

# Polygraph Testing Leads to Better Understanding Adult and Juvenile Sex Offenders

Jan Hindman, M.S.<sup>1</sup>

*It's About Childhood: The Hindman Foundation, Baker City, Oregon*

James M. Peters, J.D.<sup>2</sup>

*Assistant United States Attorney—Boise, Idaho*

**HISTORICALLY, THE MENTAL** health and probation communities have gathered information about the history of sex offenders from self-reports, often via one of several standardized sexual history inventory and data gathering forms.<sup>3</sup> A collection of studies summarized in 1995 by forensic psychologist Anna Salter, however, revealed that self-reporting often fails to uncover the true extent of an offender's sexual history. Not surprisingly, fear of legal sanctions and family and societal reproach leads most sex offenders either to deny their crimes altogether or admit to the minimum they think necessary.<sup>4</sup> Recognizing this, many treatment programs have begun to use polygraph testing to validate offenders' self-reports.<sup>5</sup> This article reviews several previously unpublished research studies conducted by Hindman on the impact of polygraphy on adult and juvenile sex offenders' self-reports of offenses and their history of personal victimization. The methodology of each study varied. The methods include:

1. Self-report with no polygraph, and no mention of polygraph.
2. Self-report when the subjects knew they would undergo polygraphy.
3. Comparison of self-report with and without polygraphy.
4. Self-report compared with polygraphy in the same subject.

We summarize those studies and related research, and make recommendations for polygraph use with sex offenders in clinical settings. The data reported here were gathered from hundreds of offenders over a pe-

riod of more than two decades.<sup>6</sup> From them emerged a phenomenon the authors term the "Magical X." *In a significant segment of the data base, critical numbers related to the extent of the offenders' criminal behavior and their personal histories of victimization reverse themselves when subject to the scrutiny of a polygraph examination.* In other words, when verified by polygraph, the numbers of the offenders' prior victims rise significantly, while the percentage of offenders who experienced victimization in their own lives drops significantly.

## A Brief Retrospective

To understand where we are now in this field, knowing where we have been is important. Three decades ago, the sexual exploitation of children was a subject that came to the attention of most people infrequently, if at all. One author of an academic dissertation published in 1975 observed that "[v]irtually no literature exists on the sexual abuse of children."<sup>7</sup> Fondling and sexually assaulting children were against the law then just as they are now, but these laws were not often enforced. The few cases reported to law enforcement were routinely shuttled quietly off to family court, unless the incident involved serious violence. Many law enforcement agencies viewed such cases as little more than time-consuming social work, and child molesters were more often the targets of jokes than prosecution.

During the 1970s and 1980s, a paradigm shift occurred. Spurred on in part by the emerging women's rights and children's protection movements, people who had been sexually abused as children, such as Louise Armstrong, began publishing books about

their experiences.<sup>8</sup> Both law enforcement and the media uncovered well-publicized cases of child pornography and sexual exploitation rings that brought those issues onto the public's radar screen.<sup>9</sup> In the behavioral research community, Robin Lloyd published a highly regarded book about prostitution among young boys in the United States,<sup>10</sup> while psychiatrist Judith Herman published one of the first significant books on incest,<sup>11</sup> and psychologist Nicholas Groth wrote a creative and influential study on the behavior of sex offenders.<sup>12</sup>

In Congress, the House and Senate Judiciary Committees began in 1977 to investigate the child pornography industry, and ultimately enacted the first of a series of federal laws designed to address child sexual exploitation.<sup>13</sup> Most states followed with similar laws,<sup>14</sup> and supplemented mandatory reporting statutes that had passed in every state during the 1960's,<sup>15</sup> requiring those who have professional contact with children to report to child protection agencies or law enforcement whenever there is reason to believe a child is being abused or neglected.<sup>16</sup>

The result of increased public awareness together with the new laws was that reports of child sexual abuse and exploitation soared throughout the 1980s.<sup>17</sup> Law enforcement agencies and prosecutors who once gave such cases scant attention began to sit up and take notice. Some created special units to respond to such reports, and methods of investigation improved greatly.<sup>18</sup> At the same time, as more offenders were convicted of sex crimes, there was a corresponding growth in the number of mental health professionals seeking to evaluate and treat them.<sup>19</sup>

## Prevalence of Sexual Abuse

As public interest grew and prosecutions and treatment programs expanded, an obvious area of study was the prevalence of child sexual abuse in the general population. One leading researcher, University of New Hampshire sociologist David Finkelhor, summarized surveys on child sexual abuse in twenty-one countries, including the United States and Canada. All found prevalence rates of between seven and 36 percent for women, and between three and 29 percent for men. Most also found that women were abused 1.5 to three times as often as men, that men committed about 90 percent of sexual abuse crimes against children, and that between 70 and 90 percent were committed by family members or others known to the child victim.<sup>20</sup>

## Effects of Sexual Abuse

As researchers documented the prevalence of childhood sexual abuse, interest in its effects increased as well. Study after study has confirmed that childhood sexual abuse is often extremely traumatic, and for some victims, results in a lifetime of dysfunction. Formal research comparing abused children to non-abused children has consistently confirmed what clinical observation of victims has suggested:<sup>21</sup> that they are far more likely than those who are not abused to display poor self-esteem, fearfulness, aggressiveness, withdrawal and/or acting-out, as well as an intense need to please others.<sup>22</sup> Children who hide their sexual abuse take on the additional burdens of guilt, shame and fear. Abused children may process their feelings by withdrawing from family and friends, or becoming angry with those they perceive to have let them down. They are at increased risk of depression and suicide, and may re-enact their experience by becoming sexually precocious themselves or by abusing other children.<sup>23</sup>

## Early Offender Studies

Professionals involved in offender studies have long recognized that the “causes” of such behavior are almost invariably complex.<sup>24</sup> Early studies often focused on traumatic events in the offenders’ developmental histories,<sup>25</sup> particularly the offenders’ reports of their own childhood abuse.<sup>26</sup> One study reported a finding common to many: that “[a] majority of sex offenders experienced physical and/or sexual abuse as children.”<sup>27</sup> Research sponsored by the National Institute of Justice found that childhood abuse increased

the odds of future delinquency and adult criminality by 40 percent. Specifically, being abused or neglected as a child increased the likelihood of arrest as a juvenile by 53 percent, as an adult by 38 percent, and for a violent crime by 38 percent.<sup>28</sup> Other researchers reported specifically on the trauma of sexual abuse. They found that people who were sexually victimized in childhood have a higher risk of arrest for committing crimes as adults than do people who did not suffer childhood abuse.<sup>29</sup>

## The Sex-Offender-As-Victim Paradigm

In the early years of sex offender research and treatment, clinicians typically asked offenders to report on their own early histories. In staggering numbers, they reported that they had been sexually abused as children. Even some who did not initially claim victimization produced such histories under the influence of hypnosis or repressed memory therapy.<sup>30</sup> Society—even the normally-skeptical mental health community—readily accepted such claims, in part at least because they offered a comforting explanation for the otherwise inexplicable behavior of child molesters. Some very reputable and good people began to believe that “bad” people must have been treated “badly,” without ever considering how many abused people (although perhaps psychologically impaired) do not become sex offenders. Almost overnight, the sex-offender-as-victim paradigm became a pearl of conventional wisdom, a staple of television talk shows and popular print media.<sup>31</sup>

## Challenging the Sex-Offender-As-Victim Paradigm

Although it made sense to question these stories—sex offenders’ use of cognitive distortion<sup>32</sup> to justify behavior was, after all, well-known—it was not until offenders’ self-reports began to be compared with reports verified by polygraph that the sex-offender-as-victim idea was challenged and discredited. This finding is consistent with that of Hansen and Bussiere, the Canadian researchers, whose highly regarded meta-analysis of sixty-one treatment outcome reports published between 1943 and 1995, covering 28,972 sex offenders from six countries, found that childhood victimization is *not* a predictor of whether the person will commit another sexual offense.<sup>33</sup>

## Self-Reporting With and Without Polygraph: The Oregon Studies

We culled the data presented in this article from the histories of hundreds of sex offenders seen in a treatment program in Malheur County, Oregon over a period of more than two decades. During its early years, the clinicians there made the same assumption many others did: that sex offenders were victims; and they were as believable and motivated for change as people in therapy for other reasons—clinical depression, for example, or erectile dysfunction. On this basis, histories were gleaned from the offenders themselves, with no attempt to verify the data. By 1983, however, the program’s clinicians had become skeptical about the veracity of the offenders’ self-reported histories, and began to use polygraph examinations to verify them.

## The Prosecutor’s Conditional Immunity Agreement

The polygraph testing was begun in 1983, with the authorization of the local district attorney,<sup>34</sup> who gave polygraphed offenders conditional immunity from prosecution for unreported prior sexual crimes. This extraordinary concession from the community’s chief law enforcement officer, a crucial piece of the puzzle, was made because of three perceived *needs*, including:

1. The offender *needs* to disclose everything so that the treatment is pertinent.
2. The treatment program *needs* to have credibility with defense attorneys, to encourage guilty pleas and save children the trauma of participating in a public trial.
3. Victimized children *need* to be identified early to begin the process of healing.

The immunity agreement was conditioned on the offenders successfully completing five years of treatment and probation supervision, and not reoffending. The law enforcement rationale was threefold—*hanging offenders’ prior offenses over their head is a management tool that helps ensure compliance with probation/treatment rules; overcoming the secrecy and identifying other victims helped the offenders in treatment; and it also helped the victims who could be identified get treatment.*

## Polygraph and the Therapeutic Process

The polygraph tests were administered *after sentencing*, as part of the therapeutic process.

Offenders who were to be polygraphed followed a similar procedure followed by non-polygraphed offenders: they first provided a detailed sexual history covering each incident of abuse plus their own history of victimization, masturbation, extramarital affairs and other sexual activities. They then presented these histories in a therapy group, where they were discussed, critiqued and revised. Finally, the offenders were polygraphed with a single purpose of inquiry: “Have you purposely withheld or misconstrued information on your victim sexual history?”<sup>35</sup>

By comparing the histories of those whose self-reports were not polygraphed with those whose accounts were verified by polygraph, a series of studies found that the polygraphed group differed from the non-polygraphed in several important ways: *they reported many more victims, far less history of having been sexually victimized themselves, and a much higher incidence of having offended as juveniles.* Indeed, those critical numbers were found to reverse themselves when polygraphs were used, creating what came to be called the “Magical X.”

### The Pilot Study

The first study, reported in 1988 in the National District Attorneys Association Bulletin, compared the self-reported sexual histories of a group of 98 offenders with polygraphed-verified histories from a second group of 129 offenders.<sup>36</sup> This was a retrospective look at data collected from men in the same program, divided into groups treated between 1978 and 1983, and 1983 and 1988. The program was the same, the therapists were the same, and the attitude of the county prosecutor was basically the same throughout. The subjects had all pled guilty to intra-familial sexual abuse crimes, or other child sexual abuse cases that were the product of the multi-disciplinary child abuse team, and the program admitted only individuals who accepted responsibility for their crime. The difference was that the latter group was required to prepare a sexual history, and to pass a full-disclosure polygraph examination on that sexual history as a requirement for successful completion of treatment. The prosecutor gave the latter group immunity, under the conditions described above, for offenses not previously known to the criminal justice system disclosed during treatment. The data are presented in Table A.

The two groups reported essentially the same number of victims pre treatment—an average of about 1.25 per offender. When

**TABLE A**

#### *Comparing the Histories of Polygraphed and Non-Polygraphed Offenders*

	Self-Reporting 1978–1983 N = 98	Polygraphed with Immunity 1983–1988 N = 129
Average number of victims reported pre treatment	1.2	1.3
Average number of victims reported at sexual history	1.5	9.0
Percent who reported being sexually abused as a child	67%	29%
Percent reporting sexually abusing others as a child	21%	71%

**TABLE B**

#### *Comparing the Histories of Adult and Juvenile Non-Polygraphed Offenders*

	Juvenile–No Polygraph N = 42	Adult–No Polygraph N = 98
Average number of victims reported	4.8	1.5
Percent who reported being sexually abused as a child	36%	77%

more detailed histories were taken, however, the offenders who knew they were to be polygraphed (and knew they would be conditionally immune from prosecution) reported an average of 9 victims each—*six times* the number reported by those not subject to polygraph and immunity. Moreover, more than two-thirds of the non-polygraphed group claimed to have been sexually abused as children; in the polygraphed group, however, that number dropped to 29 percent—far more in keeping with studies of the prevalence of sexual abuse in the community generally.<sup>37</sup> Finally, the number of offenders who acknowledged committing sexual crimes when they were juveniles rose from 21 percent in the non-polygraphed group to 71 percent in the polygraphed group.

While there may have been unidentified social or cultural influences that affected the data from 1978–1983, versus the 1983–1988 group, these early data strongly suggested that many offenders, if not held accountable for their histories through polygraph testing, would mislead their therapists and probation officers in three critical areas. First, they would grossly minimize the numbers of their victims. Second, they would deny or understate their history of juvenile offenses. Finally, they would greatly exaggerate the rate at which they themselves had been abused as children.

### Juveniles in the 1988 Study

While it was not reported in the original published data, the 1988 study also compared the self-reported histories of 42 juvenile sex offenders (who were not in Hindman’s program) with 98 self-reporting (non-polygraphed) adults. The results are presented in Table B.

As this table demonstrates, the juveniles—even though they were not polygraphed and not given immunity—acknowledged significantly more victims than did the adults—three times as many, in fact. While this finding bears further research, it seems likely that the juveniles were simply less aware than the adults of the risks they were taking by admitting to more victims, and were therefore more honest.

Conversely, the juveniles claimed victimization at only about half the rate the adults did: 36 percent of them said they had been sexually abused as children, compared with 67 percent of the adults. Given the polygraph’s tendency to reduce adult offenders’ claims of abuse by better than half (as reported in Table A), it appears that the juveniles were again being more honest. One reason may have been their greater naivete, which would make them less likely to appreciate the amount of sympathy they could invoke by claiming they had been abused.

**TABLE C**

*Comparing the Histories of Polygraphed and Non-Polygraphed Offenders 1988–1994*

	Self-Reporting N = 76	Polygraphed with Immunity N = 152
Average number of victims reported	2.5	13.6
Gender of the victims		
Female	83%	53%
Male	17%	47%
Percent who reported being sexually abused as a child	65%	32%
Percent reporting sexually abusing others as a child	22%	68%

**TABLE D**

*Comparing the Histories of Outpatient Juvenile Polygraphed Offenders with Non-Polygraphed Adult Offenders*

	Self-Reporting N = 48	Polygraphed/Immunized N = 87
Average number of victims reported	2.1	4.3
Percent who reported being sexually abused as a child	52%	44%

### Replicating the Data: The 1994 Study

Within the same treatment program and under highly similar conditions,<sup>38</sup> the 1994 study again compared two groups of similarly-situated offenders—76 adult sex offenders who self-reported their sexual histories, and 152 adult offenders with polygraph-verified histories. The former group were seen by the same program for evaluation only, but were either sentenced to prison or were terminated from the program before polygraph testing. The latter group continued into treatment, received immunity, and were polygraphed. The results, reported in Table C, were strikingly similar to the results of the earlier study.

While the number of reported victims per offender was significantly higher for both groups than it had been in 1988, the research conclusions (except those relating to gender, which were not addressed in the original study) were almost identical. Once again, the number of victims reported by the polygraphed offenders was far higher than the non-polygraphed group—more than five times higher this time, as compared with the sixfold increase found in the earlier study. Two-thirds of the non-polygraphed group again reported being sexually abused them-

selves, but that number dropped by more than half in the polygraphed group, just as it had in 1988. Finally, 68 percent of the polygraphed group, but only 22 percent of the self-reporters, admitted juvenile offenses—numbers that almost exactly replicate the earlier study.

Again, a comparison between polygraphed and non-polygraphed offenders revealed that when not subject to verification of their histories, and without the prosecutor's conditional immunity protection that went along with it, offenders tend to understate the numbers of their victims dramatically, deny or understate their juvenile records, and inflate the rate at which they were victims themselves.

### Insight Into the Gender of Victims

The second study added a dimension absent from the earlier research, in that offenders were asked to identify the gender of each of their victims. As Table C demonstrates, the offenders in the study (97 percent were male) who did not face polygraph examinations reported abusing females far more often than males, while the polygraphed/immunized offenders reported abusing girls and boys in similar numbers. While the societal stigma

attached to homosexual behavior may account for the discrepancy, it does not negate the implication that non-polygraphed offenders may be routinely understating the numbers of their male victims. Polygraphy may, therefore, have the added benefit of more accurately describing the rate of victimization among male children.

### Juvenile Offenders in the 1994 Study

By 1994, the Oregon program was using polygraphs with juvenile outpatients as well as adult offenders. The second study, therefore, compared 87 juvenile offenders whose histories were verified by polygraph (under the same grant of conditional immunity given adult offenders) with 48 adults whose histories were self-reported and did not have the benefit of immunity. The 48 offenders were seen for evaluation only, and not treatment, so did not have the benefit of the District Attorney's immunity agreement. The results are reported in Table D.

As with adult offenders, the juveniles who were polygraphed reported more victims than did their non-polygraphed counterparts—twice as many in this case. While the change was not nearly as significant as it was for adult offenders (whose reported victims grew five- and sixfold in the two studies), the comparison once again demonstrates the power of the polygraph to elicit withheld information. The difference may be, in part, the result of the juveniles' young ages, since they had less time and opportunity to offend and, therefore, fewer victims to acknowledge—or as stated with respect to the juveniles in the 1988 study, they may have been more naive and, therefore, more honest.

The juveniles also differed from the adults in reporting their own histories of abuse. While reports of victimization decreased dramatically among adult offenders when they were subject to polygraphs, juveniles in the polygraphed group reported only slightly less abuse than those in the non-polygraphed group. Moreover, the polygraphed juveniles reported a much higher rate of victimization than the polygraphed adults in either study.

Finally, the 1994 study included six adolescent males from the Nampa Boys Home in Nampa, Idaho, which is an inpatient program. The sample was small and probably not representative of the lower-risk juveniles usually seen in outpatient treatment, but the results were striking enough to be worth reporting as an independent category. The six boys had all

been convicted of sexual offenses and had been in residential treatment for some time. They had already presented histories, in which they reported an average of 2.1 victims each. Five of the six also reported having been sexually abused. The professionals involved with these youth believed their histories, and were focusing on treating them as victims. When polygraphs were added to their treatment programs, however, the boys' reports changed. Table E compares what these six boys said before and after they were subject to polygraph.

As had their adult counterparts, the boys underwent several months of preparation designed to break down denial and encourage honesty, before taking their polygraph examinations. Rather than 2.1 victims each, they now admitted an average of 11.6—once again a change in the five- to sixfold range. In total, they acknowledged 58 victims who would probably never have been known without the polygraph. Even more strikingly, all five boys who had earlier claimed to have been victims of abuse now recanted their stories—while the one boy who *hadn't* claimed abuse now acknowledged it! (His mother, who had abused him over a period of years, was still visiting regularly at the time he was polygraphed. Without that test, he might well have gone on being abused by her for some time, and might never have gotten treatment for his trauma.) Clearly, the polygraph, coupled with the prosecutor's grant of conditional immunity, is a powerful tool to elicit withheld information, and perhaps tell us what we need to know about those children who are offending other children.

### Reduplicating the Data— The 1999 Study

Clinicians in the Oregon program continued to gather data from the adult sex offenders with whom they worked. Between 1994 and 1999, 173 adult men were seen in the outpatient program. The men reported their sexual histories upon entrance into the program, and again in preparation for and after their polygraph examinations. Table F compares their reports.

As Table F indicates, there was once again an increase in the average number of victims reported pre-treatment—from 1.2 in 1988, to 2.5 in 1994, to 2.9 in the most recent study. Once again, the polygraph produced a dramatic increase in the number of victims reported—fourfold in this case, compared with the five- and sixfold increases seen earlier. The number of offenders who initially claimed to have been abused was only slightly lower than in the earlier studies, and it too dropped by

**TABLE E**

#### *Comparing the Histories of Juvenile Offenders in Residential Care Before and After Polygraph Testing*

	Pre-Polygraph	Post-Polygraph
Average number of victims reported	2.1	11.6
Reported being sexually abused as a child	83%	17%

**TABLE F**

#### *Comparing the Histories of Adult Offenders Before and After Polygraph 1994–1999*

	Pre-Polygraph	Post-Polygraph
Average number of victims reported	2.9	11.6
Percent reporting being sexually abused as a child	61%	30%
Percent reporting sexually abusing others as a child	27%	76%

more than half when offenders were sentenced, accepted into treatment and polygraphed. The post-polygraph increase in the number who admitted committing sex offenses as juveniles was even more dramatic, and again quite comparable to the earlier studies. Indeed, the three studies produced such similar data that there can be little doubt about the validity of their central thesis: that polygraph testing reveals a significant amount of sexual history likely to be withheld in self-reports.<sup>39</sup>

### Judicial Recognition of Polygraph as a Management Tool

The courts have generally recognized that sex offenders' acceptance of responsibility—including their willingness to fully disclose their criminal histories—is an important factor in determining their amenability to treatment outside of a prison setting.<sup>40</sup> Judges in both adult and juvenile court are increasingly recognizing that polygraph examinations can enhance the assessment, treatment, and monitoring of sex offenders by encouraging both disclosure of information relevant to risk and compliance with treatment requirements.<sup>41</sup> They have also generally recognized that polygraph monitoring may be imposed as a condition of probation or supervised release, as long as the circumstances are reasonable.<sup>42</sup> Partly as a result of this increasing judicial acceptance, the polygraph is gradually becoming a common tool in probation and

parole programs for both juvenile and adult sex offenders.<sup>43</sup>

### Immunity for Incriminating Statements Made in Treatment

Requiring defendants to participate in polygraph testing, some say, amounts to an impermissible condition of probation. Proponents of this viewpoint argue that such a condition presents a probationer with a "Hobson's choice" of 1) making statements that could potentially be used against them at a revocation hearing or in a new criminal proceeding, or 2) having their probation revoked for failing to cooperate with the directives of the probation officer.<sup>44</sup>

At its inception, the Oregon program was unique because of the cooperation of the local district attorney in granting immunity from prosecution for previously undisclosed offenses. Recently, other courts have begun to incorporate immunity provisions into their sentencing orders, immunizing offenders who disclose prior crimes during treatment.<sup>45</sup> In ruling that prisoners can be compelled to disclose past sexual offenses, one court also ruled that when incriminating testimony about prior offenses is compelled through court mandated treatment, it cannot be used against the offender in a later criminal trial.<sup>46</sup> Courts in Indiana have ratified similar immunity provisions.<sup>47</sup> Courts in Virginia and Nevada recently resolved the issue by finding that requiring probationers to submit to polygraph

testing does not unduly burden the privilege against self-incrimination, but neither revocation of probation nor any other substantial penalty can be imposed because of a legitimate invocation of the privilege.<sup>48</sup>

That approach is not universal, however, so without an express immunity agreement, an offender may be in jeopardy if he admits to new crimes in treatment. An Idaho state case addressed the implications of requiring sex offenders to be truthful about their sexual histories as part of court-ordered treatment.<sup>49</sup> A man named Crowe pled guilty to sexual abuse of a minor and was placed on probation. The terms of his sentence required his completing a community-based sex offender therapy program, reporting any contact with minor children, and submitting to polygraph examinations. Crowe signed a standard treatment contract that allowed his counselors to share information with his probation officer. During a treatment session, Crowe failed a polygraph examination and admitted that he had inappropriately touched his ten-year-old niece. At the counselor's request, Crowe made verbal and written admissions to his probation officer about the incident, and as a result his probation was revoked and he was sent to prison. Crowe appealed, arguing that the statements should not have been used against him because he had been threatened with sanctions if he refused to answer questions. The Idaho court held that when the state compels an individual to forego the privilege against self-incrimination by a threat to impose a penalty, the Fifth Amendment applies, even if it is not invoked. The ruling, however, was limited to situations in which the statement obtained was to be used in a new criminal proceeding. Since the statements were used against Crowe in a probation revocation hearing, the court found them admissible.<sup>50</sup>

The Washington State Court of Appeals addressed the issue differently, in a case turning on whether statements made by a probationer during and after a required polygraph exam were admissible in a separate criminal proceeding.<sup>51</sup> In that case, a sex offender named Dods admitted a new offense against a child to a polygraph examiner. After the test, the examiner sent Dods to see his probation officer. The officer advised Dods of his Miranda rights and he repeated his admissions. Later, Dods was convicted of the new offense and challenged the admissibility of both statements, claiming that the first should have been suppressed because he was not given a Miranda warning, and the second because it was the re-

sult of the first. Upholding Dods' conviction, the court decided that unless deliberately coercive or improper tactics were used, the mere fact that Dods made an unwarned admission does not presume compulsion. The court noted that Dods' probation could have been revoked if he had refused the examination, but didn't address the issue of self-incrimination raised in Crowe. Instead, it found that even if the trial judge was wrong to admit the first statement, the error was harmless because the second statement was admissible anyway. Since the first statement had been voluntary, the court reasoned, and since the probation officer had obtained a knowing and intelligent waiver of the defendant's Miranda rights before the second interview, the second statement did not have to be suppressed.

Two lessons can be gleaned from these cases. From the perspective of encouraging sex offenders to be honest and forthcoming in treatment, they underscore the need to have a clear immunity agreement. From the perspective of aggressive and successful prosecution, they point to the importance of training polygraphers to give Miranda warnings before they begin court-mandated polygraph testing.

### Implications of Polygraph Testing in Negotiated Pleas and at Sentencing

As the studies reported in this article amply demonstrate, it is common for sex offenders to lie about the numbers of their victims, falsely claim a history of being sexually abused themselves, and minimize or deny their juvenile sex offenses. We therefore strongly recommend that all sex offenders be evaluated and treated by mental health professionals who have developed a specialty in sexual deviancy, who include polygraph testing in their programs,<sup>52</sup> and who adhere to Code of Ethics and ATSA Practice Standards and Guidelines.<sup>53</sup> A paragraph such as the following, inserted in a plea agreement or conditions of supervision, would accomplish that goal.

The defendant agrees that he will submit to an assessment for sexual deviancy conducted by a mental health professional experienced in treating sexual offenders, such as a member of the Association for the Treatment of Sexual Abusers (ATSA).<sup>54</sup> If treatment is indicated, the defendant, once released from any term of incarceration, will enter and successfully complete a program of treatment for

sexual deviancy. The defendant further agrees to submit to polygraph testing to verify his/her sexual history, and to periodic polygraph monitoring during treatment to help ensure compliance with probation/treatment rules. The defendant further agrees to waive confidentiality and allow the treatment provider to make written reports regarding his/her treatment to the probation department, and to contribute to the cost of such treatment as directed by the probation department.<sup>55</sup>

### Conditional Immunity for Previously Undisclosed Crimes

We also strongly recommend using conditional immunity agreements, covering statements made by offenders in treatment, about previously undisclosed sexual crimes that occurred before the conviction and were not known to the government. Without such agreements, offenders will either run the risk of negative consequences as a result of their honesty or, more likely, become further entrenched in denial and dishonesty just at the point where the justice system is attempting to impress on them the importance of acknowledging guilt. The following paragraph, or one similar, can be inserted into plea agreements to accomplish the goal of conditional use immunity:

As a condition of court-mandated evaluation and treatment, the defendant will be required to truthfully reveal his entire sexual history. In recognition of the fact that full disclosure of that history is a necessary component of effective treatment, the government agrees that the defendant's admissions to sexual crimes that occurred prior to conviction for the instant offense, *excluding homicide*, and previously unknown to the government, during court-ordered psycho-sexual evaluation and sex offender treatment, will not be used against the defendant in a new criminal prosecution. See 18 U.S.C. 6002 and *Kastigar v. United States*, 406 U.S. 441 (1972). However, this use immunity is expressly conditioned upon: 1) the defendant successfully completing sexual deviancy treatment, and 2) the defendant not materially violating the rules of probation/supervised release. If the defendant fails to complete all aspects of treatment or fails to comply with all probation requirements, then the use immunity agreement is rescinded.<sup>56</sup>

## Summary

This article has reviewed the results of two decades of research comparing the self-reports of hundreds of juvenile and adult sex offenders with reports made after several months of treatment, with the benefit of conditional immunity for undisclosed sexual crimes, and subject to polygraph verification. Among the material findings are:

1. Adults will lie and understate by a factor of five to six the number of sexual crimes they have committed.
2. Adults will lie and under report their history as a juvenile sex offender.
3. Adults will lie and over report their history of childhood sexual victimization.
4. With polygraphs, they disclose six times as many victims and most confess that they were sexually offending as juveniles.

## Conclusion

The acceptance of the polygraph as an important tool in the management of adult and juvenile sex offenders has changed the climate dramatically since the first of these studies was published thirteen years ago. Today, the Oregon treatment program that compiled the data is just one of many cognitive/behavioral programs that routinely use polygraph testing, both to validate self-reported histories of juvenile and adult offenders, and to help manage offenders during their terms of probation. Polygraph's importance as a tool for both assessment and management is underscored by the consistency of the data over the 21 years covered by the studies. Today, just as in 1978, adult offenders not polygraphed are very likely to minimize the history of their abusive behavior and to overstate their own histories of victimization, rendering their treatment less effective and their supervision precarious. While juveniles in outpatient programs don't change their reports in the face of polygraphs nearly as much as adults do, there is evidence that higher-risk juvenile offenders may be almost as inclined to dissemble in their self-reports as adult offenders are, and just as inclined to revise their histories under scrutiny. It may be, then, that the polygraph will ultimately prove as valuable a tool with juvenile offenders as it has already become in assessing and managing adult offenders.

Because polygraph examinations introduce some complex legal questions, their use should be approached with care. In most instances, both a grant of conditional immunity from the

prosecutor and a waiver of confidentiality by the defendant will be necessary if polygraph monitoring is to be successful.<sup>57</sup>

## Endnotes

<sup>1</sup>Box 87, Baker City, OR 97814. Phone: 541-523-4574. FAX: 541-523-4578. Email [alex@eoni.com](mailto:alex@eoni.com).

<sup>2</sup>Box 32, Boise, ID 83707. Phone 208-334-1211. FAX: 208-334-1413. Email [jim.peters@usdoj.gov](mailto:jim.peters@usdoj.gov).

The opinions expressed in this article are those of the authors, and do not necessarily represent the position of the United States Department of Justice.

<sup>3</sup>David R. Walters, *Physical and Sexual Abuse of Children, Causes and Treatment*, 139-141 (Indiana University Press) (1975).

<sup>4</sup>Anna Salter, *Transforming Trauma: A Guide to Understanding and Treating Adult Survivors of Child Sexual Abuse*, 6-10 (Sage) (1995).

<sup>5</sup>See e.g., *Commonwealth v. Hill*, 2001 WL 557579, \*1 (Va. Cir. Ct. 2001); *State v. Reed*, 48 S.W.3d 856,

\*859 (Tex. App. 2001); *State v. Riles*, 957 P.2d 655 (Wa. 1998); *United States v. Wilson*, 172 F. 3d 50 (6th Cir. 1998) (unpublished - text in Westlaw).

The requirement that participants in treatment admit to their crimes is widely believed to be a necessary prerequisite to successful treatment. See Brendan J. Shevlin, "[B]etween the Devil and the Deep Blue Sea." *A Look at the Fifth Amendment Implications of Probation Programs for Sex Offenders Requiring Mandatory Admissions of Guilt*, 88 KY. L.J. 485, 485 (2000); Jonathan Kaden, *Therapy for Convicted Sex Offenders: Pursuing Rehabilitation Without Incrimination*, 89 J.CRIM. L. & CRIMINOLOGY 347, 365 n. 103(1998); Scott Michael Solkoff, *Judicial Use Immunity and the Privilege Against Self-Incrimination in Court Mandated Therapy Programs*, 17 NOVA L.REV. 1441, 1450 (1993).

<sup>6</sup>The data discussed in this article was collected through the Malheur County Court approved local treatment program, sanctioned and supported by the Malheur County Interagency Multi-disciplinary Child Abuse Team in Oregon, and by Jan Hindman at several other sources mentioned in the text.

<sup>7</sup>David R. Walters, *Physical and Sexual Abuse of Children: Causes and Treatment*, 111 (Indiana University Press) (1975).

<sup>8</sup>Louise Armstrong, *Kiss Daddy Goodnight: A Speak-Out on Incest* (Simon & Schuster) (1976).

<sup>9</sup>L. Smith, *Private Possession of Child Pornography: Narrowing At-Home Privacy Rights*, 1991 Ann. Surv. Am. L. 1011, 1013, n.19 (1992).

<sup>10</sup>Robin Lloyd, *For Love or Money: Boy Prostitution in America* (Beacon Hill) (1976).

<sup>11</sup>Judith Herman, *Father-Daughter Incest* (Harvard University Press) (1981).

<sup>12</sup>A. Nicholas Groth, *Men Who Rape: The Psychology of the Offender* (Plenum Press) (1979).

<sup>13</sup>*Child Pornography and Pedophilia*, Report of U.S. Senate Permanent Subcommittee on Investigations 99-537 (1986).

<sup>14</sup>For an online listing of every state's laws regarding child pornography, visit the Internet Law Library at: <http://law.house.gov/17.htm>.

<sup>15</sup>Barbara J. Nelson, *Making an Issue of Child Abuse: Political Agenda Setting for Social Problems*, 76 (University of Chicago Press) (1984).

<sup>16</sup>See, for example, Title 42 U.S.C. §13031; Title 18 U.S.C. § 2258. See also the National Clearinghouse on Child Abuse & Neglect Information <http://www.calib.com/nccanch/>.

<sup>17</sup>However, the number of cases of child sexual abuse coming to the attention of child welfare authorities in the United States has declined 31 percent since 1992. See Lisa Jones & David Finkelhor, *The Decline in Child Sexual Abuse Cases*, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, January 2001, <http://www.ncjrs.org/pdffiles1/ojdp/184741.pdf>.

<sup>18</sup>See, e.g., James M. Peters, Patricia Toth & Janet Dinsmore, "Why Prosecute Child Abuse?" 34 S.D. L. REV. 649-659 (1989).

<sup>19</sup>*1994 National Study of Treatment Programs & Models, Serving Abuse-Reactive Children and Adolescent & Adult Sex Offenders* (Safer Society Press) (1995).

<sup>20</sup>David Finkelhor, "Current Information on the Scope and Nature of Child Sexual Abuse," p. 31 in *The Future of Children*, Vol. 4 No. 2, The David and Lucille Packard Foundation (1994). For more, see <http://www.futureofchildren.org/> and <http://www.jimhopper.com/abstats/>.

<sup>21</sup>Jan Hindman, *Just Before Dawn: From the Shadows of Tradition to New Reflections in Trauma Assessment and Treatment of Sexual Victimization* (AlexAndria Associates) (1989).

<sup>22</sup>Jon Conte and J. Schuermer, *The Effects of Sexual Abuse on Children, A Multidimensional View*, 2 J. Interp. Vio., 380 (Dec. 1987).

<sup>23</sup>Debra Whitcomb, "Child Victimization," Ch. 10, 1999 National Victim Assistance Academy, G. Coleman, M. Gaboury, M. Murray, and A. Seymour (Eds.), <http://www.ojp.usdoj.gov/ovc/assist/nvaa99/chap10.htm>.

<sup>24</sup>David Finkelhor. *Child Sexual Abuse: New Theory & Research*, 33 (The Free Press) (1984).

<sup>25</sup>A. Nicholas Groth, *Men Who Rape: The Psychology of the Offender*, 98-101 (Plenum Press) (1979).

<sup>26</sup>Theoharis Seghorn & R. Boucher, *Sexual abuse in childhood as a factor in adult sexually dangerous criminal offenses*, in J. SAMSON (ED.), CHILDHOOD AND SEXUALITY (Editions Vivantes) (1980).

<sup>27</sup>Marie Fortune, *Sexual Violence, The Unmentionable Sin*, 184 (The Pilgrim Press) (1983).

<sup>28</sup>C. Widom, "The Cycle of Violence," *Research in Brief*. Washington, DC: U.S. Department of Justice, National Institute of Justice, September 1992.

<sup>29</sup>C. Widom, "Victims of Childhood Sexual Abuse—Later Criminal Consequences." Washington, DC: U.S. Department of Justice, National Institute of Justice, 1995.

<sup>30</sup>Compare Elizabeth Loftus & Katherine Ketcham, *The Myth of Repressed Memory*, (St. Martin's Press) (1994), with Ross E. Cheit's Recovered Memory Project at Brown University, which claims to have documented 80 corroborated cases of recovered memory. See <[http://www.brown.edu/Departments/Taubman\\_Center/Recovmem/Archive.html](http://www.brown.edu/Departments/Taubman_Center/Recovmem/Archive.html)>.

<sup>31</sup>Sharon Begley, "What Is a Pedophile?" *Newsweek*, Mar. 19, 2001, at 48.

<sup>32</sup>See James M. Peters, "Assessment and Management of Sex Offenders: What Prosecutors Need to Know," in *Prosecuting Online Child Prostitution Cases* (J. PETERS ED.) (United States Department of Justice, USABook) (in press), explaining that sex offenders tend to have distorted thinking (cognitive distortions) that helps them deny, minimize, justify, and rationalize their aberrant behavior, and also reduce guilt and responsibility for that behavior. Cognitive distortions are what allow the abuser to overcome inhibitions and ultimately progress from fantasy to behavior. See e.g., *Father Says He Raped Girl To Teach Her About Sex*, Associated Press, April 9, 2001, describing the sentencing of a Charleston, West Virginia man who "says he repeatedly raped his 13-year-old daughter to teach her about sex and birth control insists he acted 'from a parent's point of view and not a pervert's.'"

<sup>33</sup>R. Karl Hanson & M.T. Bussiere, *Predicting Relapse, A Meta-Analysis of Sexual Offender Recidivism Studies*, 66 J. CONSULTING & CLINICAL PSYCHOL., No. 2, 348-62 (1998), also available at <<http://www.sgc.gc.ca/>>, and cited in *State v. Sedgmer*, 2000 WL 863184, 7 (Ohio Com. Pl., June 8, 2000 (No. 99-219CR)).

<sup>34</sup>Jacques DeKalb was the District Attorney in Malheur County who originally granted conditional immunity for previously undisclosed sexual offenses. Pat Sullivan and Dan Norris, who succeeded him in that office, continued the practice.

<sup>35</sup>Other programs ask more pointed questions, such as "besides the seven victims you have told me about, have you ever forced anyone else to have sexual contact with you." Peggy Heil, Colorado Department of Corrections, email communication, January 29, 2001.

<sup>36</sup>Jan Hindman & James M. Peters, *Research Disputes Assumptions About Child Molesters*, 7 Nat'l. Dist. Attorneys Ass'n Bulletin 1, 3 (July/August 1988). These results were also published in James M. Peters, Patricia Toth, & Janet Dinsmore, *Why Prosecute Child Abuse?*, 34 S.D. L. REV. 649 (1989), and under the same title in *THE PROSECUTOR*, vol. 23, no. 2, p. 30, 33 (1990).

<sup>37</sup>See *supra*, endnote 19.

<sup>38</sup>The offenders had all pled guilty, usually to intra-familial sex crimes. The therapists were the same, the program requirements were the same and all had use immunity agreements from the District Attorney.

<sup>39</sup>See: Sean Ahlmeyer, Peggy Heil, Bonita McKee & Kim English, *The Impact of Polygraphy on Ad-*

*missions of Victims and Offenses in Adult Sexual Offenders*, 12 SEXUAL ABUSE: J. RES. & TREATMENT, 123, 129 (April 2000) (also citing previous published research findings achieving similar results. See the Colorado Department of Corrections web site, <<http://www.doc.state.co.us/Sex%20Offenders/Research.htm#Research>>.

<sup>40</sup>Brian Holmgren, *Forging New Alliances - Proposals for Change in Managing Sex Offenders Within the Criminal Justice System*, in *THE SEX OFFENDER: THEORETICAL ADVANCES, TREATING SPECIAL POPULATIONS AND LEGAL DEVELOPMENTS*, VOL. III, (B.SCHWARTZ, ED.) (1999).

<sup>41</sup>See *State v. Jacobson*, 977 P.2d 1250 (Wa. App.1999) *rev. den.* 11 P. 3d 825 (2000) (the Court of Appeals declared that a trial judge did not err in ordering a juvenile sex offender to undergo polygraph testing as part of a court-ordered evaluation, and in admitting evidence about the test results at a disposition hearing); *Ex Parte Charles Anthony Renfro*, 999 S.W.2d 557 (Tx. App.1999) *pet. for disc'y rev. ref'd* (Jan 19, 2000) (a polygraph requirement was a reasonably related probation condition that did not violate convicted child molesters' right against self-incrimination); *United States v. Wilson*, 172 F.3d 50, \*\*3 (6th Cir. 1998) (unpublished) (decision allows the United States Probation Office to use both polygraphy and penile plethysmograph polygraphy during an offender's term of supervised release); *Searcy v. Simmons*, 97 F. Supp. 2d 1055 (D. Kan. 2000) (reviewing the case law and holding that requiring inmates in a sex offender treatment program to participate in penile plethysmograph examinations did not violate their substantive due process rights); *Lile v. McKune*, 224 F.3d 1175 (10th Cir. 2000) (treatment program's requirement that inmate disclose his sexual history in a way that could subject him to criminal prosecution intrudes upon inmates Fifth Amendment rights); See also, Joel E. Smith, *Annotation*, "Admissibility in Evidence of Confession Made by Accused in Anticipation of, During, or Following Polygraph Examination," 89 ALR3d 230 (1979 (June 2000 Supplement)).

<sup>42</sup>See *Annotation*, *Propriety of Conditioning Probation on Defendant's Submission to Polygraph or Other Lie Detector Testing*, 86 A.L.R.4th 709, S 9(a) at 726-27 (1991). See also *State v. Naone*, 990 P.2d 1171, 1182-87 (Hawaii App.1999); *People v. Miller*, 208 Cal.App.3d 1311, 256 Cal.Rptr. 587 (1989); *Mann v. State*, 269 S.E.2d 863 (Ga.1980) (a condition requiring a probationer to submit to polygraph tests every two months did not violate probationers' right against self-incrimination, and such condition could be imposed, in the discretion of a trial judge, with no more than a general finding of the court that it was reasonably necessary to accomplish purpose of probation).

<sup>43</sup>Risdon N. Slate & Patrick R. Anderson, *Lying Pro-*

*bationers and Parolees: The Issue of Polygraph Surveillance*, 60 FED. PROBATION 54-58 (1996). See also *Washington v. Jacobsen*, 977 P.2d 1250 (Wash. Ct. App. 1999) (mere fact that juvenile was ordered to attend pre-sentence evaluation and undergo polygraph testing did not render it "custodial" or "compelled" so as to make Fifth Amendment privilege self-executing and it was not error to admit evidence about the test results at a disposition hearing).

<sup>44</sup>*Commonwealth v. Hill*, 2001 WL 557579, \*2 (Va. Cir. Ct. 2001).

<sup>45</sup>*State v. Reyes*, 2 P.3d 725, 727 (Hawaii App., 2000).

<sup>46</sup>*Bankes v. Simmons*, 265 Kan. 341, 963 P.2d 412, *cert. denied*, *Hannigan v. Stansbury*, 119 S.Ct. 629 (1998).

<sup>47</sup>*Carswell v. State*, 721 N.E.2d 1255, 1265 (Ind. App. 1999) (noting that "[t]he purpose behind this condition is to help ensure that offenders fully reveal their sexual histories, information that is essential to the development of effective treatment programs. The goal of polygraph examination is to obtain information necessary for risk management and treatment, and to reduce the sex offender's denial mechanisms." *Id.* at 1266, fn. 9.

<sup>48</sup>*Commonwealth v. Hill*, 2001 WL 557579 (Va. Cir. Ct. 2001); *Mangarella v. State*, 17 P.3d 989 (NV 2001).

<sup>49</sup>*State v. Crowe*, 952 P.2d 1245 (Idaho 1998).

<sup>50</sup>*Ibid. Accord United States v. Phelps*, 955 F.2d 1258, 1263 (9th Cir.1992); and *United States v. Gonzalez-Mares*, 752 F.2d 1485, 1489 (9th Cir.1985).

<sup>51</sup>*State v. Dods*, 941 P.2d 1116 (Wash. Ct. App. 1997).

<sup>52</sup>James M. Peters, *Assessment and Treatment of Sex Offenders: What Attorneys Need to Know*, 42 ADVOCATE (IDAHO BAR ASS'N.) 21, 22 (Dec. 1999).

<sup>53</sup>See *Polygraphy* at 44-48 in *Practice Standards and Guidelines for Members of the Association for the Treatment of Sexual Abusers* (2001). See <<http://www.atsa.com>>.

<sup>54</sup>The Association for the Treatment of Sexual Abusers (ATSA) is a nonprofit organization with a membership of approximately 2,000 professionals worldwide. ATSA publishes an ethical code and practice standards and guidelines to which all members agree to adhere. To identify ATSA members in your area and to obtain a copy of the *ATSA Code of Ethics* or the *ATSA Standards and Guidelines*, contact ATSA at: 4900 S.W. Griffith Drive, Suite 274, Beaverton, OR 97005. Phone 503.643.1023; <<http://www.atsa.com>>.

<sup>55</sup>This condition is used in certain sex offender plea agreements prosecuted by the United States Attorney's Office in the District of Idaho.

<sup>56</sup>*Ibid.*

<sup>57</sup>The authors gratefully acknowledge Susan Sachsenmaier, Ph.D., Ruth H. Williamson-Kirkland, R.N., M.S.N. Sean Ahlmeyer, Peggy Heil, and Jean McNeil for their helpful substantive comments and editorial suggestions.