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Psychology and Law. Bridging the Gap

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This book is a collection of articles by various authors, focusing especially on investigative psychology, including profiling, as well as court psychology. The very title of the book suggests that there is a gap between psychology and law. Moreover, this gap is broadening with the passage of years, parallel to the progress of knowledge. Lawyers, and especially law practitioners, not only fail to keep up with that progress, but do not even try to do so. Even elementary psychological knowledge is unfortunately alien to the majority of judges and prosecutors. Thus all attempts to build bridges between psychology and law are welcome; the problem is there being anyone to use the bridge and cross it. This review focuses on the article by Ewout H. Meijer and Peter J. van Koppen “Lie Detectors and the Law: The Use of the Polygraph in Europe”. The authors are Dutch psychologists working at Maastricht University. Meijer’s primary area of expertise is psychophysiological detection of deception in various settings. Van Koppen is senior chief researcher at the Netherlands Institute for the Study of Crime and Law Enforcement, Leiden, and is also serving as president of the European Association for Psychology and Law. The text begins with a presentation of the current situation in Belgium, which has the broadest application of the polygraph in Western Europe. The Belgian police began to use the polygraph in the 1990s, and currently approximately 300 polygraph tests are conducted there every year. The authors believe that the success of the polygraph in Belgium to a great extent results from the fact

that a certain number of suspects admit to crimes during tests or immediately after them.

The Belgian practice was presented somewhat differently by Dehon (Dehon 2006), who not only considers the number of polygraph tests conducted by the Belgian police to be greater, but more importantly believes their efficiency to be higher too.

The authors then move to the discussion of the polygraph test itself, presenting the basic types of test techniques: the Control Question Test (CQT) and the technique based on the Guilty Knowledge Test (GKT), discussing in detail the validity and accuracy of the tests performed in the control question technique as described by various authors. The data were verified in 2003, when the National Research Council reviewed the literature on the accuracy of polygraph examination based on CQT. Performing an earlier selection of cases from the point of view of methodological validity, the council reviewed 37 selected works based on experimental laboratory research and 7 works evaluating accuracy of polygraph examinations in field studies, defining the accuracy index from 0.85 to 0.89, which is tantamount to an accuracy rate of approximately 80%.

On these grounds, the National Research Council maintained that the distinction between lying and truth is far above chance, yet at the same time far below perfection. A separate question discussed in the article is the use of polygraph tests (in the CQT version) for testing sex offenders. Although not free from criticism, polygraph tests in this category of crime are even accepted in certain states, where polygraph tests are not generally applied in investigations.

The problem of ambiguous results is presented on the grounds of two Belgian case studies of murder cases.

Subsequently, the authors discuss the Guilty Knowledge technique, which they derive from Munsterberg (1908), and which owes its name to Lykken (1960). This testing technique is safer for innocent suspects. The probability that an innocent suspect will react randomly to the critical question in five successive tests with live alternatives is 0.03%. This would seem to be the decisive factor making the GKT technique better than control questions. It is, however, to be remembered that GKT can be used only in the first phase of police investigation, and also that there are sometimes problems with proper design of multiple tests for a single case.

The authors believe that this technique of polygraph tests is used more commonly only in Japan, where approximately 5000 such tests are performed every year.

Is use of the polygraph in Europe, the authors note a major variation. Primarily, we are dealing with two systems. In the first, the final evaluation of

evidence is governed by the conviction in time: the court convicts when it is convinced the suspect is guilty. In the other, the court must argue its verdict in a manner that conforms to certain statutory standards, which, however, tend to be rather lenient. According to the authors, typically in this systems an appeal to the Supreme Courts can only concern matters of law, not the manner in which evidence was considered by the lower court. This may explain, therefore, why in some European countries, in spite of a policy or precedents that forbid the use of polygraph tests as evidence, they are nevertheless used. Discussing the practice of resorting to polygraph testing in various European countries, the authors remind us that over 300 tests are performed every year in Belgium using the CQT technique. Introducing the polygraph into police practice, it was assumed that tests would not be used beyond police investigations and that results would not be offered as evidence in court. Nevertheless, the practice went further, and actually such evidence has already been accepted by courts.

In the Netherlands, the polygraph is not used either in police investigations, or – especially so – as evidence before the court. This kind of evidence was rejected by the Hague Appellate Court, whose decision was upheld by the Dutch Supreme Court (18 June 2004, LJN AU 5496). The Supreme Court argued, that “the use of polygraphs in criminal investigations is disputed because of its unreliability”. On the other hand, the polygraph is used in the Netherlands in sex offender management. There have been attempts to use it in criminal cases in the United Kingdom. However, the report by the British Psychological Society of 2004 concluded that “the use of the polygraph has inherent weaknesses, and the error rates can be high”. In the United Kingdom, too, the polygraph is used in sex offender management; the UK is a pioneer in putting the polygraph to such use.

In Germany, the Supreme Court once again abandoned the CQT from procedure in 1998. Despite this the polygraph is used in Germany in civil cases, mainly child custody disputes with allegations of sexual abuse of children.

In Finland, the polygraph has been used by the Finnish National Bureau of Investigation since 1995. Approximately 300 tests were performed, mostly in the case of homicides and sexual crimes. The GTK technique was also used in murder cases to disclose the place where the corpse was hidden.

In Norway, the polygraph is used by the police in the pre-trial phase, with the courts treating such evidence in various ways. In 1996, the Supreme Court rejected such evidence, yet later similar evidence was accepted by Appellate Court. In the 1990s, the polygraph was used two or three times in Sweden. The result of the test was presented to the court by the defence in child sexual

abuse cases as a proof of the defendant's innocence. The court allowed the evidence, but finally gave it low weighting.

In Switzerland, the polygraph is considered an unlawful means of investigation: according to the Swiss courts, polygraph testing violates Art. 6 of the European Convention on Human Rights. It is only to be regretted that the authors limited their review to only a handful of countries of Western Europe. In numerous countries of Central and Eastern Europe, the polygraph is used today in criminal investigations as well as court evidence. The practice in the countries of this region is interesting and highly differentiated. Some countries, for example Poland, have gained experience in using polygraph tests since the 1960s and have gathered an interesting scientific heritage in the field. In Russia, the tradition of using the polygraph is much shorter; nevertheless, it is a country where currently at least several tens of thousands of polygraph tests are performed every year, of which more than every other one is performed in the private sector.

The authors close their article with a discussion of the future of polygraph testing. They believe that the results of polygraph tests will be ever more precise, in parallel to increased practical experience and experimental research. They also turn their attention to the fact that the new techniques of studying the brain (EEG, fMRI) may allow a better grasp of the process of lying. Yet they are right to point out that these methods raise new problems of both a legal and an ethical nature.

Dehon F. (2006), "Paper at the 41st APA Annual Meeting", Las Vegas, 2006.

Jan Widacki*

* biuro_poselskie_jwidackiego@interia.eu