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17 May 2021

Critique and Evaluation of Polygraph Examinations of Benjamin Lawrence Petty

I am a veteran of U.S. Army Intelligence with experience in interrogation, counterintelligence, and counterterrorism. I am also a co-founder of AntiPolygraph.org, a non-profit, public interest website dedicated to exposing and ending waste, fraud, and abuse associated with the use of polygraphs and other purported “lie detectors,” and co-author of *The Lie Behind the Lie Detector*, a popular free book on polygraph validity, policy, procedure, and countermeasures, first published in 2000 and now in its fifth edition.¹

I have received the written reports of two polygraph examinations of Benjamin Lawrence Petty conducted by James R. Kelly on Thursday, 14 February 2019 (Attachment 1) and Tuesday, 14 May 2019 (Attachment 2). I have also received audio recordings made by Mr. Petty of both polygraph sessions.

On 15 September 2020, in two phone conversations, recordings of which I also received, Petty asked Kelly for the computerized data files associated with these polygraph examinations. Kelly told him that he could meet him the next morning at his office at 1370 North Interstate Drive in Norman and told him to bring a thumb drive. However, the next day, when Petty went to Kelly’s office with his disability assistant, Lynette Clower, in a recorded conversation, a copy of which I have also received, Kelly expressly refused to provide the computerized data files to Petty, or to even acknowledge their existence.

On 17 September 2020, Petty emailed Kelly “formally requesting ALL documentation, electronic records, data, reports, charts, notes, forms and audio/video recordings” associated with a total of five polygraphs Kelly administered to Petty between May 2018 and May 2019. I understand that Kelly did not reply to this request.

Today, 17 May 2021, Mr. Petty’s legal counsel, Kim Heinze, advised me that her investigator, Kathy Karmid, spoke with Mr. Kelly this morning and that he advised that he “does not keep, and has no computerized data, notes, hand scoring of polygraph charts, no recordings of any

1. Maschke, George W. and Gino J. Scalabrini. *The Lie Behind the Lie Detector*. 5th edition. AntiPolygraph.org, 2018. Available at:

<https://antipolygraph.org/pubs.shtml>

kind, and no additional file” and that he further “stated he does not even write down the questions that he asks.”

Such practice is inconsistent with Title 560, Chapter 10 of the Oklahoma Administrative Code, which governs the licensure and regulation of polygraph examiners, and which requires (at para. 1-7) that “[t]he examiner shall maintain on file for at least two (2) years all physical and/or electronic records, including audio and video tapes, papers, discs, polygraph charts, consent to examination forms, notes, question lists and reports of polygraph examinations conducted.”

Mr. Kelly’s averred lack of record-keeping is also inconsistent with the American Polygraph Association’s Model Policy for Post-conviction Sex Offender Testing, which holds at para. 12 that “[e]xaminers should retain all documentation, data, and the recording of each examination for a period of at least three years or as required by law.”²

Without the computerized data files, I am unable to review Kelly’s scoring of the polygraph charts.

The polygraph technique used by Kelly is a variant of the probable-lie control question test (CQT). In this technique, decisions regarding the truthfulness of the subject are made by comparing the subject’s physiological responses (breathing, palmar sweating, heart rate, and relative blood pressure) when answering “relevant” questions (about the matter under investigation, for example, “Did you shoot John?”) to such responses when answering so-called “control” (or comparison) questions.

Probable-lie control questions do not directly concern the matter under investigation and are designed in such a way that most people could not provide a yes or no answer with complete confidence. The polygraph operator attempts to convince the subject that the control questions are as important as the relevant questions and must be answered with complete honesty. An example of a common control question is, “Did you ever lie to get out of trouble?” The polygraph operator steers the subject into a denial, suggesting that the person who would lie to get out of trouble is the same kind of person who would commit the behavior that is the subject of the inquiry and then lie about it. But secretly, it is expected that everyone has lied to get out of trouble.

If the subject’s reactions to the control questions are stronger than her reactions to the relevant questions, then the subject is deemed to have truthfully answered the relevant questions. Conversely, if the subject’s reactions to the relevant questions are stronger, it is inferred that she is lying in response to the relevant questions.

2. American Polygraph Association (2018). Model Policy for Post-conviction Sex Offender Testing [Electronic version]. Available at:

https://www.polygraph.org/assets/docs/Misc.Docs/PCSOT_Model_Policy_March_2018%20.pdf

This simplistic procedure has no grounding in the scientific method. There is no raging debate amongst scientists regarding the validity of polygraphy. On the contrary, there is broad and longstanding consensus that polygraphy is without scientific basis and is not to be relied upon.³

Perversely, CQT methodology actually has a built-in bias against the truthful, because the more candidly one answers the control questions—and as a consequence feels less anxiety when answering them—the more likely one is to fail. Moreover, polygraph tests can be beaten through the use of simple countermeasures that polygraph operators have no demonstrated ability to detect.

In addition, examiner bias can influence outcomes, as was illustrated in a 1986 CBS *60 Minutes* exposé on polygraphy. Three polygraph operators were selected at random from the New York telephone directory and asked to administer polygraph tests regarding the theft of a camera and lens to four different employees of the CBS-owned magazine, *Popular Photography*. In fact, no theft had occurred. Each polygraph operator was told that a different employee was suspected as the likely culprit. In each case, the polygraph operator found the person who had been fingered to be lying.

The specific polygraph technique Kelly used in his examination of Petty is the “Air Force Modified General Question Test” (AFMGQT), which is documented in Chapter 9 of the “Polygraph Guide for Standards and Practices” a policy document adopted by numerous law enforcement polygraph units.⁴

3. See, Iacono, William G. “Forensic ‘Lie Detection’: Procedures Without Scientific Basis.” *Journal of Forensic Psychology Practice*, Vol. 1 (2001), No. 1, pp. 75-86. Available at:

<https://antipolygraph.org/articles/article-018.shtml>

See also, Iacono, William G. and Gershon Ben-Shakhar. “Current Status of Forensic Lie Detection With the Comparison Question Technique: An Update of the 2003 National Academy of Sciences Report on Polygraph Testing.” *Law and Human Behavior*, Vol. 43, No. 1 (2019), pp. 86-98. Abstract available at:

<https://www.ncbi.nlm.nih.gov/pubmed/30284848>

4. Available online at:

<https://antipolygraph.org/documents/plea-guide-2018-10-25.pdf>

Kelly's 14 February 2019 polygraph examination of Petty consisted of one question series repeated twice.⁵ The questions asked, and their functions, are as follows:

1. Is your first name Benjamin? (irrelevant)⁶
2. Do you intend to answer all my questions truthfully today? (sacrifice relevant)⁷
3. Did you ever lie to a therapist about anything serious? (control)
4. Did you have sexual contact with your victim at Falls Creek on or about June 16th, 2016? (relevant)
5. Did you ever lie to a probation officer about anything serious? (control)
6. Did you touch your victim's vagina in any way at Falls Creek on or about June 16th, 2016? (relevant)
7. Did you ever lie to a polygraph examiner? (control)
8. Did you make a sexual proposal to your victim at Falls Creek on or about June 16th, 2016? (relevant)

It is hardly surprising that accusatory relevant questions of a criminal sexual nature, such as those Kelly asked of Petty, might produce stronger emotional responses than the relatively mundane control questions about ever lying to a therapist, probation officer, or polygraph examiner, even in persons answering the relevant questions truthfully.

Apart from the inherent bias against the truthful that besets all polygraphic lie tests, **Kelly deviated from widely observed norms** in polygraphy in three egregious ways that made Petty's "failing" all but certain.

First, Kelly deviated from norms by formulating relevant questions that *implicitly assumed Petty's guilt* by referring to "[his] victim." In so doing, Kelly clearly violated the U.S. federal government's standards for the construction of relevant questions, which hold (at Section 4.5):

The examiner should not construct relevant questions that are worded in the form of an accusation or appear to be judgmental. This might cause the examinee to

5. The question order shown here is from the first chart collection. A second chart collection was also done, with the same questions asked in a different order.

6. Irrelevant questions are not scored. The first question asked is typically an irrelevant question, based on the rationale that a subject might react to the first question asked merely by virtue of it being the first question asked.

7. A "sacrifice" relevant question is one that is not scored.

feel the examiner has already reached a conclusion about his honesty or involvement in the crime....⁸

The previously-mentioned “Polygraph Guide for Standards and Practices” includes a similar provision (at Section C4.3.1), holding that “[r]elevant questions should...[n]ot be worded in the form of an accusation or contain an inference that presupposes knowledge or guilt.”

Based on the wording of the relevant questions that Kelly constructed (each of which includes the words “your victim”), it is clear that he presupposed Petty’s guilt. The assumption of guilt implicit in Kelly’s relevant questions increased the likelihood that Petty would react strongly to them, thereby increasing the likelihood of his failing.

Second, Kelly deviated from norms in his selection of control questions. The federal examiner’s guide for the polygraph technique Kelly used, the AFMGQT⁹, indicates at Section 7 that for the control or comparison questions, the operator should “[t]ypically use action verbs that are the same or similar” to those used with respect to the relevant questions.

The federal government’s handbook for polygraph operators similarly states regarding control or comparison questions in general:

C10.3.3. Probable-Lie Comparison. This question is designed to be a probable-lie for the examinee. The PLC question **should be similar in nature** but unrelated by time, place or category to the specific issue....¹⁰ (emphasis added)

8. National Center for Credibility Assessment. Test Question Construction, March 2011. Available online at:

<https://antipolygraph.org/documents/ncca-test-question-construction.pdf>

9. Available online at:

<https://antipolygraph.org/documents/daca-afmgqt.pdf>

10. Defense Academy for Credibility Assessment. Federal Psychophysiological Detection of Deception Examiner Handbook, 2 October 2006. Available online at:

<https://antipolygraph.org/documents/federal-polygraph-handbook-02-10-2006.pdf>

The federal polygraph school's test question construction guide is more specific, stating at para. 5.5 that for a rape suspect, a control question about sex or lying about sexual activities should be used.¹¹

In his text book on polygraphy, retired U.S. Army Criminal Investigative Division (CID) polygrapher James Alan Matte explains the importance of selecting control questions that are similar in nature to the relevant questions:

...We should remember that a sex offense, especially with children, carries an enormous social stigma, nearly indefensible, which can significantly increase the emotional content of the relevant question(s). Therefore, **strong control questions must be used** to compete with such emotionally charged relevant questions to protect the innocent.¹² (emphasis added)

Matte provides examples of appropriate control questions for child sexual abuse cases. In the following list, "DYR" is short for "do you remember":

CHILD SEX ABUSE CASES

DYR ever being sexually aroused by a child under 16 years of age?
DYR ever thinking of having sex with a child under the age of 16?
DYR ever taking sexual liberties with a child under the age of 16?
DYR ever thinking of having sex with anyone under the age of 16?
DYR ever thinking of engaging in a sex act with anyone under the age of 16?
DYR ever engaging in an unnatural sex act?
DYR ever feeling any improper sexual attraction for someone who was too young?
DYR ever taking sexual liberties with a child under the age of 16?
DYR ever doing anything sexually that you're ashamed of?¹³

11. National Center for Credibility Assessment. Test Question Construction, March 2011. Available online at:

<https://antipolygraph.org/documents/ncca-test-question-construction.pdf>

12. Matte, James Allan. *Forensic Psychophysiology Using the Polygraph*. J.A.M. Publications, 1996, at p. 253.

13. Ibid., p. 471.

Similarly, an official training presentation on pretest interview procedures for rape suspects prepared by the federal polygraph school¹⁴ suggests the following control or comparison questions:

Rape Sex Comparison Questions

- ..., did you ever engage in an unnatural/abnormal sex act?
- ..., did you ever perform an unnatural/abnormal sex act?
- ..., did you ever perform an unnatural/abnormal sexual act you would be ashamed of?
- ..., did you ever engage in a sexual act you would be ashamed to tell your parents about?
- ..., did you ever tell a lie about your sexual activities?
- ..., did you ever tell a lie about your sexual performance?
- ..., have you ever fantasized about committing an unnatural sex act?
- ..., did you ever force your sexual desires on anyone?

In their 2015 textbook on polygraphy, Donald J. Krapohl, a former president of the American Polygraph Association who for years served as deputy director of the federal polygraph school, and Pamela K. Shaw, a polygraph school director, suggest the following control questions:

Sex Crimes

- Have you ever done anything sexually unusual?
- Have you ever lied about your sexual activities?
- Have you ever fantasized about having sex with an underage girl?
- Have you ever touched someone sexually without permission?
- Have you ever done anything sexually you are ashamed of?
- Have you ever touched yourself sexually in a public place?
- Have you ever used pornography (excessively) for sexual purposes?
- Have you ever wanted to have sex with someone under the age of 18?
- Have you ever tried to view anyone's private parts without her permission?
- Have you ever tried to have sex with anyone after she said "no?"
- Have you ever taken part in an unusual sex act?
- Have you ever done anything sexually unusual that no one knows about?
- Have you ever done anything sexually that you would not want anyone to know about?
- Have you ever done anything sexually that you would lie about if asked?
- Have you ever thought about touching a young girl's private parts?
- Have you ever done anything during a sex act that would be considered excessive?

14. National Center for Credibility Assessment. Pretest Interview, PDD 501 - Rape Suspects, at slides 46-48. Available online at:

<https://antipolygraph.org/documents/ncca-pretest-interview-rape-suspects.pdf>

Have you ever been sexually excited by something not normal?
Have you ever thought out a plan on how you could have sex with an underage girl?
Have you ever seen (tried to see) the private parts of a girl or woman without her knowledge?
Have you ever done anything sexual that could bring shame to your loved ones?¹⁵

By deviating from polygraph norms and selecting relatively mundane control questions (about lying to a therapist, probation officer, or polygraph examiner) not of a sexual nature, Kelly increased the likelihood that Petty would fail.

Third, Kelly deviated from norms by failing to review the control questions with Petty during the pretest. The operator must take time to explain the control questions and attempt to convince the subject that they are as important as the relevant questions and relate to the subject's moral values.¹⁶

In the pretest phase of the polygraph session of 14 February 2019, Kelly introduced the control questions by reading aloud in a rapid fire manner a list of all the questions he would be asking. I have transcribed this exchange, which begins at 20 minutes and 3 seconds into the recording and lasts a mere 73 seconds:

Kelly: So the questions there are very, very straightforward, very plain English—If you don't understand what I'm asking, ask me to explain it. First one says, "Did you have sexual contact with your victim at Falls Creek on or about June 16th of 2016?"

Petty: No.

Kelly: Did you touch your victim, victim's vagina at Falls Creek on or about June 16 of two thous...—let me re-read it, because I stumbled across it. But did you touch your victim's vagina in any way at Falls Creek on or about June 16th of 2016?

Petty: No.

Kelly: Did you make a sexual proposal to your victim at Falls Creek on or about June 16th, 2016?

Petty: No.

15. Krapohl, Donald J. and Pamela K. Shaw. *Fundamentals of Polygraph Practice*. San Diego and Oxford: Academic Press, 2015, at p. 71.

16. Abrams, Stan. *The Complete Polygraph Handbook*. Lexington, Mass. and Toronto: Lexington Books, 1989, at p. 58.

Kelly: Did you ever lie to your therapist about anything serious?

Petty: No.

Kelly: Did you ever lie to a probation officer about anything serious?

Petty: No.

Kelly: Did you ever lie to a polygraph examiner?

Petty: No.

Kelly: Do you intend to answer all my questions truthfully today?

Petty: Yes.

Kelly: Is your first name Benjamin?

Petty: Yes.

Kelly: Do you now live in Oklahoma?

Petty: Yes.

Kelly: That's all there is.

Petty: I thought it was just supposed—oh, I guess never mind.

Kelly: Ask your question.

Petty: I thought it was supposed to be about my crime only, and I've already answered if I've been lying to my probation or my therapist, so, why are those questions on the—

Kelly: Because I want to ask them. Because they have to do with crime. So if you did your crime, then you have lied to your therapist. If you didn't, then it's no.

Petty: Okay, I understand.

Kelly's departure from polygraph norms by failing to properly review the control questions (the only discussion of them arose from Petty's question) increased the likelihood that Petty would fail.

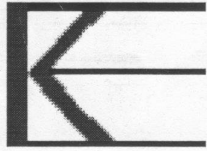
Kelly's second instant offense polygraph examination of Petty on 14 May 2019 suffered from all of the aforementioned shortcomings that beset his polygraph examination of 14 February 2019.¹⁷ This time, Kelly additionally had a conflict of interest. Because Kelly had previously accused Petty of "attempting deception," he had a strong incentive to produce the same outcome the second time. To do otherwise would be to admit having been wrong the first time.

Conclusion

Polygraphic lie detection has no scientific basis to begin with and has an inherent bias against the truthful. Kelly's failure to observe polygraph norms by 1) formulating relevant questions that presupposed Petty's guilt, 2) formulating control questions that, unlike the relevant questions, were *not* of a sexual nature, and 3) failing to properly review the control questions during the pretest phase, would have made Petty's "failing" all but certain. James Kelly's opinion that Benjamin Petty "was attempting deception" is entirely speculative and is without scientific basis or support.


George W. Maschke

17. During the polygraph session of 14 May 2019, the accusatory relevant questions were identical except that instead of "June 16th, 2016," Kelly used "June of 2016." In addition, while Kelly used different control questions than he did during the previous polygraph, again none of them were of a sexual nature. The control questions Kelly selected were: 1) Between the ages of 16 and 21, do you remember lying to a boss about anything serious? 2) During the first 16 years of your life, do you remember ever lying to anyone who trusted you about anything serious? and 3) Other than what you told me about, during the first 21 years of your life, do you remember lying to get out of serious trouble?



POLYGRAPH INVESTIGATIONS, PGS
1370 N. Interstate Dr., Suite 161
Norman, Oklahoma 73072
(405) 306-0720

CONFIDENTIAL POLYGRAPH REPORT

Polygraph Examiner - JAMES R. KELLY
Subject - PETTY, BENJAMIN LAWRENCE PHONE: 405-312-0643
Probation Officer - Marty Swinney
Treatment Provider - Chandler & Assoc. - Megan

Date/Time of Examination: February 14, 2019 09:30hrs

TYPE OF EXAMINATION:

Instant Offense - Offense Report recommended; covering the offense(s) for which he is currently under supervision.
Target event-specific for those **denying any or all of original offense**

RESULTS: **Significant Reaction**

PRE-TEST: Subject arrived at the Polygraph Investigations, PGS polygraph suite in **OKC, Ok.** at the appropriate appointment time at which time the interview was begun. He provided basic background information, read (with the aid of his cellphone camera magnified and scanning over the documents)/understood and signed standard Polygraph releases and read (with aid of his cellphone) and signed the Oklahoma Polygraph Bill of Rights. It is the examiners' understanding that the purpose of this examination was to determine the base truth regarding whether or not Subject falsely denied any or all of his instant offenses. Subject's offenses of conviction included: Rape I, Rape by Instrumentation and Forcible Oral Sodomy of a minor female attendee at Falls Creek on June 16, 2016. Subject denied all of his offenses of conviction and claimed that his ED would have prevented his committing the crimes.

Subject's stated physical condition was poor due to smoking with no serious pain, his attitude was cooperative and communicative, he had gotten 6 hours of sleep in the last 24 hours, he had taken all prescribed medications in the last 24 hours and had more than one week notice for this examination. Based on this interview, the examiner determined that Subject was a **suitable** polygraph examinee at the time of this interview.

Subject related that in June 2016 he was working as a cook in a "cabin" at Falls Creek. He stated that in the middle of the week, he was alleged to have had sexual intercourse and anal rape of a 13 year of age (yoa) female Falls Creek attendee. He denied the allegations.

Subject denied being alone with his victim at any time.

Subject denied that he was ever in his room with the victim.

Subject denied ever being alone with the victim.

Subject indicated that the only physical contact he had with his victim was patting her on the shoulder in the presence of other Falls Creek attendees on one occasion.

Subject denied ever seeing his victim's bare body.

Subject denied any kind of sexual contact with his victim.

Subject denied making a sexual proposal to his victim.

An Air Force MGQT specific issue test was then formulated and administered with the following relevant questions.

Did you touch your victim's vagina at Fall's Creek on or about June 16, 2016?

Did you have any kind of sexual contact with your victim at Fall's Creek on or about June 16, 2016?

Did you make a sexual proposal to your victim at Fall's Creek on or about June 16, 2016?

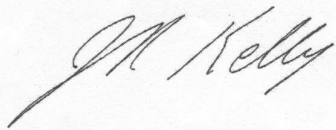
RESULTS: Subject's charts were scored using the AFMGQT Technique.

Subject's charts contained **strong and consistent reactions to the relevant questions** asked during this examination.

Subject's charts were **classified as Significant Reaction**.

OPINION: It is the opinion of this examiner that **Subject was attempting deception** when he answered the relevant questions on this examination.

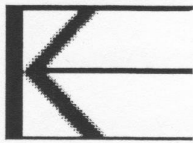
POST-TEST: Immediately after the examination Subject was told that he did not pass this examination and was asked why he reacted to the relevant questions. He indicated that no one believes him and that the "small town cops" set him up by "coercing" his victim to reenact the offense of his conviction for four hours. He added that he pled guilty because he thought he would die in prison.



JAMES R. KELLY - EXAMINER

February 14, 2019

DATE



POLYGRAPH INVESTIGATIONS, PGS

1370 N. Interstate Dr., Suite 161

Norman, Oklahoma 73072

(405) 306-0720

CONFIDENTIAL POLYGRAPH REPORT

Polygraph Examiner -

JAMES R. KELLY

Subject -

PETTY, BENJAMIN LAWRENCE

PHONE: 405-312-0643

Probation Officer -

Marty Swinney

Treatment Provider

-

Chandler & Assoc. - Megan

Date/Time of Examination: May 14, 2019 14:00hrs

TYPE OF EXAMINATION:

Instant Offense - Offense Report recommended; covering the offense(s) for which he is currently under supervision. Target event-specific for those **denying any or all of original offense**

RESULTS: Significant Reaction

PRE-TEST: Subject arrived at the Polygraph Investigations, PGS polygraph suite in **OKC, Ok.** at the appropriate appointment time at which time the interview was begun. He provided basic background information. It is the examiners' understanding that the purpose of this examination was to determine the base truth regarding whether or not Subject falsely denied any or all of his instant offenses. Subject's offenses of conviction included: Rape I, Rape by Instrumentation and Forcible Oral Sodomy of a minor female attendee at Falls Creek on June 16, 2016. Subject denied all of his offenses of conviction and claimed that his ED would have prevented his committing the crimes.

Subject's stated physical condition was poor due to smoking cigars with no serious pain, his attitude was cooperative and communicative, he had gotten 6 hours of sleep in the last 24 hours, he had taken all prescribed medications in the last 24 hours and had more than one week notice for this examination. Based on this interview, the examiner determined that Subject was a **suitable** polygraph examinee at the time of this interview.

Subject related that in June 2016 he was working as a cook in the Country Estates Baptist Church "cabin" at Falls Creek. He stated that in the middle of the week, he was alleged to have had sexual intercourse and anal rape of a 13 year of age (yoa) female Falls Creek attendee. He stated that he went home sick on Thursday and was home Thursday and Friday.

He elaborated that the only contact he had with his victim was when she came to the kitchen and spoke to him about staffing and talked to him near the cabin when he was outside.

Subject denied being alone with his victim at any time.

Subject denied that he was ever in his room with the victim.

Subject denied ever being alone with the victim.

Subject indicated that the only physical contact he had with his victim was patting her on the shoulder in the presence of other Falls Creek attendees on one occasion.

Subject denied ever seeing his victim's bare body.

Subject denied any kind of sexual contact with his victim.

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Subject denied making a sexual proposal to his victim.

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Did you have any kind of sexual contact with your victim at Fall's Creek on or about June 16, 2016?

Did you make a sexual proposal to your victim at Fall's Creek on or about June 16, 2016?


RESULTS: Subject's charts were scored using the AFMGQT Technique.

Subject's charts contained strong and consistent reactions to the relevant questions asked during this examination.

Subject's charts were classified as Significant Reaction.

OPINION: It is the opinion of this examiner that Subject was attempting deception when he answered the relevant questions on this examination.

POST-TEST: Immediately after the examination Subject was told that he did not pass this examination and was asked why he reacted to the relevant questions. He indicated that he has panic reactions to the issues and always reacts the same way when asked about the offenses or circumstances for those offenses.



May 14, 2019

JAMES R. KELLY - EXAMINER

DATE