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UTILIZING THE LIE DETECTOR TECHNIQUE TO DETERMINE THE TRUTH IN DISPUTED PATERNITY CASES*

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A paternity or "bastardy" case is usually initiated upon the charge or complaint filed in court by a mother who alleges that a certain man is the father of her child. By such an action the complainant seeks to have the accused man legally declared the father and also required to help pay for the support of the child. The law does not penalize a guilty individual to the extent of compelling him to marry the complainant; however, if both are willing, the act of marriage will terminate the paternity suit.

As a rule, once the matter has reached the stage of a court proceeding, the male defendant is usually not agreeable to any sort of admission or settlement. Therefore, a court trial must be held, and a judge or a jury must decide if the defendant is or is not responsible for the child's conception. If he is found guilty, that is, declared to be the father of the child in question, he must pay a certain amount of money for the child's support or go to jail.

When testifying in court on his own behalf, the defendant usually invokes one of two defenses. First, he may deny any sexual intercourse with the complainant during the possible period of the child's conception.¹ Second, he may admit intercourse during the conception period but claim that the complainant also had intercourse

* The writers gratefully acknowledge the assistance of Professor Fred E. Inbau, Northwestern University School of Law, in the preparation of this article.

¹ The conception period is considered to be the three months in which conception most probably took place. That is, the first conception month is considered to be the tenth month before the baby's birth, the second or middle conception month is the ninth month before the baby's birth, and the third conception month is the eighth month before the birth. These three months form the basis of questioning of both the mother and the putative father during the investigation and are also used as the basis of test questioning if the lie-detector is utilized.

When there is evidence that the baby was either long-term or short-term, this is taken into consideration and the questions are changed to cover this contingency. For example, if the medical report stated that the baby was born seven months after conception, the eighth, seventh, and sixth months before the birth are used. See Sidney B. Schatkin, *Disputed Paternity Proceedings* (3rd ed., 1953), Chapter XV.

with other men during this same period, and that he should not be held responsible since one of the others could be the father.

In almost every case, of course, the complainant will claim that during the conception period the defendant is the only one with whom she had sexual intercourse. In paternity cases, therefore, one of the two parties probably will be lying; and this is definitely true when the defendant denies any intercourse during the conception period while the complainant alleges that during this same period she had intercourse only with him, and on a number of occasions.

A court confronted with a paternity case may or may not have at its disposal the facilities for having blood-grouping tests made of the complainant, the defendant, and the child. Even if the court does have access to blood-group testing, such tests can only exclude the defendant as being the child's father. They cannot prove that he is the father. The reason for this limitation is readily apparent when the basic principle of blood-grouping tests is understood. The basis for the tests is that a child inherits his particular blood group and blood types from one or both of his parents. For example, if the child is group *A*, he must have inherited the *A* group from either the mother or the father. If his mother is group *B* and the accused man is also group *B*, the accused man *could not* possibly be the actual father. However, if the accused is of group *A*, this fact only indicates that he—as well as any one of the millions of other males of group *A*—*could* be the father.²

Where blood tests are not yet used, or when the blood tests do not exclude the accused man as being the father, the judge or jury is faced with an extremely difficult problem. Only rarely are there any witnesses to be heard or physical evidence introduced to help prove or disprove a party's contention. This is because the act of sexual intercourse between two persons unmarried to each other almost always results from a clandestine agreement. And as regards the parties themselves, the court or jury ordinarily will be without any reliable means for determining which litigant is telling the truth. As a scientific aid for determining the truth in such cases, the lie-detector technique can be of great value.

For 16 years a number of judges of the Chicago Municipal Court have consistently availed themselves of the lie-detector technique to assist them in their decisions. Upon such occasions both the accused and the mother are requested by the judge to take a lie-detector test. This request is ordinarily made at the conclusion of the testimony given by both the complainant and the accused.

On the basis of a six-year study of the 312 disputed paternity cases handled at the

² Sidney B. Schatkin has written that complete blood tests (A-B-O, M-N, and Rh-Hr) will now detect 55 out of 100 false accusations of paternity. Schatkin, "Paternity Proceedings—A Changing Concept," *Journal of Criminal Law, Criminology, and Police Science*, Vol. 42, p. 825 (1952).

Mr. Schatkin, who is in charge of all paternity proceedings referred to the Corporation Counsel's Office, City of New York, is the author of the standard legal treatise in this field, *Disputed Paternity Proceedings* (3rd ed., 1953). He also stated in his Journal article, "We must re-examine the prevailing standard of evidence for paternity proceedings. A stricter standard must be erected. The evidence adduced must be scrutinized most carefully. In the light of science, there must be a new dispensation for the man accused as the father of a child born out of wedlock."

With this in mind, these authors thought that this present article might prove to be of some value to those who are continually seeking the better administration of justice.

Chicago laboratory of John E. Reid and Associates, it was determined that 93 per cent of the tested parties lied in some respect when they testified in court as to their sexual relationship! The lying ranged from the defendant's complete denial of any intercourse with the complainant, when he actually did have it with her during the conception period, to the complainant simply exaggerating the number of times intercourse did take place with the defendant during the conception period.

Even when a witness testifies in a paternity case, usually for the defendant, the judge or jury can not assume that he is telling the truth. Such a witness will swear in court that he had sexual intercourse with the complainant during the baby's conception period. This is supposed to prove false the mother's claim that during the conception period the defendant was the only one with whom she had intercourse. Yet when the witnesses were given lie-detector tests, 57 per cent of them confessed to the lie-detector examiner that they had not had sexual intercourse with the mother during the conception period. In fact, many of them confessed that they never did have sexual intercourse with the mother.

Following their lie-detector tests, approximately 82 per cent of the paternity complainants, alleged fathers, and witnesses confessed to the lie-detector examiner that they committed perjury when testifying in court! The fact that over 40 per cent of the tested mothers confessed to having had sexual intercourse with others during the conception period is enough to warrant a more extensive use of the lie-detector in paternity proceedings.³

Although lie-detector test results are ordinarily inadmissible in court as evidence, an exception to the rule is involved in these cases. This exception occurs when both parties agree and stipulate before any tests that the results of such tests are to be admitted in the trial as evidence, regardless of the tests' outcome.⁴

To request lie-detector tests is often the defendant's only hope if he is to prove his contention that he did not have sexual intercourse with the complainant during the baby's conception period. Rather than accuse the man who is the actual father, the mother often decides to accuse the man she loves as being the father of her child, in the hope that he will marry her. Or she accuses a single man, or a man with money or a good job, rather than the man who is the father.

Without lie-detector examinations, the judge or jury often are forced to come to a decision based more on intuition than facts, and they then can only hope that they were right. If they find in favor of the defendant, and are wrong in this decision, an innocent child and mother will be harmed financially and forced to suffer further embarrassment. If they find in favor of the mother and are wrong in this decision, an innocent man is forced to pay a large sum of money and also face an unfriendly wife, family, and friends because of his supposed indiscretion. These unfortunate

³ The Chicago Municipal Court, through its Social Service Department, has reported a large number of cases wherein, after the lie-detector has been suggested, the accused man admits for the first time having had intercourse with the mother during the conception period. It is also reported that at this time mothers often confess having made false accusations.

It is interesting to note that on many occasions, when both parties have agreed to take the tests, the lying party fails to appear at the laboratory for his or her examination.

⁴ For a suggestion as to the written agreement and stipulation in such cases, see Appendix I of this article.

consequences can be avoided almost entirely by the use of the highly reliable lie-detector technique.⁵

THE LIE-DETECTOR TEST RESULTS

In investigating paternity cases by the use of the lie-detector technique, the best procedure to follow is the one utilized by the Chicago Municipal Court, through its Social Service Department. Both the defendant and the complainant submit to the lie-detector test, even when the defendant admits intercourse during the conception period. This is done for several reasons. First of all, since almost always both parties are withholding at least part of the truth, the testing of both affords the examiner a much better opportunity of finding out exactly what the facts are. Then, too, in the event one party's test records are inconclusive in their indications, the interpretation of the other subject's records may be sufficiently definite to permit a positive opinion regarding the basic issues before the court. For example, even though the defendant's test results were inconclusive, the examiner may still be able to determine from the complainant's records whether she had intercourse with the defendant during the conception period and also whether she had sexual intercourse with anyone else during that time.

Results of the Examinations of Alleged Fathers. A defendant in a paternity case may tell the truth in any one of three respects. First, when he claims that he never had sexual intercourse with the mother; second, when he admits having sexual intercourse with the mother, but denies it during the period of possible conception; or third, when he admits a certain number of intercourses with the mother during the conception period, but asserts that she was also intimate with some other man or men during that time.

The first contention, that the accused never had sexual intercourse with the mother, was found to be true in only 1 of the 312 cases studied. The second contention, that he had intercourse with the mother but not during the period of conception, is the most prevalent defense. It was found to be true in only 26 of the other 311 cases. The third defense position, the admission of one or more acts of intercourse during the conception period, is used by the man who has had intercourse with the mother during the period and is trying to be as truthful as possible. However, this man desires the lie-detector tests because he believes that another man or men have had intercourse with her during the same period. If his belief is right, that is, that she did have intercourse with others during the conception period, he is usually declared innocent and acquitted.

⁵ The latest estimation accords to the lie-detector technique, when properly used, an accuracy of 95%, with a 4% margin of indefinite (inconclusive) determinations and a 1% margin of maximum possible error. In other words, in the examination of 100 subjects the examiner can make a definite and accurate diagnosis as to the guilt or innocence of 95 of these subjects. The actual known error at the Reid laboratories for the past six years was less than .0007.

Far less accuracy will prevail, however, when the examiner is lacking in basic qualifications, adequate training, sufficient experience, general competence, or complete honesty. The lie-detector is far from the automatic device some persons think it to be. (For a complete discussion as to the lie-detector technique's accuracy and limitations, the qualifications necessary for a competent examiner, and general information about the technique see Inbau and Reid, *Lie Detection and Criminal Interrogation* (3rd ed., 1953).

Regardless of the defense used by the accused men, 88 per cent of them confessed to the lie-detector examiner that they lied in court regarding the number of times they had intercourse with the mother. Seventy-one of those who previously denied any intercourse with the mother during the conception period confessed to having had intercourse with her during that time. Even those men who admit intercourse during the conception period, but contend that other men were also involved, often confess that they lied in court, in that they withheld the number of times they actually did have intercourse with the mother during the period.

Results of the Examination of Complainants. A complainant may be telling the truth on three main issues. First, when she claims she has had sexual intercourse with the defendant; second, when she claims she had intercourse with the defendant during the three months of possible conception; and third, when she denies having intercourse with any man besides the defendant during the conception period. If the lie-detector indicates that she is telling the truth on all three issues, it can be assumed that the defendant is the father, particularly when the defendant admits intercourse during the conception period.⁶

Of course, the complainant also can be lying on any or all of these three main issues. Only once, however, was a complainant found to be lying altogether regarding her accusation that she had had intercourse with the defendant. In 26 of the other 311 cases she was lying when she claimed to have had intercourse with him during the conception period. In 149 of the total number of cases, or 47.75 per cent, she was reported lying when she denied having intercourse with any one else but the defendant during the conception period.

In the great majority of cases the lying mother confessed to the lie-detector examiner that she had lied in court. Many times damaging admissions are given even before the running of the first test. Of the 149 complainants reported lying when they denied intercourse with anyone else but the defendant during the conception period, 128 of them confessed that fact to the examiner! If just blood tests were used on these 149 women, only 82 of them, instead of 128, would have been definitely shown to have filed a false paternity suit. (See table following page.)

CASE EXAMPLES

The following cases were selected as representative examples of the paternity cases handled at the Chicago laboratory of John E. Reid and Associates. In every case the mother's allegation in court was that she had had sexual intercourse with the defendant, and only him, during the three months of possible conception.

A. INTERCOURSE ONLY WITH THE DEFENDANT

1. *P-211* involved a defendant, *C. W.*, who swore in court that he never had sexual intercourse with the plaintiff, *H. K.*

C. W.'s examination: His lie-detector records clearly indicated he was lying when he denied having had sexual intercourse with *H. K.* during each of the three months of possible conception.

⁶ It must be remembered that the lie-detector only indicates to the competent examiner what the subject *believes* to be the truth or a lie to a particular question. For example, if the woman honestly believes that she had intercourse with the defendant during certain months, her responses will indicate that, even if she is mistaken.

STATISTICS OF LIE-DETECTOR TESTS IN PATERNITY CASES

(January 1948 to September 1953)

1. Total number of cases.....	312
2. Total number of subjects.....	589
3. Number of cases where the defendant was reported to have been the only one to have intercourse with the mother during the conception period.....	158
4. Number of cases where the mother had intercourse with others during the period as well as with the defendant.....	122
5. Number of cases where the mother had intercourse with others during the period but not with the defendant.....	27
6. Total number of mothers' confessions to intercourse with other men during the period....	128
7. Total number of defendants who in court denied any intercourse with the mother during the period, then admitted it to the lie-detector examiner.....	71
8. Number of cases where no definite report could be given to the court.....	5*

* In each of these 5 cases only one party was tested instead of both. Two of these five "indefinite" subjects had been previously confined to a mental institution, two of them were of extremely low intelligence, and the fifth was unresponsive to the technique.

When confronted by the examiner with his responses, he admitted intercourse on seven different occasions with *H. K.*, including the months of conception.

H. K.'s examination: Her lie-detector records indicated that she was telling the truth when she claimed to have had intercourse with *C. W.* during the three conception months, and that she was also telling the truth when she denied intercourse with anyone else during these months.

2. *P-664-A* involved the testing of a male witness, *S. H.*, as well as the testing of the mother, *N. P.* The defendant was not tested since he admitted intercourse during the conception period. In court *S. H.* swore that he had had intercourse with *N. P.* during two of the three months of possible conception.

S. H.'s examination: Before his first lie-detector test this witness admitted to the examiner that he did not have intercourse with *N. P.* at any time during the conception months. He was then tested, and the records indicated he was now telling the truth.

N. P.'s examination: Her lie-detector records were devoid of any deception responses on the relevant questions, including those regarding not having intercourse during the conception period with *S. H.*

3. *P-682-A* had to do with a defendant, *R. G.*, who claimed that he never had intercourse with the plaintiff, *V. B.*, that *V. B.* was a prostitute, and that during the conception period he had sent men to her house so that she could have sexual intercourse with them. His allegations were apparently partially confirmed by the testimony of another man, who stated in court that during the conception period the defendant, *R. G.*, sent him to *V. B.*'s house so that he could have intercourse with her, and that they did have intercourse.

R. G.'s examination: Before the first test *R. G.* confessed to the examiner that he had lied on each of his three contentions. He also stated that he made up the story about sending men to her house and that he instructed the witness to testify as he did. *R. G.*'s tests indicated he was now telling the truth.

V. B.'s examination: There were no indications of deception in this subject's lie-detector records, including the questions pertaining to having had sexual intercourse with anyone else but *R. G.*

B. INTERCOURSE WITH OTHERS AS WELL AS WITH THE DEFENDANT

1. *P-1250-A*. In court the complainant, *A. F.*, denied having sexual intercourse with anyone but the defendant, *A. P.*, during the three months of possible conception. Furthermore, she claimed that they had intercourse throughout the three months.

A. P.'s examination: *A. P.* contended that he had intercourse with her only in the third month. His lie-detector records indicated he was telling the truth.

A. F.'s examination: Before her first test the plaintiff admitted that she had intercourse with *A. P.* only during the third month. She also admitted that during the first month of possible conception she had intercourse 7 or 8 times with another of her boy friends, *J. A.*, and that during the second month she had intercourse 8 times with yet another boy friend, *R. V.*

2. *P-1315-A* involved the testing of a 15-year-old girl, *W. M.*, who became pregnant when only 13 years old. *C. C.* was the defendant.

C. C.'s examination: The subject admitted having had intercourse with *W. M.* during one of the three months.

W. M.'s examination: The subject gave deception responses on her lie-detector record when she denied having intercourse with anyone else but *C. C.* during the conception period. When confronted by the examiner the subject admitted having had intercourse with 5 men during the conception period, 4 of whom had it during the middle (ninth) month.

3. *P-1333-A* Under investigation in this case was the paternity of *E. D.*'s two children. In court she alleged that *L. K.* was responsible for both since she had not had intercourse with anyone else during the three months of possible conception for each of the two children.

L. K.'s examination: The subject admitted to the examiner that he had intercourse with the mother during each of the six months of possible conception.

E. D.'s examination: Before her first lie-detector test, *E. D.* confessed to the examiner that during each of the three possible conception months of her oldest child she had had intercourse with another man, *G. R.*, as well as with *L. K.* She then admitted that she also had intercourse with *G. R.* during two of the three possible conception months of her youngest child.

C. NO INTERCOURSE WITH THE DEFENDANT

P-672-B involved a paternity suit brought by *V. C.* against *W. W.* *V. C.* swore in court that during the conception period she only had intercourse with *W. W.* *W. W.* denied having had intercourse with *V. C.* at the time of possible conception.

W. W.'s examination: There were no indications of deception in this subject's lie-detector records when he denied having had intercourse with *V. C.* during any of the three months.

V. C.'s examination: Before her first lie-detector test the subject confessed to the examiner that she had lied in court when she testified *W. W.* was the only one with whom she had intercourse. She admitted the following other acts of sexual intercourse during the three months of possible conception: about 36 with *R. P.*, about 24 with *N. C.*, and about 35 with *W. P.*

Following another test which indicated she still had not told the full truth about her relations with other men, the complainant admitted that during the period of conception she also had intercourse with two additional men, *W. I.*, and *C. U.*

CONCLUSION

As can be realized from the above case histories, a court ordinarily has an extremely difficult task in rendering justice in paternity cases. But with the assistance of the lie-detector in these cases, the judge could give his decision knowing that he had done everything possible to determine the truth.

Blood-grouping tests can only exclude an accused person; they cannot identify the father. On the other hand, the lie-detector technique can serve both purposes—to determine guilt as well as innocence.

APPENDIX I: A MODEL AGREEMENT AND STIPULATION⁷

It is hereby agreed and stipulated between the complainant, Mary Roe; the defendant, John Doe; and the district attorney of Oak County, New York, Ralph Bald; that the said Mary Roe and said John Doe shall submit to lie-detector examinations in New York City on or about January

⁷ Adopted, with slight modification, from the one appearing in Inbau and Reid, *Lie Detection and Criminal Interrogation* (3rd ed., 1953), p. 135.

4, 1954, which examinations are to be given by John E. Reid and Associates of New York, New York. The purpose of these examinations is to determine whether the said Mary Roe had sexual intercourse with the said John Doe during the months of November or December, 1951, or January, 1952, and also to determine whether the said Mary Roe had sexual intercourse with any other male or males during these said three months.

It is further agreed and stipulated that the results of the lie-detector examinations, in the form of an opinion by the examiner at John E. Reid and Associates, may be offered in evidence on behalf of the complainant or on behalf of the defendant. In presenting his opinion the examiner may exhibit and explain to the court and jury the various recordings obtained as part of the test procedure. He may also describe the instrument used, explain the nature of the tests, and state the reasons which form the basis for his opinion that the said Mary Roe or said John Doe are either lying or telling the truth about the specific issues under investigation in this complaint, concerning the paternity of Mary Roe's child, Richard, born on September 12, 1952.

If the test results and the examiner's opinion are offered as evidence by either party to this agreement and stipulation, the opposing party shall have a right to cross-examine the lie-detector examiner with respect to the manner in which he conducted the tests, his own training and experience, and also regarding the lie detector technique's limitations and possibility of error. The trial court's discretion shall prevail as regards the privilege of inquiring into any other matter on cross-examination.

If the case is tried by a jury, the court shall be requested to instruct the jury regarding the terms of this agreement and stipulation. The court shall also be requested to further instruct the jury that they should not accept the test results and the examiner's opinion as conclusive of the issue before them, but that they are privileged to consider the results and the examiner's opinion along with all the other evidence in the case and give the lie-detector evidence whatever weight and effect they think it reasonably deserves.

The expenses for the examination and for the testimony of the examiner shall be borne by (Oak County, New York or by the defendant, John Doe).⁸

In consenting to this lie-detector examination the complainant and the defendant know and understand that they are under no legal compulsion to do so. Agreed and stipulated this twentieth day of December, 1953.

Complainant

Defendant

Counsel for Complainant

Counsel for Defendant

District Attorney

APPENDIX II: SAMPLE LABORATORY REPORT

On January 4, 1954, Mary Roe and John Doe voluntarily came into this laboratory for a polygraph (lie-detector) examination to investigate various circumstances surrounding the paternity of Miss Roe's male child, Richard, born on September 12, 1952. In court John Doe denied ever having intercourse with the complainant. Mary Roe testified that throughout this child's conception period, November and December, 1951, and January, 1952, she had sexual relations with the defendant. She denied having intercourse with anyone else during this period.

John Doe: Before this subject's first test he told the examiner that in November, 1951, he did have sexual intercourse on one occasion with Mary Roe. He denied having any other sexual intercourse with her. The subject was then tested, and there were no significant emotional disturbances, indicative of deception, in this subject's polygraph records on the following questions:

1. In November 1951, did you have sexual intercourse more than one time with Mary Roe?
Answer: No.

⁸ The ideal situation would be for the county to pay for the examinations, but public funds for this purpose are difficult to obtain. For this reason, it is almost always necessary for the accused to pay, in advance, for the cost of both examinations.

2. In January 1952, did you have sexual intercourse with Mary Roe? Answer: No.
It is the opinion of the examiner, based upon this subject's polygraph responses, that he is telling the truth on the above listed questions.

However, there were significant emotional disturbances, indicative of deception, on the question, "In December 1951, did you have sexual intercourse with Mary Roe? (Ans. No)." When confronted by the examiner with these responses the subject admitted, "Several times that December I did have it with her but we got in a fight so I stopped seeing her."

Mary Roe: There were no significant emotional disturbances, indicative of deception, in this subject's polygraph records on the following questions:

1. In November and December 1951, did you have sexual intercourse with John Doe? Answer: Yes.
2. Besides John Doe, in November 1951 did you have sexual intercourse with anyone else? Answer: No.
3. Besides John Doe, in December 1951 did you have sexual intercourse with anyone else? Answer: No.

It is the opinion of the examiner, based upon this subject's polygraph responses, that she is telling the truth on the above listed questions.

However, there were significant emotional disturbances, indicative of deception, in her records on these two questions:

1. In January 1952, did you have sexual intercourse with John Doe? Answer: Yes.
2. Besides John Doe, in January 1952 did you have sexual intercourse with anyone else? Answer: No.

When confronted by the examiner with these responses the subject stated:

I broke up with John before that Christmas, and didn't see him for several months. Soon after New Year's I met a man in a tavern, his name was Herb Carlton, and we did it several times that month in my apartment.

The subject was retested, and there were no indications of deception on the question, "Besides with Herb Carlton, in January 1952 did you have sexual intercourse with anyone? (Ans. No)."

It is the opinion of the examiner, based upon this subject's polygraph responses, that she is now telling the truth about her sexual relations in January, 1952.

Respectfully submitted,
JOHN E. REID & ASSOCIATES

Richard O. Arther