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Non-Verbal Communication in Interviewing/Depositions/Hearings

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Historically, the pursuit of truth has always been man's challenge and quest.

Many techniques to expose the truth have been employed

- ▶ China: rice in mouth
- ▶ Middle East: tail of the sacred ass
- ▶ Medieval: hot poker on tongue
- ▶ Cross Examination
- ▶ General Interviews
- ▶ Proffered Statements (under oath)

A PRACTICAL APPROACH TO USE OF POLYGRAPH

By William Evans

“You are the embodiment of the information you choose to accept and act upon. To change your circumstances, you need to change your thinking and subsequent actions.” Adlin Sinclair, author and motivational speaker

Sinclair’s view is straightforward: free choice exists and most individuals are capable of changing the environment in which they find themselves. It’s easy enough to see how this view can be seen through the multifaceted prism of our legal system.

The concept of “influence by osmosis” ⁽¹⁾ was explained in a recent issue of the *Vindicator* as a systematic and progressive conditioning of another’s beliefs, thereby causing the other to adopt a disingenuous version of the truth. Many times the “victim” of such “influence by osmosis” is subjected to what is called “ambient information.” ⁽¹⁾ That outside information corrupts the recipient’s understanding of the facts of a situation to such a degree that the pure version is destroyed in the process. The process can be subtle – sometimes undetectable to most, but the ramifications, particularly in law, can be tremendous.

Think of a bullfrog plunged into hot water. It will jump out of the pot because of the sudden, uncomfortable change in temperature. However, the same bullfrog conditioned in water that gradually increases in temperature will eventually boil to death. Many “victims” of “ambient information” are conditioned in a similar way by being immersed in an environment that subtly becomes toxic over time. “Ambient information” and “influence by osmosis” work much the same way and occur more often in family and criminal law than one might expect.

The vehicle can be non-verbal communication or gossip or any number of things that slowly raise the temperature in the pot. This concept can affect or effect anyone subjected to a potentially protracted criminal, civil or domestic law case. The defendant (or plaintiff) becomes the embodiment of the information they choose to accept. More times than not, it’s human nature to be quick to accept information that casts him or her in a positive or good light. However, information that makes them appear bad or that could adversely affect their future is not easily accepted or, at times, completely disregarded. Then counsel must encourage the defendant to accept reality. This is often a difficult task. Effective counsel includes helping defendants to examine -- and accept -- the reality of their circumstances, which may include jail or prison time, or other adverse consequences associated with bad behavior, irrational decisions, or even mistakes in judgment they don’t particularly want to face.

It is always important to be mindful that the best historian of the facts is a client who actually committed the crime. Innocent clients are poor historians, which is why it is so difficult to disprove a negative. Polygraph testing is an extremely useful tool in the

THE UTILITY AND ADMISSIBILITY OF POLYGRAPH EXAMINATIONS

Mark Twain said “fiction is obliged to stick to possibilities; truth isn’t.” Assessing the veracity of a witness, victim or defendant is a challenge for practitioners and professionals alike. We are in constant pursuit of the truth recognizing just how elusive it can be.

During the pendency of a case, it is not unusual to discover irregularities, inconsistencies and even errors in witness, suspect, and victim accounts. Some can be chalked up to human error while others are blatant falsehoods. What was once believed to be absolutely true may later be determined to be clearly false.

It is not unusual for witnesses to change their stories or recollection, victims to minimize or exaggerate, and defendants to deny involvement or responsibility. But what is the motive for such deceit? It seems the most common denominator is fear at some level. The fear may be of loss of life, liberty, property, status, job; it may even be an irrationally misplaced fear, resulting from perceived circumstances. All can cause a person to deviate from the truth, or even reality. After all, perception is reality at its core. The motive to lie is known only to the liar. Everything is relative and truth is no exception. Often an accuser is deemed “per se truthful,” in the absence of an apparent motive to lie. Motive, like the truth, can be difficult to pin down. Complicating factors such as rationalization and justification may make the liar believable. These dynamics make it even more challenging to differentiate fact from fiction.

Several methods are used to sort through the facts; cross examination provides a universally accepted means to ferret out truth. However, Perry Mason moments are very rare. Successful cross examination requires great skill. Other means of assessing truth include psychology, hypnosis, sodium pentothal and lie detection.

Psychologists claim that the average person tells many lies through the course of a day--sometimes small, sometimes large. It is reasonable to assume that when the stakes are raised, the gravity of the lie becomes more profound and the frequency of lies increase. Thus, the psychology of the lie, and its underlying cause are important for some practitioners and professionals to understand. All lies are relative to the source and circumstances under which they are told. But it is critical to realize that sometimes a false accusation is not a lie in the real sense, rather a claim resulting from “influence by osmosis” or the conditioning of the mind, memory or psyche. Such may be the result of many external factors such as suggestive questioning, subtle inferences or comments, exposure to casual conversation, and so on. Any of which, over time, can be adopted (especially by children) as factual events or circumstances. In reality, the event in question may have occurred in some form and at some level, distorted over time to the point it no longer resembles the actual circumstances or event at all...thus, “influence by osmosis.” Such conditioning need not be direct or overt. Suffice it to say that most claims or accusations are well-founded, later proven to be factual when coupled with supporting evidence. However, exploring the possibility of a false claim, and exposing

Thoughts to Ponder

- ▶ If something is repeated long enough, it becomes believable.
- ▶ Perception becomes reality.
- ▶ Memory is malleable.

Thoughts to Ponder

- ▶ The Cover-up is worse than the Crime/Lie
- ▶ Deceit most often surfaces through:
 1. Rationalization
 2. Justification
 3. Excuse
 4. Desperation
 5. Crisis

Thoughts to Ponder

- ▶ “Modifying the truth” may result from rationalization
 1. Lying to a liar
 2. Lying because the matter is a private issue; no one’s business
 3. Lying for the public good
 4. Lying to protect another
 5. Lying to avoid embarrassment

Techniques to Expose the Truth

- ▶ 60 percent of communication occurs through:
 - *Nonverbal Communication
 - *Gestures
 - *Body Language

Tools for detecting a lie:

- Statement analysis
- Cognitive Load recognition
- Cluster Analysis

Lay Understanding of Basic Physiology and Psychology of the Lie

- ▶ We want a safe environment
- ▶ We are conditioned to our surroundings
- ▶ Self-preservation is a reptilian concept
- ▶ Humans and animals react instinctively to avoid danger or threat
 - Fight, Flight, Freeze, Fib
 - Only humans can lie
 - Deception is a “defense mechanism” to avoid a consequence

No stress/Low cognitive load

Stress/High cognitive load

The psychology of a lie

- ▶ Is lying really normal?
- ▶ Psychologists claim we tell 5-10 lies a day
- ▶ Examples of deception:
 1. ETA
 2. Size of the fish
 3. Golf handicap
 4. Changing the major premise
 5. Subterfuge
- ▶ What happens when the stakes are raised, “The Chocolate Chip Cookie Caper” to the “Gangland Slaying Case.”
- ▶ Who lies?

The psychology of a lie

- ▶ Cardio vascular system is stimulated, face flush or blush.
 - Noticeably in the ears or cheeks
- ▶ Body Temperature Changes
 - Blood leaves extremities and supplies vital organs.
- ▶ Central nervous system is stimulated resulting in general nervous tension.
 - Sweat on palms, upper lip, brow
- ▶ Involuntary responses occur as part of the autonomic nervous system, also resulting in minute changes such as pupil dilation or constriction, or broken eye contact.
- ▶ Respiratory changes result from less oxygen intake.
 - Coughing, sighing, clearing throat; many times to allow the person to recover lost oxygen.

Crisis personality characteristics

- ▶ Tension/anxiety result in reduced attention span.
- ▶ Person tends to be more introspective in search for causation, meaning, solutions.
- ▶ Less capable of controlling emotional outbursts
- ▶ May bring a “support person” to your office.
- ▶ Great deal of impulsive, unproductive behavior.
- ▶ Client’s problem solving capabilities may be irrational.
- ▶ Rationalizes how or why someone else is responsible while emphasizing s/he can’t be responsible.
- ▶ Possess large volumes of information relative to the problem; generally in state of disorganization.
- ▶ Misses the forest for the trees; centers on minutia or irrelevant facts.
- ▶ Dwells on non-issue problems or concerns of the case.

Polygraph- What a lie looks like

Ability to identify the “tell” is an art; skills improve with practice just like any other discipline.

Observable characteristics

- ▶ Use four of your five senses
 - Sight
 - Hearing
 - Smell
 - Touch
 - Smell
- ▶ the 6th sense is created through “experience”

“I can teach anyone how to play the game, but I can’t give you the feel for it.”

-Jack Nicholas on the game of golf.

Jack Nicholas Golf My Way- Video

What is NOT said is as important as what IS said.

Truth Paradigm

Potential liars stall questioning

- ▶ Repeats the question back to you to gain time
- ▶ Hesitates to decide if they tell the truth, or lie
- ▶ Slightly rephrases the question
- ▶ Asks for the question to be repeated
- ▶ Wants the question clarified
- ▶ Coughs or clears throat before answering
- ▶ Asks for water; or takes a drink of beverage, coffee or water before answering

Verbal Gestures and Communication

- ▶ Potential liars stall the questioning by
 1. Repeating the question back to you to gain time.
 2. Hesitating to decide if they should lie or tell the truth
 3. Slightly rephrasing the question
 4. Asking for the question to be repeated
 5. Wanting the question clarified
 6. Coughing or clearing the throat before answering
 7. Asking for water, or taking a drink of beverage, coffee, or water.
 8. Lapsing in memory at the point of answer by saying:
 - Can’t recall
 - Don’t think so.
 - Qualifying the answer.
 - Sniffing

- Sighing
- Stammering or starting the sentence then re-starting the same sentence.
- Laughing at inappropriate times.
- Starting sentences with honestly, truthfully, to the best of my knowledge.

Answering without complete or proper verbiage, i.e. “can’t really answer that,” “didn’t see it,” “could’ve been there.”

Potential liars stall questioning

- ▶ Lapses in memory at the point of answering the question by saying:
 - Can’t recall
 - Doesn’t think so
 - Qualifies the answer
 - Answers in ambiguous terms
 - Sighs
 - Stammers or starts a sentence then re-starts the same sentence
 - Laughs at inappropriate times
 - Starts sentence with honestly, truthfully or to the best of my knowledge

Discourse Analysis

When is the last time you had any trouble with the police?

Brain Process: 450 - 650 WPM (We can talk at 100-120 WPM)

Some people answer the questions before you're ever done asking it.

Discourse Analysis

- ▶ NDI- E.G Do you live in Ohio? yes
- ▶ NDI- Did you tamper with the vacuum lines on JFK Jr.’s Cessna before it took off? Yes or No – No is easy to state without thinking.
- ▶ DI- Did you ever commit a crime? This requires thought!
- ▶ DI- Did you ever tell an important lie? This requires thought!
- ▶ DI- Qualification or ambiguity. “To the best of my knowledge,” “I don’t think so”; “maybe”

Cluster Observation

- ▶ Interpret non-verbal communication after a pattern has developed.
- ▶ Interpret nonverbal communication in clusters within close time proximity to the target question.

Observable characteristics

- ▶ Start with a handshake:
 - Temperature
 - Moisture
 - Firm/loose

- Long hold/short hold
- Muscular Grip
- Fingernails
- Callous
- Dry/Chapped

Observable characteristics

- ▶ HEAD
 - “Read” the face
 - Skin; texture, tone, blemishes, scars
 - Eyebrows
 - Eyes
 - Ears
 - Mouth
- ▶ NECK
- ▶ SHOULDERS
- ▶ ARM and ELBOWS

Observable characteristics

- ▶ Hand(s) to mouth
- ▶ Hand(s) to chin
- ▶ Hand(s) to ear
- ▶ Hand(s) to nose
- ▶ Hand(s) to neck
- ▶ Hand(s) to forehead
- ▶ Hand(s) to throat/necklace
- ▶ Finger to chest
- ▶ Open hand to chest
- ▶ Arms tightly crossed
- ▶ Loosely crossed with open hands
- ▶ Lint picker, dress-smoother, pant creaser
- ▶ Hands wiped on tissue/pants
- ▶ Hands on Hips

Observable characteristics

- ▶ GESTURES OF THE HAND
 1. Finger tapper; pen tapper; fingernail cleaner
 2. Jabs finger at you
 3. Clenched fists around object
 4. Fists with crossed arms
 5. Steepling
 6. Hands apart, palms up

Observable characteristics

- ▶ LEGS
 - Cross
 - Re-cross
 - Open cross/closed cross

Observable characteristics

- ▶ KNEES
 - 1. Closed
 - 2. Open
 - 3. Movement side to side; up/down

Observable characteristics

- ▶ FEET
 - 1. Under chair
 - 2. From under chair to forward position
 - 3. One foot under leg
 - 4. Feet flat on floor
 - 18" apart
 - 5. Ankles crossed under chair
 - 6. Foot Tapping
 - 7. Heel Stomp

- 1. Sole of shoe facing
- 2. Toe to ceiling or to floor.
- 3. Soccer ball kicker
- 4. Territorial Rights
 - Contact-personal relationship
 - 1-12 inches – Intimate
 - 12-36 inches – Personal
 - 36 inches - Social

Observable characteristics

- ▶ Miscellaneous
 - 1. Respiration
 - Sighs
 - Rapid breathing
 - Yawns
 - 2. Goosebumps
 - 3. Indigestion
 - 4. Odor
 - Sweat rings under arms
 - Beads of sweat on brow, temples, upper lip

5. When your gesture is mirrored by the other person (i.e. raised eyebrows with smile, or hand to scratch back of neck, or when person assumes your posture,) then you are leading the discussion; the other is buying into your view points.

Verbal Gestures and Communication

▶ Voice Changes

1. Pitch goes up
2. Rate of speech increases
3. Volume increases or decreases from person's normal volume
4. Speaks at a pace too fast for good comprehension by the listener