

POLYGRAPHS AND 175 WRONGFUL CONVICTION EXONERATIONS

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Since the 1989 exoneration of [Gary Dotson](#) of his rape conviction in Illinois through DNA testing, over a thousand people have been exonerated from their wrongful convictions. The best source for information about those cases is the newly created [National Registry of Exonerations](#), a joint project of the University of Michigan and Northwestern University Law Schools. These exonerations have correctly shaken our faith in the ability of the criminal justice system to determine truth. In every one of those cases, the truth, as determined "beyond a reasonable doubt" by a judge or jury, was false.

Since the invention of the polygraph in the early 20th century, its reliability as a detector of truth or lies has been vigorously debated and studied. Given the lack of consensus that polygraph results are reliable, they are not permitted, with some exceptions, to be introduced as evidence in criminal trials in U.S. courts.

Nonetheless, polygraphs are used extensively by police, lawyers and others in their efforts to determine the truth of people's statements. Faith in the reliability of polygraphs has been enhanced by favorable studies and upon anecdotal evidence where other means have been available to ensure the accuracy of the tested truth. Also, many crimes have been solved by police who announce plans to use polygraphs on witnesses, and the prospect of such a test then sometimes produced a desired confession or changed testimony.

This paper addresses the reliability of polygraphs in predicting the truth which exonerations from wrongful convictions have exposed, before and since the advent of DNA testing. One hundred seventy five (175) exonerations were found on the Internet where polygraphs were used with defendants, suspects or witnesses. Not all of these cases are listed on the National Registry of Exonerations, but for those not listed, there is sufficient information for classifying them here as exonerations. The 175 cases have been divided into the following six categories where polygraphs of

1. Exonerees supported innocence.	74	42%	
Before trial	42	24%	
After trial	32	18%	
2. <i>Others supported exoneree innocence.</i>	37	21%	63%
3. Exonerees had an uncertain result and use.	27	15%	
4. <i>Others had an uncertain result and use.</i>	14	8%	24%
5. Exonerees did not support innocence.	18	10%	
6. <i>Others did not support exoneree innocence.</i>	5	3%	13%

Of the 74 cases where polygraph examinations of exonerees supported innocence, 42 examinations were conducted before trial. In those cases, the prosecutors did not believe the validity of the results and obtained convictions from juries which did not know of the polygraph tests, because of the rules of evidence. For 27 other exonerees, the polygraph results, almost always taken before trial, were uncertain. It could be argued that even these

results should have been considered by prosecutors as pointing away from the exoneree, given the presumption of innocence, and should have given prosecutors pause before proceeding to trial or attempts to obtain guilty pleas. Thus, in 69 (42+27) instances, out of 175, the prosecutors should have paid more attention to polygraph results before trial. Such additional attention could have meant additional investigation or a request for a second polygraph exam.

For 32 exonerees, the polygraph tests affirming their innocence were administered after their wrongful convictions, almost always in prison.

In 56 (37+14+5) instances, polygraphs were given to others involved in the wrongful conviction cases, such as witnesses or informants, and 37 results supported innocence, but they were ignored. In 14 cases, the results were mixed or uncertain, and five did not support the exonerees' innocence.

Thus, in 111 (74 + 34) or 63% of the 175 cases, polygraph results of exonerees and others supported the exonerees' innocence. In another 41 (27+14) cases, or 23%, the results were mixed or uncertain. Therefore, in 151 (111+41) cases (86%) the polygraphs reached a result inconsistent with certainty, or, to use the legal terminology, inconsistent with guilt beyond a reasonable doubt.

For the 119 (74 + 27 + 18) polygraphs of only exonerees, 74 passed and 18 failed. If the inconclusive results are not considered, that gives the odds of 4.1:1 or 76% of getting a clear correct result for an innocent defendant claiming innocence. If the 27 inconclusives are also included, and if the concept is accepted that the only polygraph failure is a clear "deception indicated" failure, the odds of obtaining an acceptable result are 5.6:1 or 82%. This rate of accuracy is reasonably close to the accuracy rate found of 86% on single issue testing, found by the 2003 National Research Council report, [The Polygraph and Lie Detection](#).

As is described below, there is substantial reason to believe that many, if not most, of the 18 failed exoneree polygraphs were defective examinations. To the extent that is true, the odds and percentage probabilities of obtaining a favorable result will improve when each such defective examination is identified as a result of future research.

A significant difficulty in the researching for this article was the quality of the information about the use of polygraphs, when such use was mentioned at all. Without the full records of polygraph examinations, it is very difficult to determine the quality of the actual exams themselves. Were the examiners properly trained? Were the pre-interviews fairly conducted and were the questions objectively prepared? Even when polygraph examinations were properly conducted, it was never clear that the reporting of the results was accurate. Sometimes, the police would tell a suspect that s/he failed the polygraph in the hope of generating a confession, even when the examination was passed. This is what happened in the [Peter Reilly](#) case, described below.

During the research for this article, the actual report for a polygraph exam was obtained for only three cases involving exonerees. The first was the one page report of the 1966 examination for [Rubin "Hurricane" Carter](#), and that record is included in the linked files for him and all of the 175 cases at <http://www.bonpasseexonerationservices.com/about.html>. The second was for [Byron Halsey](#), noted below, who also was said to have failed his exam. The third was a two page report for [Erick Daniels](#), who passed his polygraph in prison in 2003 at the age of 17 after his 2001 conviction for robbery at the age of 14. Each case is linked separately by name on the [linked spreadsheet](#) and sorted by the role of the polygraph. Another [linked spreadsheet](#) sorts the 175 cases by state. As more cases and more information about each case become known to the author, that information will also be updated and linked. Also,

it is hoped that some readers of this article will have direct knowledge of one or more of these cases and that they will forward to the author any documents which contribute to the accuracy of this article.

As there were multiple polygraph examinations used in some of the 175 cases, the actual number of polygraph was approximately 200. These 175 cases came from 26 states with the four largest numbers coming from Texas (23), New York (19), Illinois (17) and California (16).

Not included in this article were cases where a polygraph exam played a role, but was not completed. For example, in Illinois, an alternate suspect in the murder case where [Alan Beaman](#) was wrongly convicted in 1995 began to take a polygraph exam. However, the exam was stopped and cancelled due to the suspect's failure to comply with the polygraph examiner's procedural instructions. That non-completion of the polygraph session actually contributed to Beaman's eventual exoneration, but it was a long journey.

The first use of a polygraph in a wrongful conviction case was in Colorado where [Loren Hamby](#) was convicted in 1939 of murdering a gas station attendant during a 1937 robbery. He was sentenced to life in prison, but he insisted that he was innocent. His mother had learned of the newly invented polygraph, and asked one of its co-inventors and prominent proponents, Leonard Keeler, to give Loren a polygraph examination in prison. Keeler traveled from Chicago, so the undertaking was a large commitment. Hamby passed the polygraph exam. As often happens with such results, it wasn't the polygraph by itself, which persuaded the prosecutors and the courts of their mistake. Instead, after a period of time, the results helped persuade the chief prosecution witness to repudiate his testimony, and the repudiation was sufficiently credible to persuade the prosecutors. Hamby was released in 1946 and the Colorado legislature awarded him \$10,000 compensation in 1947.

Examples of each of the categories of the 175 cases are presented below.

Category: Polygraph of exoneree supports exoneree – before conviction

The [Peter Reilly](#) case in Connecticut illustrated several uses of polygraphs in police investigations. When his mother was murdered in September, 1973, Reilly was given a polygraph and he passed it. However, the police told him that he failed and used that alleged failure in their successful effort to obtain Reilly's false confession. The 17-year old Reilly reasoned that if a polygraph administered by the police, whom he respected, said he murdered his mother, then he must have done it. This must have happened, even if he had no memory of it. Reilly's case fits the sub-category of exonerees passing polygraphs before they were convicted.

In the California child abuse cases involving husband and wife [Scott and Brenda Kniffen](#), they both passed polygraph tests before their trials. If the accuracy of polygraphs is assumed to be 82%, as calculated above, and the corresponding risk of incorrect result is 18%, then the likelihood of guilt of two people who both claim innocence and who pass polygraph tests is 3% (18% x 18%). A similar result applies in the Indiana murder case of [Jerry Watkins](#) where he and his wife passed polygraph tests before his trial. She was his alibi witness. A 3% likelihood of guilt does not seem close to guilt beyond a reasonable doubt, but the prosecutors sought and obtained their wrongful convictions nonetheless.

The case of [Robert Kaupp](#) was the only one of the 175 exoneree-polygraph cases to achieve an opinion in the U.S. Supreme Court. Even though Kaupp had passed a polygraph test and even though his co-defendant, Nicholas Thetford, who had implicated Kaupp, had

failed his three (3) polygraph examinations, the Texas Courts upheld Kaupp's murder conviction in 2001. In 2003 in [Kaupp v. Texas](#), the U.S. Supreme Court reversed Kaupp's conviction because his confession, at age 17, was wrongly extracted. The Court's five page unanimous opinion mentions the polygraphs in the body of the opinion, ("*Kaupp was cooperative and was permitted to leave, but the brother failed a polygraph examination (his third such failure)*") and in a footnote ("*the brother had previously failed three polygraph examinations, while, only two days earlier, Kaupp had voluntarily taken and passed one, in which he denied his involvement.*") These polygraphs must have had some effect on the justices even if they were not used as justifications for the decision.

One other Supreme Court-bound polygraph related case, was about the alleged prosecutorial misconduct in the convictions of [Terry Harrington and Curtis McGhee](#) in Iowa. However, the case of [Pottawattamie County v. McGhee](#) was settled in 2009 for \$12 million just before the Supreme Court hearing.

Category: Polygraph of exoneree supports exoneree – after conviction

The [Dotson](#) and [Hamby](#) cases, described above, both fit the category where the polygraph results of the exoneree supported innocence, and the sub-category where the polygraph exam was given after conviction.

A more recent case was that of [Marty Tankleff](#), who was convicted of murdering both of his parents in September, 1988, on the first day of his senior year in high school. His conviction was due primarily to his false confession, which was obtained under duress. After years of appeals, he sought the services of private investigator Jay Salpeter, who agreed to work on Marty's case after he passed an in-prison polygraph exam.

Centurion Ministries and the Innocence Project often ask their clients or prospective clients to take polygraphs for the same reason. [Richard Miles](#), convicted of murder in Texas, took such a polygraph for the Centurion Ministries investigators. His polygraphist was Eric Holden of Richardson, Texas who also polygraphed exoneree [Rickey Dale Thomas](#).

The [Greg Taylor](#) case in North Carolina was another where an attorney had a client polygraphed during the post-conviction appeal process, in order to ensure that the client was telling the truth. In Taylor's case, he denied any role in the murder for which he was convicted in 1993. What's not included in the tabulated results here is that Taylor volunteered DNA samples and he offered to take a polygraph immediately after he became a suspect. If a suspect volunteers for a polygraph, the police should take one or both of two actions. First, they should reconsider their suspicion of the volunteer and/or their theory about the case. Second, if they continue to suspect the volunteer then they should give him a polygraph exam or arrange to have one conducted by a third party. It's unconscionable to reject both options and continue to prosecute a suspect.

Before the 1997 murder convictions of [Christopher Scott and Claude Simmons](#) in Texas, the actual murderer, Alonzo Hardy, had admitted his role to at least one person. However, Hardy's admissions were not allowed into evidence at the trial. Students at the University of Texas at Arlington Innocence Project took on the case and obtained positive polygraph results from Scott and Simmons. Then, they interviewed Hardy and persuaded him to renew his earlier admission of guilt in the case and then take a polygraph test to validate that admission. He also passed his test. This was the only one of the 175 cases where the actual perpetrator took a polygraph to verify an admission of guilt.

Category: Polygraph of other person supports exoneree

This category includes two types of results. The first is where another person, often a witness, speaks in support of the exoneree's innocence and passes a polygraph. The second type is where a witness, who is sometimes an inmate informant, provides incriminating information and fails a polygraph.

[Ellen Reasonover's](#) exoneration in 1999 from her 1983 murder conviction is an example of the first sub-category. A prison inmate named Eddie McClenton, came forward to stated that the real murderer had confessed to him. Centurion Ministries was working on this case and obtained a polygraph confirmation of McClenton's statements.

An example of the second sub-category was in the [Sonia Jacobs](#) case, where she was sentenced to death in 1976 in Florida for the murder of a policeman. She did not pull a trigger but was with others, and one of the others did pull the trigger. The only person in the group with gunpowder residue on his clothing was Walter Rhodes, who testified against Jacobs and was the father of her daughter, Jesse Tafero. The case later unraveled when it was discovered that Rhodes had failed a polygraph exam, but that failure had not been disclosed to Jacobs' and Tafero's attorneys. The prosecutor had justified the plea bargain for Rhodes by falsely affirming that he had passed the polygraph. By the time Jacobs was finally released, Tafero had been executed. If the police had followed the guidance of their own polygraph exam, the wrongful convictions, and the execution of Tafero, would not likely have occurred. Thus, the Jacobs case is in the category where the polygraph examinations of others, i.e. not the exoneree, accurately assessed at least one part of the case, i.e. that the witness pointing to Jacobs, failed the polygraph exam. The case of Sonia Jacobs was one of seven featured in the play, [The Exonerated](#).

The 1975 cases of [Clarence Chance](#) and [Benny Powell](#) are also examples of where the polygraph correctly challenged the incriminating witness. Here, the allegations of an incriminating informant were apparently doubted after he failed a polygraph exam. He was therefore given a second exam and he failed that, too. The prosecution withheld from the defense the results of the informant's polygraph failures and Chance and Powell remained in prison until 1992.

Category: Polygraph of exoneree with uncertain result

In New York, [Jeff Deskovic](#) was polygraphed during his interrogation for murdering in 1989 a schoolmate girl. In 1990, Deskovic requested a polygraph to alleviate suspicion, and the police used the occasion to obtain a false confession by telling Deskovic that he failed the polygraph. The actual results are unknown to the writer of this article. Thus, the Deskovic case is classified in the category for exonerees where the results of polygraphs were unclear. As more is learned about this case, the category may be changed.

In 2011, polygraph expert Charles Honts evaluated the quality of the Deskovic polygraph in an [opinion](#) given in support of Deskovic's civil lawsuit against the polygraph examiner and other defendants for his wrongful conviction. Honts criticized polygraph examiner Daniel Stephens for using the discredited AEP (Arther's Examination Procedure). This procedure was discredited even in 1990. Honts found the use of this procedure odd, as Stephens was trained in the more accurate CQT (comparison question test) methods. Honts concluded,

"Issues of technique validity aside, there were serious problems with the technical aspects of the examination conducted by Mr. Stephens. In total those problems are so out of the range

of normal practice for the conduct of a valid polygraph examination as to be considered outrageous and contrary to minimally accepted practice in 1990 and before....

Based upon Stephen's polygraph training and experience by 1990 and the undisputed conditions of the polygraph: at least five hours in length, leaving at least some of the sensors on Mr. Deskovic for an extended period of time, failing to use a valid polygraph technique with numerical scoring, and providing Mr. Deskovic coffee and no food for at least six hours, are so out of the normal range for the normal procedures in conducting an actual polygraph examination as to be considered professionally and scientifically outrageous, and in my opinion, the conditions of this examination were simply abusive.

This interaction between Stephens and Deskovic is not consistent with a deception detection CQT, rather this examination is consistent with a guilt presumptive interrogation where the polygraph was used as an evidence ploy to elicit a confession. Moreover, if Mr. Deskovic's testimony concerning, for example the aggressive nature of the questioning, the false reporting of incriminating statements, and the threats and promises made by the Peekskill Police are credited (I make no assessment regarding credibility) the conduct of Stephens would be even more outrageous with regard to accepted practice in 1990."

Category: Polygraph of other person(s) with uncertain result

In 1990, [Antoine Goff](#) and [John Tennison](#) were convicted of murder in California primarily because of the testimony of two prosecution eye witnesses. During the investigation, one eye witness, Pauline Maluina, who was 14 at the time of the murder, had recanted her earlier statements and was given a polygraph examination which was said to be inconclusive. Afterwards, the witness was brought together with a cooperating witness to discuss their prospective testimony, and the witness also talked with the prosecutor. At trial, she testified with her pre-recantation version of events, and the polygraph and recantation were never brought to the attention of Goff's and Tennison's attorneys.

Category: Polygraph of exoneree with reported failure

There were 18 cases of reported polygraph failures by exonerees, and all of them were prior to conviction, and all were by police polygraph examiners. However, in at least one of the reported exoneree failures, the results have been challenged by subsequent analyses of the tests by polygraph experts.

In 1985, [Byron Halsey](#) was wrongly convicted of two murders in New Jersey and was told by polygraph examiner Peter Brannon that he failed his polygraph test. Halsey was not exonerated until 2007. Since then, he has sued his polygraph examiner and others and Charles Honts was asked by Halsey's attorneys to evaluate Brannon's polygraph. Honts found the polygraph to be substandard, and wrote in his 2012 [letter](#),

"In summary concerning the CQT portion of the examination, it is my opinion that there were serious problems with the design and implementation of the Halsey polygraph examination. One of the two comparison questions was at best weak, and was likely inappropriate. The amount of obtained data was less than that required by professional standards. The data that were obtained are inconclusive about Mr. Halsey's credibility when he answered the relevant questions in both series....

... my evaluation of the entire Halsey polygraph examination indicates that Mr. Halsey did not fail either of the comparison question test series and that the CIT [Concealed Information

Test] produced a strong truthful result. It is my opinion that rather than failing this polygraph examination Mr. Halsey actually passed the examination and produced a truthful result.”

Another questionable polygraph result was the 1966 examination by Sgt. John J. McGuire of [Rubin “Hurricane” Carter](#). The 1966 report stated that McGuire used “*standard polygraph procedure*” and then stated...

“RESULTS: Subject answered all pertinent questions.

Q. Regarding the shooting at the Lafayette Grill, do you intend to answer truthfully each question about that?

A. Yes.

Q. Did you shoot any of those people last night at the Lafayette Grill?

A. No.

Q. Were you present last night at the Lafayette Grill when those people were shot?

A. No.

Q. Was your car used in that shooting last night at the Lafayette Grill?

A. No.

Q. Are you deliberately holding back information about that shooting last night at the Lafayette Grill?

A. No.

Q. Before the shooting occurred at the Lafayette Grill did you know it was going to happen?

A. No.

CONCLUSIONS: After a careful analysis of the polygraph record of this subject it is the opinion of the examiner that this subject was attempting deception to all the pertinent questions. And was involved in this crime. After the examination and confronted with the examiner’s opinion, the Subject denied any participation in the crime.”

One of the best known cases of polygraph failures for an exoneree was the Ohio case of Floyd Fay. He was accused of murder and the prosecutor offered to dismiss the charges if Fay would pass a polygraph exam. Fay agreed to take a polygraph and failed it. According to one source, he also failed a second polygraph. By Ohio procedures, his written agreement with the prosecutor made the evidence about the first failed polygraph admissible at his trial in 1978, and he was convicted. Two years later, he was exonerated when his attorney and others uncovered evidence about the real killers, and they were prosecuted. Fay became an articulate spokesperson against the use of polygraphs in criminal trials and his case was commented upon in several journals by polygraph opponents. As his conviction was for a capital offense, Fay also publicly opposed the re-introduction of the death penalty in Ohio after *Furman v. Georgia*.

One case in this category of failed polygraphs involved the lowest level crime of the 175 cases: embezzlement of the amount of a nightly bank deposit from a hair salon. In 2005, [Lisa Hansen](#) left a deposit at a bank in Grand Rapids, Michigan, but the bank said it wasn’t received. Hansen denied stealing the money, but was fired by her employer. She took a police polygraph which determined that she was “deceptive” and was later found guilty of embezzlement. According to the National Registry of Exonerations summary of Hansen’s case, “On the advice of her attorney, she elected to plead guilty, but the judge rejected her plea, and Hansen entered a diversion program which cost her \$400 and required 40 hours of community service. She completed the program and charges were dismissed in April 2006.” In August of 2006, a bank

employee found the missing envelope whereupon the bank apologized and reached an out-of-court compensation settlement. Again, the claimed polygraph failure was obviously incorrect.

The most devastating exoneree pre-trial polygraph failure came for [James L. Dean](#) who was one of the six defendants in the case of the murder of Helen Wilson of Beatrice, Nebraska. The “Beatrice Six,” as they became known, served a total of 87 years in prison for a murder than none of them was actually involved in, whatsoever. The failed polygraph of James Dean was combined by the police with other techniques to secure his false confession and guilty pleas from him and four of the others in 1989. For this article, Dean is classified as a polygraph failure. [Kathleen Gonzalez’s](#) polygraph seems to have had an uncertain result and [Debra Shelden](#) passed her polygraph. The other three, [Joseph White](#), [Ada JoAnn Taylor](#) and [Joseph Winslow](#) are classified with “uncertain polygraphs of others” because of the mixed results. Two of the six, Ada JoAnn Taylor and James L. Dean passed polygraphs during the post-conviction re-investigation in 2008 or 2009. However, the pre-trial polygraph results trump the post-conviction results for the purposes of this article. Only one of the Beatrice Six, Joseph White, went to trial and he was convicted in 1989 on the testimony of two of the Six, who, by that time likely believed their own lies. He was still in prison by the time of his DNA-related release in 2008. The others were released earlier, by virtue of the reduced sentences from their guilty pleas.

It is likely that several, if not most, of the unevaluated 17 (18 minus Halsey) “exoneree failure” polygraphs will not withstand careful scrutiny by qualified polygraphists. For example, it was widely reported that three of the “Ford Heights Four” failed their polygraph examinations. If the “non-confirmation of guilt or deception” rate of polygraphs is about 82%, as this article confirms, and, conversely the chance of erroneous determination of guilt is 18%, then it is highly unlikely ($6/1000$ or $.006$ or $.6\%$, calculated as $.18 \times .18 \times .18$) that three exonerees in the same case failed exams which were bona fide, properly conducted exams. Further, there was no evidence from the media accounts of the other 17 that any special effort was made to support the original polygraph conclusions. For example, there were no reported requests by prosecutors to give second polygraph examinations to them.

Another reason for the presumed weakness of the failure results for the 17 unreviewed polygraphs is that several of the exonerees were likely ill-prepared for their exams and tired. Some may have been impaired on the day of the crime for which they were convicted.

This discussion of polygraph failures by exonerees did not clearly find that police intentionally distorted any of the 18 polygraph results to produce the failures. The Jeff Deskovic case probably comes closest to that level of distortion. That such a distortion is possible was documented in the case of [Timothy Brown](#), who was convicted in Florida in 1993 of murdering a policeman which occurred when he was 14, and to which he falsely confessed. In a 2002 hearing on a Motion for retrial for Timothy Brown, Broward County polygraph examiner Richard Hoffman admitted that his polygraph of an alternate suspect was faked. According to an Associated Press story, he “testified he was ordered to perform the lie detector test as a ruse, didn’t ask required control questions and wrote a misleading report on test subject Andrew Johnson.” The Timothy Brown case is not included in the totals for this article because the test was not a real test and therefore not a valid measurement of the accuracy of polygraphs.

As sometimes happened in the analysis of these exoneree polygraph cases, there was more than one polygraph and therefore the case could have involved more than one classification, but the research design allowed for only one category for each case. When that happened, the

classification closest to the exoneree was primary. In “Hurricane” Carter’s case, there were two other polygraphs. One was of Carter’s co-defendant, John Artis who also was reported to have failed his polygraph. The third polygraph was a given to a witness named Arthur Bello who was in the Lafayette Grill on the night of the murders and who said that Carter was not inside at the time. Before the second trial of Rubin Carter and John Artis in 1976, Bello was given a polygraph examination by Professor Leonard Harrelson and Bello passed. According to the 1987 Third Circuit U.S. Court of Appeals opinion, the chief detective on the case said that Professor Harrelson’s conclusion was “impossible” and then simply ignored the exculpatory result.

The [Anthony Graves](#) case in Texas is another case with multiple polygraphs where the polygraph of the exoneree dominated the category classification. Graves failed his polygraph, and that’s how the case is classified for this article. However, the actual murderer, Robert Carter, also failed his polygraph. Without the exoneree polygraph, the case would have been classified as one where a polygraph of another person supported the exoneree’s claim of innocence. As noted above, the quality of Graves’ polygraph remains to be examined.

Category: Polygraph of other person with result not supporting exoneree

In 1994, [Tiffany Pritchett](#) was charged in Pennsylvania with murder when her co-defendant, Dameon Isbell, claimed that she, and not he, shot a store attendant during a robbery. Isbell passed a polygraph test which prompted the police to offer to polygraph Pritchett during her trial. After a four hour interrogation session, which was not recorded and during which the police took no notes, Pritchett allegedly confessed. It was Isbell’s testimony and Pritchett’s false confession which convicted her. She was released in 2006 after pleading the equivalent of an “Alford plea” in lieu of a new trial. Isbell was never charged with the murder.

In New York, [Lynn DeJac](#) had been convicted in 1994 of strangling her 13-year old daughter and was sentenced to 25 years in prison. Her boyfriend, Dennis Donohue, was initially a suspect in the crime, but he passed a polygraph test and became the primary prosecution witness against DeJac. After DNA testing of the daughter’s rape kit pointed toward Donohue, and after a determination that she died of cocaine poisoning, DeJac was released in 2008. That same year, Donohue was convicted of a 1993 strangulation murder in another case.

The results of the 175 cases involving exonerees and polygraphs show that polygraphs assist in the determination of the truth most of the time. The percentages depend upon how the “inconclusive” tests are used, but the percentage of 82% is used for the purpose of this discussion. Conversely, there would be an 18% chance of failure. If a person claims to be telling the truth and fails a polygraph, then such a person should be given the opportunity to take another, because the probability of an innocent person failing two tests is 3.2% (.18 x .18).

During the research for this article, only one case, but not involving a wrongful conviction, was found where a person took two polygraphs, with different results. In Arkansas, [Ed Owens](#) was accused of child sexual abuse and took a polygraph which found that he was deceptive in his denials. Then he took another polygraph which found no deception. The case was dismissed prior to trial.

The largest number of polygraphs taken by any individual in the cases researched for this article was five, by Earl Mann in the [Clarence Elkins](#) case. In 1999, Elkins was convicted in Ohio of murdering Judith Johnson, and of attempted murder and rape of her six year old

granddaughter. While wrongful convictions are among the unluckiest events one could imagine, it sometimes happens that such people get lucky. For Elkins, the luck came when the alternate suspect, Earl Mann, was sentenced to Elkins' prison for another crime and he smoked cigarettes. Elkins collected a discarded butt and sent it to his attorney and the DNA tests showed a perfect match to the crimes for which Elkins was convicted. Still the prosecutor was not sure that the Elkins conviction was wrongful, so she offered polygraph tests to both men. She was still confident that Mann would pass and Elkins would decline to take a polygraph, or that he would fail if he did. So convinced were the police that Mann was not involved in the Johnson murder that when he failed the first polygraph test, they gave him another, and then another, and another, and another for a total of five failures over 10 hours over three days. At a 18% chance of a false reading, the chance that Mann was innocent after failing five tests is .02% (.18⁵). Elkins was released shortly afterwards, in 2005, without the prosecutor even needing to have a polygraph exam for him. The extent to which the prosecutor relied upon Mann's polygraph results *vis a vis* the DNA tests is not known. The point here is that the polygraph examinations were accurate about Mann's deception.

CONCLUSION

In the cases of 175 exonerees, polygraphs examinations pointed toward the correct result more than 80% of the time. This is still not accurate enough to warrant their use in criminal trials as evidence of guilt or innocence, but this accuracy level is sufficient for investigators and lawyers to use the results of polygraph examinations to more aggressively search for and uncover the truth.

As additional information surfaces about these 175 cases, and especially the claimed 18 polygraph failures by exonerees, and 27 uncertain results, it is expected that the reliability percentage will increase. Updates of this article will be posted online.

RECOMMENDATIONS.

The positive results of this study should send a message to police and prosecutors, and to defense attorneys and also polygraph examiners that properly administered polygraphs are useful to the pursuit of truth. These results also support the following recommendations:

1. Polygraphs should be encouraged for defendants claiming innocence and for witnesses whose testimony supports that innocence as well as for witnesses whose expected testimony points toward guilt.
2. Investigative polygraphs should be administered by neutral polygraph examiners, instead of using police polygraph examiners. This recommendation is consistent with the widely considered recommendation that crime labs be set apart from police and prosecutor organizations. A backup recommendation is that if an initial polygraph is given by police to a suspect and that person is found to be deceptive, or the examination is inconclusive, AND the person insists on innocence, then the suspect should be offered the opportunity to have a second polygraph by a neutral person. A similar offer should be made for initial police polygraphs of witnesses or informants where the exam finds deception or is inconclusive.
3. Police and prosecutors and defense attorneys should pay more attention to the results of polygraphs. Every polygraph examination result which is partially or completely inconsistent

with police and prosecutors' theories of a case should give police and prosecutors pause and should prompt a request for a second polygraph test by a neutral examiner. As noted in this article, such inconsistency can work in two ways. First, such inconsistency would appear when a witness or suspect is found to be truthful when contradicting the police theory of a case, or when the polygraph results are inconclusive. Second, the inconsistency can appear when a witness who supports the police theory is found to be deceptive or the examination result is inconclusive.

The 1987 cases of [Gordon Steidl and Herbert Whitlock](#) illustrate the importance of this recommendation for re-testing. These co-defendants were convicted in substantial part upon the testimony of Derrell Herrington. During the investigation, Herrington failed a polygraph, so the cases are classified as "polygraphs supporting exonerees." The polygraph examiner recommended a second test, but the investigators ignored the examination failure and the recommendation; and proceeded to trial with Herrington's testimony.

Given the powerful odds noted above of the accuracy of results when two tests are given, it should be considered unethical and unprofessional to proceed in a case in denial of a double polygraph result without a thorough and open re-evaluation of a prosecution or defense. When prosecutors proceed to trial and a conviction in spite of a claim of innocence supported by a doubly passed polygraph, they bear a special burden to justify their actions.

4. Claims of innocence by inmates who have passed, or at least not failed, polygraph examinations should be given more careful consideration. In addition, all inmates who claim innocence (See www.registryofclaimsofinnocence.org) should be offered the opportunity to take a polygraph exam. While searching for exonerees and their cases which involved polygraphs, 40 cases were found where inmates have passed polygraphs, but their claims of innocence languish. Most of those polygraphs were conducted prior to trials, but the inmates were convicted nonetheless, just as were the 42 exonerees identified in this article. A few of the 40 have passed their polygraphs while in prison, such as [Brian Chevalier](#) in New Hampshire. If the validity of his polygraph exam is not believed, then he should be given the opportunity to take another polygraph exam. Eight more inmates were identified who have taken polygraphs while in prison which have produced inconclusive results. As argued above, such a result is contrary to the expectation that every person convicted of a crime beyond a reasonable doubt should be found by a polygraph to be deceptive when denying culpability for that crime. When a polygraph does not find clear deception, police and prosecutors should pay attention, and a second test should be offered. Also, where two people have offered different versions of the same event and one is clearly lying, the American Polygraph Assn. [Model Policy for Paired Testing](#) could be used.

In the New Hampshire State Prison, [Chad Evans](#) took a polygraph exam in April 2012 and the results were found to be inconclusive. Evans is a client of the writer of this article and he has requested a second test, to be financed by his own supporters. The prison warden and his superiors have, so far, denied him such a test. In the research for this article, only one case was found where a prison refused to permit a polygraph exam. That was the case of [Alonzo Watts](#), who was convicted of murder in Pennsylvania. In 2006, a Centurion Ministries volunteer and an investigative reporter were actively working on his case and Watts had agreed to take a polygraph exam, but the prison denied the request. Watts died in prison that year, before he and his supporters had a chance to persuade the prison warden, perhaps via the governor or a court order, to permit the polygraph exam.

5. Every polygraph of a person convicted beyond a reasonable doubt that does not show that person to be deceptive when denying responsibility for the crime should be reviewed. The American Polygraph Association (APA), or other group or individuals should fully investigate the 18 cases listed in the [linked spreadsheet](#) to this article where exonerees were said to fail, or did fail polygraphs, and the 27 cases where the outcome was reported to be inconclusive. From that investigation should come a determination of how many of the 45 unexplained failures and inconclusive results were due to polygraph examiner failure and how many were due to the inherent imprecision of the device and process themselves.

6. The American Polygraph Association could offer to dedicate itself and its members to exonerating the wrongly convicted and to preventing future wrongful convictions. The Association participated in the 1950's and early 1960's in Erle Stanley Gardner's "Court of Last Resort" which evaluated claims of innocence, which sometimes resulted in exoneration. In the 1970's the APA had a Case Review Committee which provided some polygraph assistance to claimants of innocence. Some State chapters of the APA did similar work into the 1990's, formally or informally. The recommendation here is that the APA recommit itself to this work of exonerating the wrongly convicted and preventing wrongful convictions. The leading agent of the innocence movement since 1989 has been DNA, but DNA is present in only about 5% of all crimes or major crimes. On the other hand, at least one living human being is present in every single crime, at least when it begins, and therefore, the potential for polygraphs to play a larger role in this work on wrongful convictions is large.

7. The data for this article should continue to be evaluated and updated and posted on the internet.