

# *Alternatives to Tactical Polygraph*

*AAPP Conference 2024*



# PRESENTATION DESCRIPTION

A training for the use of polygraph during the investigation of Internet based sex offenses. Course will include the use of single-issue screening SIST format with question templates for evidence based actuarial risk factors for evaluating sex offenders. The course will discuss protocols for managing accusations of false confessions or denial of legal counsel that may follow a tactical polygraph.

# TEACHING OBJECTIVES

- Increase student's understanding of how to assist the courts with improving risk assessment during sentencing process.
- Increase student's understanding of how to assist the courts in decreasing offender recidivism.
- Increase student's understanding of how to assist the courts in evaluating offender suitability for diversion, treatment, and corrections programs.
- Increase the defensible use of polygraph for evidentiary purposes.
- Identify unknown victims for counseling referral.

# DISCLOSURES

- Nothing in this presentation is represented as the opinion of the American Association of Police Polygraphists.
- The presenter is a school director for an accredited polygraph program and an approved instructor for post conviction sex offender treatment course.
- The lecture will include discussions about sexual material that will be graphic and may be uncomfortable.
- The presenter will ask questions that challenge current paradigms about the use of polygraph.
- Nothing in this material is proprietary for the presenter. The audience is encouraged to use this material as they deem proper.

7-10-07-04

# **DANGER**

## **Registered Sex Offender In Vehicle**

*Report Suspicious Behavior to:*

**(361)854-4122 NCCSCD**

**(361)826-2900 NCSO**

**(361)886-2600 CCPD**



*What is Tactical Polygraph?*

# TACTICAL POLYGRAPH

- *A tactical polygraph is a polygraph examination administered as soon as possible after the point of first contact with a suspect in order to gather immediately-actionable information. In the context of child exploitation cases, a tactical polygraph is intended to assist with conducting a more complete and truthful interview regarding the facts of the offense under investigation and the individual's history of offenses against children. However, the true target of a tactical polygraph is not the initial offense – such as possession/distribution of child pornography, but other crimes against children that are known only to the suspect and or his or her victims. As a result, the tactical polygraph can be thought of as a “screening” examination used to uncover other undisclosed criminal acts involving the sexual abuse of children.*

- *Texas DPS – Criminal Investigation Division Presentation*

# *The Use of Tactical Polygraph with Sex Offenders*

- Bourke, M.L., Fragomeli, L., Detar, P. J., Sullivan, M. A., Meyle, E, O’Riordan, M. 2014. The Use of Tactical Polygraph with Sex Offenders. *Journal of Sexual Aggression*, <http://dx.doi.org/10.1080/13552600.2014.886729>
- Discusses the hypothesis of whether those who have accessed child pornography have had hands on victims.
  - (1) Do men who download child pornography constrain their sexual activity involving children to online acts?
  - (2) Does the tactical polygraph technique increase the number of admissions of child sexual abuse beyond the initial interviews conducted by investigators?
  - (3) Do tactical polygraph admissions provide sufficient information to identify victims?



# BUTNER STUDY

- Michael L. Bourke, Andres E. Hernandez (2009). Butner Study Redux: A Report of the Incidence of Hands-on Child Victimization by Child Pornography Offenders. *Journal of Family Violence*, Volume 24 (3), 183-191
- Nov. 2000, Hernandez presented unpublished paper that 76% of child pornographers had hands on victims.
- May, 2002, FBI Agent Michael Heimbach cited the first study in testimony to Congress.
- In 2009 the second study reported 85% of child pornographers had hands on victims.



# Pros and Cons for Tactical Polygraph

# WHAT ARE THE POTENTIAL CHALLENGES

- How many child pornographers have hands on victims?
- Are the Butner studies defensible research?
- What does other research tell us about the issue?
- Are suspects in child exploitation investigations suitable for polygraph at the time of the arrest?
- Are there other reasons why we may want a polygraph immediately after the arrest?
- Are polygraph examiners subject to confirmation bias that affects test results?

# WHAT ARE THE POTENTIAL UPSIDES

- Will most people refuse a polygraph test if we wait?
- Are most traditional investigators good interviewers?
- Are polygraph examiners better at conducting interviews where suspects are normally wanting to lie?
- Are polygraph examiners better at understanding risk identification?
- Can polygraph aid in identifying which issues a subject is not lying about?

# CHALLENGES TO BUTNER

- The initial Butner studies were not subject to normal peer review and publication standards.
- Other studies have suggested significantly different results for hands on victims.
- U.S. v. Johnson (588 F. Supp. 2d 997, U.S. Dist. Lexis 106494 (Iowa)). Prosecutors, citing the study, implied that the defendant was statistically more likely than not to have committed an act of child sexual abuse.
- *“The Court rejects this proposition because the Butner Study is not credible. The Butner Study’s sample population consisted of incarcerated individuals participating in a sexual offender treatment program at a federal correctional institution. As [Dr. Dan L.] Rogers testified, the program is highly coercive.”*

- *“Overall, Faust et al. (2014) found that child pornography offenders had less substantial criminal histories and lower substance abuse rates than contact sex offenders...”*

**Percent of federal sex offenders with official record of contact sexual behavior**

Instant sex offense at conviction	Number	Percent of offenders with —		
		Any official contact behavior	Static-99	Prior arrest for sex assault or exploitation
All sex offenders	7,416	49.5%	43.6%	25.0%
Child pornography	4,462	23.6%	18.6%	12.0%
Other-not classifiable <sup>a</sup>	250	54.4%	45.6%	28.4%
Sexual assault	1,030	90.6%	86.0%	28.9%
SORNA <sup>b</sup>	874	94.6%	82.0%	75.1%
Transportation for illegal sexual activity	800	90.9%	85.9%	36.0%

# CHILD PORNOGRAPHY VS. ONLINE SOLICITATION

- Seto, Michael & Wood, J. & Babchishin, Kelly & Flynn, Sheri. (2011). Online Solicitation Offenders Are Different From Child Pornography Offenders and Lower Risk Contact Sexual Offenders. *Law and Human Behavior*. 36. 320-30. 10.1037/h0093925.
- 38 lower risk (based on actuarial risk assessments) men convicted of contact sexual offenses against children, 38 child pornography offenders, and 70 solicitation offenders
- *Solicitation offenders were less likely to disclose undetected sexual offenses than the other two groups but did not differ from child pornography offenders in their prior nonsexual criminal history or dynamic risk factors.*
- *Solicitation offenders were more likely than contact offenders, however, to have viewed child pornography, to report hebephilic sexual interests, to have problems in capacity for relationship stability, to be better educated, and to be more likely to have unrelated and stranger victims.*
- *Finally, solicitation offenders were less likely to report pedophilic interests, to have offended against a male, to have lived with a lover, and to have lived with a child than contact offenders.*

# STATIC 99-R RISK ASSESSMENT

- 1) The presence of prior sexual offenses;
  - 2) Having committed a current non-sexual violent offense;
  - 3) Having a history of non-sexual violence;
  - 4) The number of previous sentencing dates;
  - 5) One's age;
  - 6) Having male victims;
  - 7) Having never lived with a lover for two continuous years;
  - 8) Having a history of non-contact sex offenses;
  - 9) Having unrelated victims, and
  - 10) Having stranger victims.
- Other tools are available but are generally based on arrests and convictions for sex crimes, along with other factors.



# TACTICAL TEAMS AND POLYGRAPH SUITABILITY



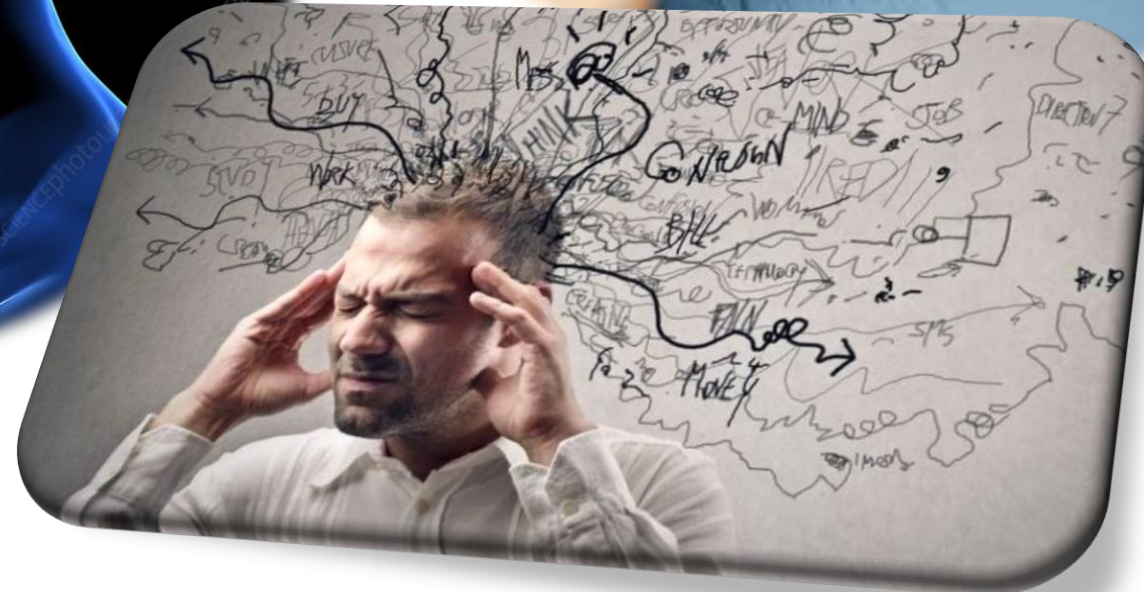
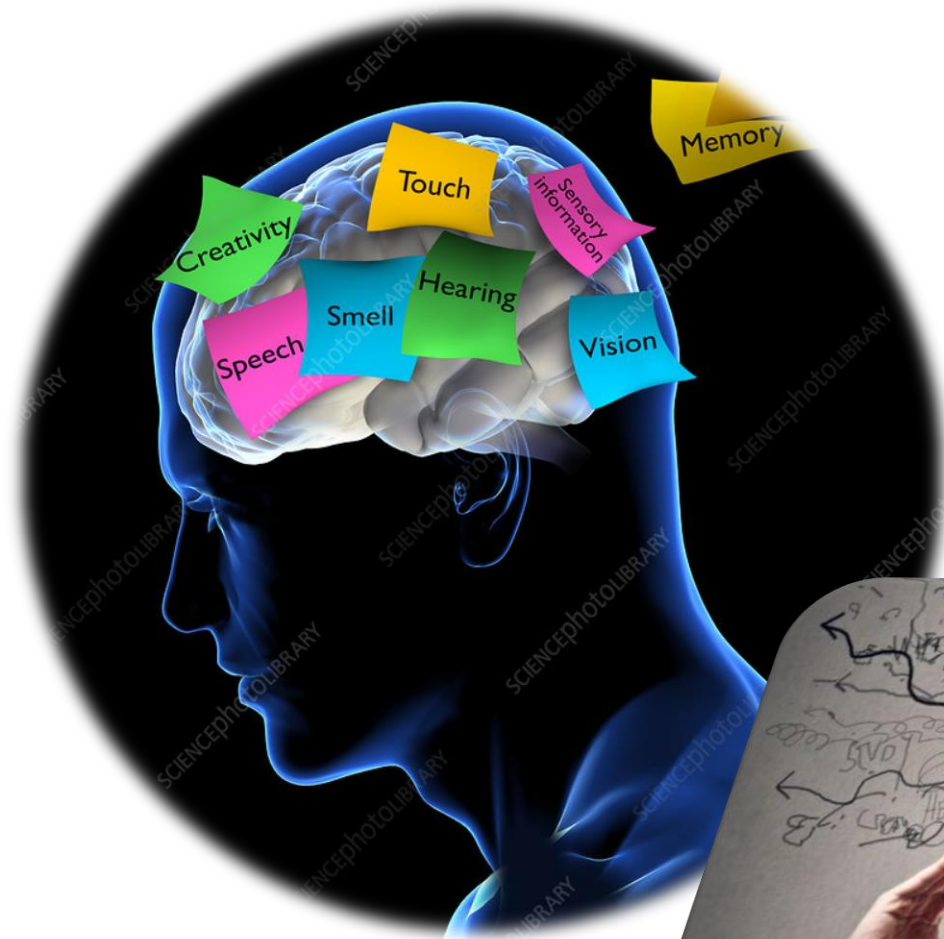
# HOW DOES A POLYGRAPH TEST WORK?

- *The polygraph test is constructed on recording a subject's physiological data at relevant and comparison questions using a validated format. Polygraph test theory is that a deceptive subject will load more physiological changes on relevant questions, while truthful subjects will load more physiological changes on comparison questions.*
- *This subject was determined to be (**not**) (**marginally**) suitable for subjecting to a polygraph examination. Inspection of the test data was that this subject's test data was (**marginally**) suitable (**unsuitable**) for numerical evaluation.*

# DOES PRIOR TRAINING PRESENT COGNITIVE BIAS

- We tend to perceive what we expect to perceive.
  - Richards Heur Jr., *Psychology of Intelligence Analysis*
- Examiners were influenced in test scoring with programming of expectations for the polygraph test.
  - Dutton and Krapohl 2018
- Fingerprint examiners and handwriting analysis opinions were influenced by expectations for outcomes.
  - Dror IE, Charlton D, Péron AE. Contextual information renders experts vulnerable to making erroneous identifications. *Forensic Sci Int.* 2006 Jan 6;156(1):74-8.

# POLYGRAPH AND MEMORY





*What are alternatives to Tactical Polygraph?*

# ALTERNATIVE PROCESS

1. Knowledge of a pending suspect contact for child exploitation.
2. Make the contact and gather physical evidence.
3. Conduct a forensic criminal history interview at the point of contact.
4. Have a 48 to 72 hour pause period, additional interviews if possible, (or polygraph is refused).
5. Conduct polygraph with Single Issue Screening Test(s).
6. Identify truth or deception per issue of actuarial risk.
7. Identify and report victims.
8. Make arrests at the conclusion of the investigation.
9. Discuss polygraph and Daubert challenges with prosecutor.

# INITIAL FORENSIC INTERVIEW FOR SEXUAL HISTORY

- Develop rapport during initial contact.
- Use narrative style interview.
- Look for cognitive distortions.
- Look for external locus of control.
- Adaptive vs maladaptive responses to stressors.
- Completion of evidence based sexual history.

# SEXUAL HISTORY FORM-*use a one pager*

- First sexual experience?
- Sexual orientation?
- Masturbation frequency?
- Number of sex partners? Male/female
- Sex with or as a prostitute?
- Number of minors?
- Number of strangers?
- Number of multiple partners?
- Harmed a sex partner?
- Peeped into windows?
- Sexually exposed yourself to someone without permission?
- Use of pornography.
- Paraphilias?



# THINKING ERRORS

*(partial list)– Albert Ellis. 1955*

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Everyone MUST love and approve of me.

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I MUST be successful at everything I want to do.

---

Certain people are bad and SHOULD be punished.

---

It is catastrophic when things are not going my way.

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I can not control how others make me feel.

---

It is easier to avoid difficulties than to deal with them.

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The past is all important for my future.

# GOOD INTERVIEWERS USE

## ❖ Rapport Building

- Perspective sharing
- Express concern or empathy
- Coaching to be normal

## ❖ Collaboration

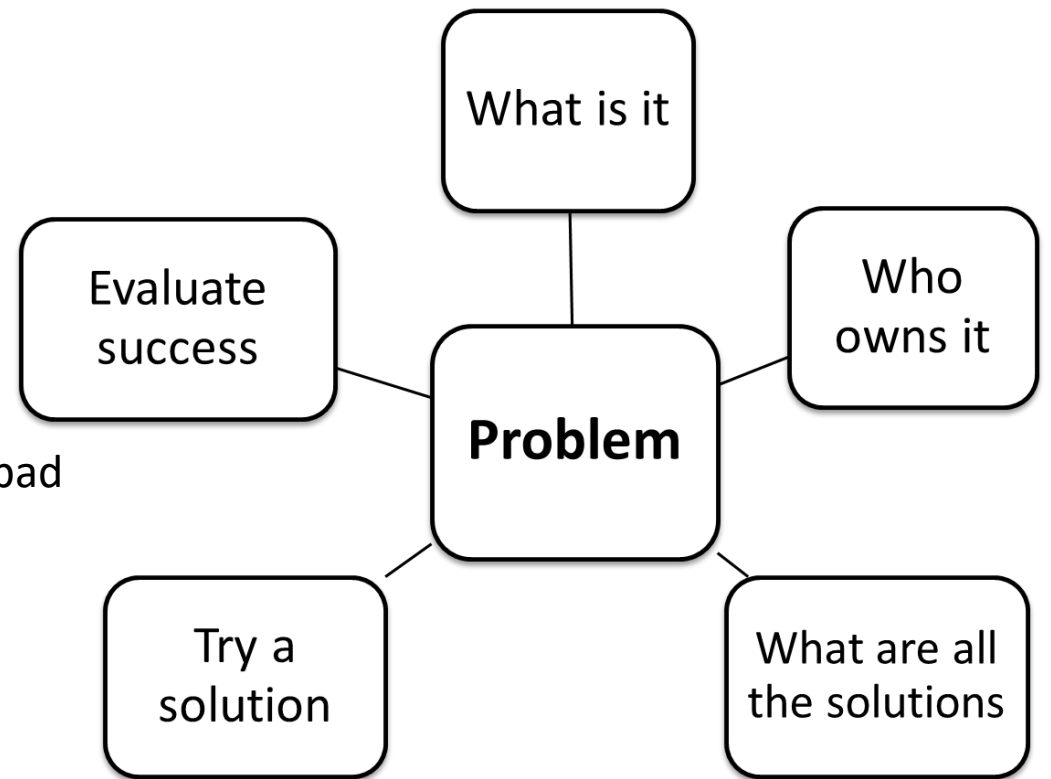
- Guide them towards developing a plan
- Regain control of their destiny
- Appeals to self interest, help them not to look bad

## ❖ Presentation of Evidence

- Summary of evidence
- Contradictions in story or evidence
- Validity testing of assumptions

## ❖ Confrontation

- Reality Appraisal
- Setting boundaries
- Cognitive errors
- Direct accusation



# FOCUS ON THE THINKING NOT THE BEHAVIOR

- ❖ Faulty thinking precedes the deviant behavior.
- ❖ Asking more questions is not working.
- ❖ Coercive techniques can be seen unfavorably.
- ❖ Therapy not correlated to false confessions.
- ❖ Psychologists use an evidence-based approach.
  - Teach people to solve their problems.
  - Righting reflex
- ❖ Interrogators understand behavioral intervention.
  - Recognition of faulty thinking and negative behaviors.
  - Experienced in teaching more appropriate responses.



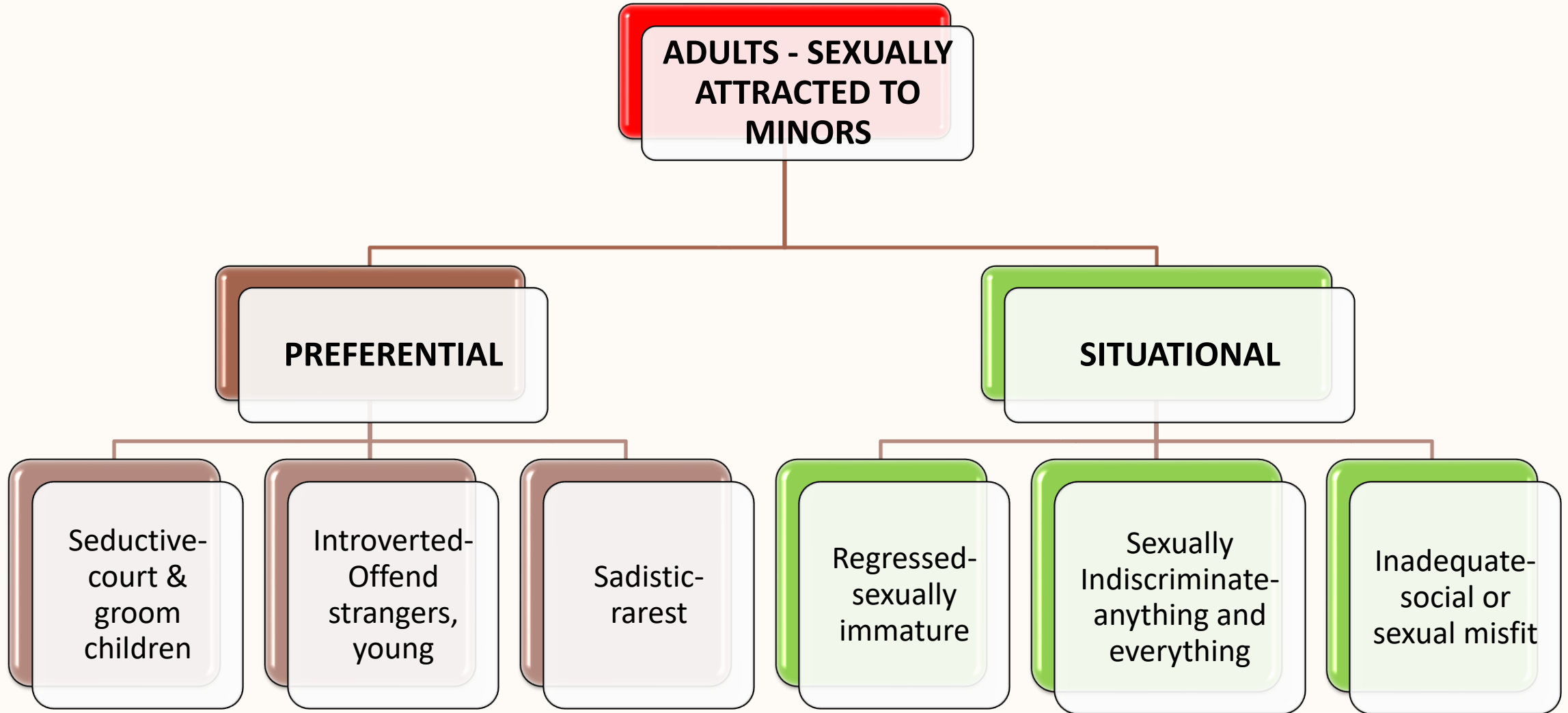
# SEX OFFENDERS

❖ ARE...

- ✓ RAPISTS
- ✓ CHILD MOLESTERS
- ✓ EXHIBITIONISTS
- ✓ VOYEURS



# PEDOPHILES, HEBOPHILES, & OTHER LABELS



# RAPISTS - A. N. Groth (1979)

- ❖ **ANGER RAPE**-usually unplanned, re-affirm manhood, precipitated by stress, gratuitous violence
- ❖ **POWER RAPE**-often planned, less violence, exercise control, elaborate fantasies, highly homophobic
- ❖ **SADISTIC RAPE**-most severe/dangerous, ritual of violence and pain, desire to humiliate/destroy. May escalate to murder.

# LOOK FOR ESCALATION OF CONDUCT/RISK

- ❖ assaultive history shown early
- ❖ multiple victims (*more than 1*)
  - ❖ male on male victim
- ❖ rape fantasies and multiple paraphilias
  - ❖ tendency to assault strangers
  - ❖ more forceful and violent over time
    - ❖ shows a “learning curve”
- ❖ more victims over a shorter time period
  - ❖ tendency to bind / transport victims
  - ❖ does not negotiate, does not reassure
  - ❖ maintains longer contact with victim



## HOW TO USE THE SIST



# WHAT IS THE SIST - ONE ISSUE ONE CHART

- ❖ Conduct one chart per test with two relevants regarding a **single** issue.
  - *R1. Are you concealing information about this one issue?*
  - *R2. Are you withholding information about this one issue?*
- ❖ Present each question three times for six presentations of the issue.
- ❖ Two comparisons bracket R1 and R2 and repeat.
- ❖ N1, N2, SR, C1, R1, R2, C2, R1, R2, C1, R1, R2, C2
- ❖ Grand total scoring, higher mean scores, with fewer inconclusive results.
- ❖ Science better supports single issue test.

# IS THE SIST AN APPROVED FORMAT?

- ❖ The APA does not “*approve formats*”.
- ❖ Research supports (*or not*) the use of a format/technique.
- ❖ The DLST is listed in the APA meta-analytic survey.
- ❖ Prado *et al* published two studies in 2015 demonstrating a two-question single chart test was just as accurate as other single issue two question multi chart tests (You Phase etc.).
- ❖ OBurke, Morgan (2021). Published on single issue DLST-SIST.
- ❖ OBurke, Westerman (2022). Published on an LE agency using SIST with 100 applicants. 363 tests; mean +10 NDI, -8 DI, Inc 3%.

## WHY NOT THE DLST

- ❖ 4<sup>th</sup> presentation frequently occurs and increases subject discomfort.
- ❖ One agency reported 50% for use of successive hurdles charts.
- ❖ Agencies improperly use grand total scoring for multiple issues.
- ❖ Agencies use different cut scores to avoid inconclusive test results.
- ❖ Agencies often avoid complying with need for subsequent charts for testing all issues.

# WHY GRAND TOTAL IS BEST

- ❖ There is no research that polygraph can reliably discriminate which issue when truth and deception are mixed in the test.
- ❖ Grand total scoring is better for moving away from inconclusive ranges.
- ❖ *Statistical Reference Distributions for Comparison Question Polygraphs*, Nelson & Handler (2015)
  - Spot total (multi-issue) mean scores ESS
    - -2 DI (sd 3) +2 NDI (sd 3)
  - Grand Total 2 question mean scores ESS
    - -6 DI +6 NDI (both sd 6)
  - Grand Total 3 question mean scores ESS
    - -9 DI (sd 8) +8 (sd 7)

# USE AN ACQUAINTANCE TEST

- ❖ Use an ACQT before you start the case information/background question review.
- ❖ Emphasize the evaluation for following instructions and focus on the test questions.
- ❖ Feedback
  - *That was good! You followed all the instructions. It is also obvious that you understand when you are lying. Your body reacted perfectly when you lied. Your body reacted differently when you told the truth.*
- ❖ Provide feedback that the body can respond appropriately to truthful questions without any “help”.
- ❖ Provide detailed instructions when cooperation is lacking.

# VERBALLY SEGREGATE QUESTION TYPES

- ❖ *Only discuss the test questions you are about to collect.*
- ❖ *The questions for why you are here.*
  - Sacrifice Relevant (SR)
  - Relevant
    - R1 & R2, are discussed/introduced for test A.
    - R3 & R4, are discussed/introduced for test B
    - R5 & R6, are discussed/introduced for test C
- ❖ *The questions about your background.*
  - Directed-Lie Comparison (C1 & C2)
- ❖ *The questions where I know you are telling the truth.*
  - Neutral (N1 & N2)

# PROTOCOLS FOR MULTIPLE TESTS IN A SESSION

- ❖ It is just as important to identify what they have not done as what they have done.
- ❖ Recommend testing independent Issues.
- ❖ **Hierarchal Protocol:**
  - Test the best issue first.\*
    - Higher Base Rate, most salient, most information, most concern
  - Only discuss the test issue to be given immediately following the discussion.
- ❖ **Gatekeeping Protocol:**
  - If the first test is NDI/NSR, review and test the next issue, if there is a next.
  - Once a test issue is DI/SR, then stop testing and resolve that problem.
- ❖ Use ESS-normative Grand Total cut scores.
- ❖ Modify DLCs between tests.

# SAMPLE PROCESS FOR RISK ASSESSMENT

## TEST A (hands-on victims)(if yes, move to Test B)

- *As an adult have you had sex with any minor?*
- *As an adult have you sexually touched a minor?*

## TEST B (stranger)(if yes, move to Test C)

- *As an adult have you had sex with any minor who was a stranger?*
- *As an adult have you sexually touched any minor you had just met?*

## TEST C (males)(if yes, move to Test D)

- *As an adult have you had sex with any underage male?*
- *As an adult have you sexually touched any underage male?*

## TEST D (harm)(if yes, move to more than one victim for any above)

- *Have you ever forced any partner to have sex with you?*
- *Have you ever harmed any person you had sexual contact with?*



# ALTERNATIVE PROCESS FOR RISK ASSESSMENT

## TEST A (harm)(if yes, move to Test B)

- *Have you ever forced any partner to have sex with you?*
- *Have you ever harmed any person you had sexual contact with?*

## TEST B (stranger)(if yes, move to Test C)

- *As an adult have you had sex with any minor who was a stranger?*
- *As an adult have you sexually touched any minor you had just met?*

## TEST C (males)(if yes, move to Test D)

- *As an adult have you had sex with any underage male?*
- *As an adult have you sexually touched any underage male?*

## TEST D (hands-on victims)(if yes, move to more than one victim for any above)

- *As an adult have you had sex with any minor?*
- *As an adult have you sexually touched a minor?*

# NO - DECEPTION INDICATED PER ISSUE

- *My grand total score for this examination exceeds the recommended cutoff for deceptive classifications.*
- *Using normative data, or probabilistic estimates, the likelihood for error can be approximated.*
- *Using the ESS scoring method and normative data would indicate that only a very small proportion of truthful persons could be expected to produce a similar numerical test score.*
- *These results support a conclusion that there is **DECEPTION INDICATED** to the relevant test questions during this examination.*
- *This examiner used computer measurement tools to validate the examiner's visual inspection and assignment of numerical scores.*  
*(Peer reviewed)*



***“IT’S ALL FUN AND GAMES UNTIL THE FLYING  
MONKEES SHOW UP”***

# KNOW THE DEFENSE STRATEGY

- If a polygraph is involved, they will try to show a deviation from standards of practice.
- They will link this to falsifying forensic evidence.
- The defense will seek to own the false confession.
  - ✓ Their case depends on showing that the confession was coerced.
  - ✓ Their case depends on showing contamination.
  - ✓ Their case depends on presenting another narrative.
  - ✓ Their case depends on linking the interviewer's methods to similar cases and interview methods.
  - ✓ Their case depends on knowledge of the police agency's interview techniques.

# ALTERNATIVE PROCESS

1. Knowledge of a pending suspect contact for child exploitation.
2. Make the contact and gather physical evidence.
3. Conduct a forensic criminal history interview at the point of contact.
4. Have a 48 to 72 hour cooling off period, additional interviews if possible (or polygraph is refused).
5. Conduct polygraph with Single Issue Screening Test(s).
6. Identify truth or deception per issue of actuarial risk.
7. Identify and report victims.
8. Make arrests at the conclusion of the investigation.
9. Discuss polygraph and Daubert challenges with prosecutor.

# ***the Polygraph Institute LLC***

8546 Broadway Suite 145

San Antonio Texas

210.377.0200

*jpoburke@thepolygraphinstitute.com*

