughter. He claimed he had only ever touched her on one occasion, on her breasts and over her pyjamas, in spite of the girl’s statement of digital penetration of her vagina. After a ‘deception indicated’ polygraph test, he admitted to sexual arousal to 13 and 14 year old
girls, and to having masturbated to fantasies of his stepdaughter prior to the offence. This led to a marked change in treatment targets.

A 24 year old man was on parole having been convicted of unlawful sexual intercourse with a 14 year old girl. His probation officer believed he was maintaining a sexual relationship with his victim, but this was persistently denied by the offender. His monitoring included a tag and a curfew at night, with which he was compliant. He denied any wrongdoing during the pre-test interview, but the outcome of the test was ‘deception indicated’. In the post-test interview he admitted to regular contact with his former victim, and to some sexual activity with her (in his home after his curfew). When the girl was interviewed by the police she reported spending one night a week in the offender’s home, where in addition to the sexual activity described by him she said they also engaged in sexual intercourse.

In his critique of PCSOT Ben-Shakhar (2008) argues that polygraphy has “no value as a scientific method for detecting deception and uncovering information the examinee does not wish to disclose”. Yet, PCSOT elicits substantially more disclosures than ‘business as usual’. The reason that individuals disclose during polygraph interviews is interesting in itself, and worth further exploration. There may be a ‘bogus pipeline’ effect at work, a well known and often repeated research finding that occurs when subjects disclose information because they believe they are attached to a device that can accurately detect lies (Jones & Sigall, 1971). In the English probation trial described above, however, 30% of disclosures were made only after a failed polygraph test, where the bogus pipeline theory would be more congruent with pre-test disclosures; furthermore, this type of effect will lessen in subsequent tests if offenders experience test outcome to be inaccurate. It may be that offenders disclose because they believe they have been ‘caught out’ by the polygraph – in other settings there is evidence that offenders confess to crimes when they believe there is good evidence against them (Gudjonsson and Sigurdsson, 2000). Another possibility is that the polygraph examination provides an opportunity for an offender to change his account in a face saving manner. Whatever the reason, the dynamics are more complex than Ben-Shakhar’s reference to what individuals may “wish” to disclose.
Although a large study with a comparison group, the conclusions from the English probation trial of PCSOT are indicative rather than definitive. The polygraphed and non-polygraphed offenders were not randomised nor were they explicitly matched, and though they appeared to be similar in terms of offence characteristics and level of risk there may have been differences between them that influenced the findings. This was particularly relevant given the voluntary nature of the study, as it is possible that offenders who volunteer for polygraph testing may differ from sex offenders on probation generally. Nevertheless, it contributes to the weight of evidence demonstrating that the increase in disclosure claimed by proponents of PCSOT is likely to be genuine.

What really matters, however, is whether PCSOT brings about a reduction in risk behaviours and reoffending. Here, the ‘weight of evidence’ is less heavy. In an often quoted study, Abrams and Ogard (1986) compared recidivism rates of 35 probationers (few of whom were sex offenders) required to take periodic polygraph tests by the Courts in two areas of the state of Oregon, with 243 offenders from another county whose supervision did not involve polygraphy. They found that over a two year period 69% of men who received periodic polygraph examinations remained offence or infringement free compared with 26% of those who were not polygraphed. But in addition to the small number of polygraph subjects, the two samples were not matched, nor is it clear whether there was any selection bias in choosing those who underwent polygraphy. Also in Oregon, Edson (1991) reported that 95% of 173 sex offenders on parole or probation and required to undertake periodic polygraph testing did not reoffend over a 9 year period, but this study did not include a comparison group at all.

Although a small study involving volunteers, Grubin, et al (2004) found that after a first polygraph test offenders reported engaging in fewer and less serious risk behaviours (supported by ‘no deception indicated’ polygraphs), and increased reporting of such behaviours to their supervising officers. The study, however, was unable to examine at the relationship between this and any reduction in future reconviction rates.
McGrath, et al (2007), in a well designed evaluation, compared 104 sex offenders in Vermont who received treatment in programmes involving PCSOT with 104 matched offenders in programmes where polygraphy was not used. At five year follow-up they found no difference in sex offence recidivism rates, but they did find a significantly lower rate of reconviction for non-sexual violent offences. It is difficult to determine the meaning of this, however, because although the study itself was sound, the way in which PCSOT was delivered was not, with offenders undergoing polygraph examinations on average just once every 22 months, dissipating the likelihood that polygraphy would have an impact on behaviour. Even so, the reduction in violent offending is notable.

Although less objective, a sense of the efficacy of PCSOT can be obtained from simply asking probation officers for their views of its impact on treatment and supervision. When this was done in the English probation trial (Grubin, 2006), probation officers rated polygraphy as being ‘somewhat’ or ‘very’ helpful in over 90% of cases, with very few tests considered by officers to have had either no or negative impact.

In conclusion, while the evidence base is not definitive, it is supportive of PCSOT in terms of its utility in contributing to sex offender treatment and supervision, enabling probation officers to better monitor risk and to bring about more effective and timely interventions.

**The ethics of PCSOT**

Regardless of the utility of PCSOT, a number of critics raise ethical objections to polygraph testing of sex offenders. Cross and Saxe (2001), for example, refer to it as “psychological manipulation”, suggesting that its impact may simply reflect a ‘bogus pipeline’ effect, which as described above occurs where subjects disclose information because they believe they are attached to a device that can accurately detect lies. They imply that examiners deceive subjects by suggesting that the polygraph is error free. While this may occur, it is not good practice, and there is no reason for examiners to make out that the test is any more accurate than it actually is (in this
respect, the use of a ‘rigged’ card test as mentioned by Ben-Shakhar (2008) is not necessary for a successful examination, and it was not used by us in the English probation trial). The British Psychological Society report (2004) observes that participants in any investigation should be informed of known error rates, a sentiment with which it is difficult to disagree, and is readily compatible with polygraph examinations – subjects continue to disclose even when this occurs, as was found in the English probation study (Grubin, 2006). The fact that PCSOT encourages disclosure of information relevant to treatment and risk management in itself is not an ethical issue.

A number of other ethical issues are raised by the British Psychological Society (BPS) report on polygraph testing (2004). For example, it is observed that PCSOT may be perceived by sex offenders as coercive, with penalties for non-cooperation. It should be remembered, however, that PCSOT involves convicted offenders, who by virtue of their criminal convictions are required to accept a range of measures they might otherwise resent, including restrictions on where they live, limitations on employment, and curfews. Treatment itself can be mandated, even though the evidence for treatment efficacy is limited. Provided that polygraph testing is directly relevant to treatment or supervision, and the questions asked during tests are intended to further this aim (typically they are the same questions asked by probation officers anyway), it is difficult to see why coercion should be morally problematic. The BPS report quite rightly comments that it is wrong to assume that a person who refuses to take a polygraph test has something to hide, but in a post-conviction context, a failure to co-operate with any aspect of supervision is a well described potential indicator of risk (Hanson & Harris, 2000).

The BPS report argues that polygraph testing should only be carried out when informed consent is freely given, based on full and valid explanations. Most examiners would agree with this – outside of a criminal justice context. Whether such consent can be given in criminal justice settings, however, is not straightforward, nor is the issue of balancing the need for offender consent with that of public safety.

Another ethical issue relates to polygraphy as an invasion of privacy, contrary to the European Convention on Human Rights. In this respect, it should be noted that the
European Court has ruled that penile plethysmography (a technique in which penile arousal in response to sexual stimuli is measured and recorded), can be made a compulsory part of sex offender treatment on the grounds of public safety (Gazan, 2002). Most observers would probably consider this procedure to be considerably more ‘invasive’ than polygraphy.

Finally, one might ask whether it is unethical not to use PCSOT in the treatment and supervision of sex offenders. If the information obtained during polygraph examination adds significantly to what would otherwise be known about treatment need and risk, is it right to deny the potential benefits of PCSOT to an offender? If PCSOT does reduce risk, how can one explain to a future victim why it did not form part of the offender’s treatment and supervision package?

**Conclusion**

In his criticism of PCSOT Ben-Shakhar fails to differentiate between two different questions:

i. Do subjects believe that polygraphy ‘works’? Their perception of this may impact on their readiness to disclose, and hence the utility of PCSOT. Their belief, however, only indirectly relates to the actual efficacy of polygraphy.

ii. Does polygraphy (or more specifically the CQT) reliably differentiate deception from truth telling? Even if subjects are sceptical about the validity of polygraphy, and because of this do not make any disclosures, the actual accuracy rate of the technique determines how much meaning to give to a ‘pass’ or ‘fail’ result.

Proponents of PCSOT argue that its utility and validity are both sufficiently well demonstrated to justify it use. Detractors can point to many examples of misuse and frank abuse of the technique. There is no reason to believe, however, that acceptable PCSOT protocols cannot be developed, or the practice cannot be properly regulated.
PCSOT is not error free, but neither is sex offender treatment and supervision in its absence. The evidence suggests that, whatever the pros and cons of polygraph use in other settings, PCSOT can make a valuable contribution to sex offender treatment and management.
References


