

James Stern Associates



**U.S. Law Enforcement: Prejudicial Conduct and Hate Crimes
Identification Initiative**

Police Pre-employment Polygraph
Proposal for
Milwaukee Fire and Police Commission
Milwaukee, Wisconsin
November 2020

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I. Executive Summary

The tragic events of the spring and summer of 2020, resulting in unprecedented demands for criminal justice reforms nationwide, invite progressive and forward-thinking police agencies to consider what they can quickly do to begin the healing process.

The proposed U.S. Law Enforcement: Prejudicial Conduct and Hate Crimes Identification Initiative, Police Pre-Employment Polygraph Program, is unprecedented, extremely logical, and relevant.

It will enable law enforcement to directly demonstrate an affirmative commitment to address and alleviate concerns of systemic racism making the program a seminal step for police nationally to address these issues so vital to our nation's democracy and stability.

The primary objective of this initiative is to enhance law enforcement screening of pre-employment police applicants by adding to existing background investigative tools and methods *a specific single-issue polygraph examination to identify pre-existing racial or other biases against persons of a legally recognized protected class which may be held by a law enforcement applicant.*

Although polygraph is frequently used in law enforcement background checks; we are not aware of any polygraph verification specifically related to pre-existing issues of racial bias, hate, prejudice, or specific acts against another based on these motives.

We see tremendous potential for our test to help identify those best suited to wear a badge.

As retired law enforcement professionals we created a process available to law enforcement agencies demonstrating a timely response to public calls for law enforcement reform.

II. Overview

Like all law enforcement agencies in the United States, Milwaukee is challenged to respond to the demands for timely, meaningful police reforms. The opportunities to get ahead of this issue nationally, show leadership, courage, and initiative, and begin repair of fractured public confidence are all offered by the *Police Pre-Employment Polygraph Initiative*.

Safeguarding and assuring the civil rights of all persons is fundamental to our form of government. This requires that people are confident those charged with enforcing our laws and protecting them do so without bias or prejudice. Law enforcement best practices today demand every credible and reliable tool be employed to ensure police applicants are free of hate or prejudice based on race or other legally recognized status.

Since Milwaukee currently does not include any pre-employment polygraph screening of police applicants, this easily administered polygraph series affords Milwaukee city leaders the chance to demonstrate early leadership and commitment to reform by adopting a validated technique to better verify a police candidate's suitability for employment in terms of any prior bias or hate motivated acts.

III. Recommendations and Deliverables

We recommend the Milwaukee Police and Fire Commission avail itself of this unique opportunity to stand out as a leader in implementing meaningful police reform measures by implementing the Police Pre-Employment Polygraph Program of James Stern Associates.

Law enforcement agencies, both those directed by a governing entity or those taking a proactive position to address community concerns, such as Milwaukee, are the intended users of the program. The program is designed to identify and deter prejudicial and hate motivated conduct of officer candidates.

James Stern Associates (SA) will augment and enhance Milwaukee's existing background investigation and vetting procedures with a polygraph series specially designed to determine any history of prejudicial and hate motivated activity.

Applicants may be afforded the polygraph prior to an offer of employment. The program is not designed to replace any portion of an existing selection process, but to provide additional scrutiny regarding any past prejudicial and hate motivated conduct.

Uniquely, this proposal offers law enforcement and the public an established, credible, and neutral company (James Stern Associates), completely independent of any police agency, as the source of polygraph services; assuring an independent and impartial examination concerning these issues.

It is anticipated that James Stern Associates (SA) will advertise and circulate the availability of the program to professional law enforcement groups and associations such as the International Association of Chiefs of Police (IACP), National Sheriff's Association (NSA), FBI National Academy Associates (FBINAA), state commissions on police training and standards (POST), state and federal Departments of Justice, etc.

Specific policies and procedures from accepting requests for polygraph through the administration of the examination, post-test options, and reporting will be formulated between SA and former federal polygraph

examiner consultants who will administer the exams and conduct quality control (QC) reviews of all examinations before they are considered final.

SA and polygraph consultants will establish a cost per exam and related expenses prior to marketing the service. Client billing and examiner/quality control reviewer (QC) payments to be made by SA.

SA will identify a cadre of federally trained and certified polygraph examiners and QC reviewers available to conduct examinations and QC reviews of test results.

The assigned examiner will contact the client law enforcement agency, obtain necessary background information for the examination, determine client preference concerning post-test actions based on examination results, and schedule the examination.

The examiner will prepare all necessary reports upon completion of the examination and submit the polygraph charts for quality control review. Polygraph reports will be provided to the client upon final QC review, including any reports necessitated by post-test options.

Upon identification of an agency utilizing the program, administrators of the program will personally meet with personnel designated by the agency to oversee the agency's aspect of the program. Discussion will include logistics of the actual administration of the polygraph, expected outcomes of the polygraph, and introduction of the program to those persons subject to the polygraph.

Ensuring the assigned polygraph examiner has adequate information to conduct the examination is critical to the success of the program. Regarding applicants, an examiner will have access to review the applicant's application and other background information collected to date. Information regarding each person to be polygraphed will be reviewed within the agency's secure workplace and will be made available at least two hours prior to the scheduled polygraph.

It will be incumbent for the agency to arrange for the scheduling of the persons to be afforded the polygraph and to ensure those identified persons present themselves on time. Each agency will be required to

establish a point of contact for the administrators of the program to utilize when issues regarding scheduling and logistics occur.

Agency will provide a room within the secure area of their office to conduct the polygraph examination. The room will be available to the examiner the entire workday polygraphs are scheduled. At a minimum the room, should be 12' by 12' in size, with electrical outlets, in a relatively quiet area. Room should be furnished with at least one table and two chairs. The room is required to be secure enough and located to afford the examiner privacy to conduct the examination with no interruption.

The administration of the polygraph will be limited to a four-hour period to allow for the work schedule of both the examinee and the examiner. It is anticipated a polygraph will typically be about two hours in length.

The polygraph will begin with a pretest interview wherein the examiner will collect and confirm biographical information of the examinee. Any waivers or consent forms requiring signature will be addressed during this portion of the process. Health and psychological state of the examinee will be discussed to ensure the examinee is suitable for a polygraph on the scheduled date. Examinee will then be afforded a general explanation of the polygraph process and the various components of the polygraph instrument and their purpose.

The pretest interview will continue with the examiner's detailed explanation of the specific issues to be evaluated by the polygraph and review of the actual relevant questions to be utilized. All relevant questions will be designed to be answered "yes" or "no," and the examiner and the examinee will develop the relevant question to ensure the examinee fully understands the questions and the questions address the issue be reviewed. Typically, the polygraph will consist of two relevant questions directly related to the issue under review. Additionally, questions to be utilized known as irrelevant and control or comparison questions will also be reviewed prior to polygraph data collection phase.

Once the examinee indicates they understand the process and the questions to be utilized on the polygraph data collection phase, the examiner will situate the examinee comfortably in a suitable chair and place the polygraph components on and near the examinee. Examiner will then collect the polygraph data from the responses of the examinee to each

question. The questions will be repeated a number of times until the examiner has collected enough data to provide for an evaluation of the responses. The actual data collection phase typically is about 15 to 20 minutes in length.

Once the data is collected the examiner will announce the polygraph data collection has ended and the components will be removed from the examinee. Examiner will conduct a preliminary review of the data collected prior to the departure of the examinee or continued discussion with the examinee regarding the issues.

Should an examinee make significant admissions of inappropriate or illegal conduct during the interview prior to the data collection phase, the examiner will suspend the polygraph and follow previously set procedures with the agency. Actions would likely involve summoning the agency designate to address and document any admissions.

The post-test procedures to be followed by the polygraph examiner, after the data collection phase, will be based upon previous arrangements and preferences designated by the participating agency. The preliminary opinion of the examiner will have three possible conclusions:

- 1.) No Deception Indicated (NDI)
- 2.) Deception Indicated (DI)
- 3.) Inconclusive (INC)

These factors will determine the procedures to be followed during the post-test.

If the preliminary opinion of the examiner is NDI, typically the examinee will be advised of the result and dismissed. The examinee will be cautioned the polygraph result of NDI is preliminary, and the examinee could again be contacted for further testing should a quality control review of the polygraph have a different opinion.

An INC preliminary opinion could result in additional testing. The additional polygraph testing could occur immediately after the initial test if time permits within the four-hour block reserved or could occur on a different date. The details of addressing INC preliminary results would be previously arranged with the participating agency prior to the initiation of the program.

The procedures upon DI preliminary result would be arranged prior to the initiation of the program within an agency. Possible procedures would be for the examiner to advise the examinee they will be contacted by their agency regarding the results; or an agency may consider having the examiner confront the examinee with the DI result in efforts to obtain additional information regarding inappropriate or illegal conduct.

Should an examinee make significant admissions of inappropriate or illegal conduct during the interview after the data collection, the examiner will summon the agency designate to address and document the admission.

Any result or opinion of polygraph data is considered preliminary until completion of the quality control review. An onsite examiner is authorized to discuss their preliminary opinion with the examinee or agency designates in order to expedite an action required; however, they are required to caveat their discussion with the fact their data is subject to a review and is not the final opinion.

An examiner is expected to expeditiously prepare their report and submit the same with all collected data to their designated quality control team. The quality control team will be comprised of experienced Federally trained and certified polygraph examiners who have been indoctrinated into the quality control program of the initiative.

Examiners will be expected to submit their report and data of polygraph within two working days of completion, and quality control is expected have its review completed within two working days of receipt. Quality control will directly discuss any discrepancies directly with the examiner, and the opinion of quality control is considered final.

IV. Qualifications of James Stern Associates:

Stern and Associates was formed by several retired Special Agents of the Federal Bureau of Investigation following the death of George Floyd earlier this year. Our primary purpose is to address perceived systemic racism and criminal justice reform in the United States.

James Stern Associates are all former FBI Agents who created a specific single-issue polygraph test to augment existing pre-employment background investigations conducted by police departments nationwide. Our test is specifically designed to identify pre-existing racial or other biases against persons of a legally recognized protected class which may be held by a law enforcement applicant.

Polygraph is frequently used in law enforcement background checks; however, we are not aware of any polygraph verification specifically related to pre-existing issues of racial bias, hate, prejudice, or specific acts against another based on these motives.

As retired law enforcement professionals, we created a process available to law enforcement agencies that demonstrates a timely response to public calls for law enforcement reform. We see tremendous potential for our test to help identify those best suited to wear a badge.

Credentials of the Principals:

- 1.) **Gregory A. Gilmartin**
(Retired) FBI Special Agent - June 1989 to May 2012.
FBI Honolulu and FBI Las Vegas Division;
Polygraph Examiner: 1994 to 2002.
FBIHQ Unit Chief, Polygraph Unit: 2002 to 2004.
Last FBI Assignment: Legal Attaché Kuala Lumpur (2009).

- 2.) **Robert W. Moore**
(Retired) FBI Special Agent: Sept. 1978 to March 2005.
FBI Seattle and San Francisco Divisions;
Polygraph Examiner: 1996 to 2002.
Last FBI Assignment: Supervisory Special Agent – Violent Crimes and Major Offenders Program
FBI San Francisco Division (2003).

- 3.) **James C. Stern**
(Retired) FBI Special Agent: June 1982 to June 2007.
FBI Los Angeles, New Orleans, San Francisco, Honolulu,
Hong Kong, Washington, D.C. and Las Vegas Divisions;
Polygraph Examiner: 1998 to 2004.
Last FBI Assignment: FBI Headquarters Unit Chief, Asian/African
Criminal Enterprise Unit, Organized Crime Section (2004).

- 4.) **Joseph D. Pistone**
(Retired) FBI Special Agent: July 1969 to February 1996.
Primary FBI Assignment: FBI New York Office.
Currently a Senior Law Enforcement Advisor to U.S. and International
Police Departments.
Last FBI Assignment: FBIHQ Undercover and Sensitive
Operations Unit and FBI Academy, Quantico, Virginia (1994)

- 5.) **John Cooney**
(Retired) FBI Special Agent: January 1987 to April 2013
FBI Los Angeles, Salt Lake City and Portland
Polygraph Examiner: 2008-2012
Last FBI Assignment: Portland

- 6.) **Jerry O'Callaghan**
(Retired) FBI Special Agent: April 1984 to June 2016
FBI Seattle, Philadelphia, Washington D.C.(Supervisor in Polygraph
Unit, 2013-15)
Polygraph Examiner 1997-2016
Last FBI Assignment: Philadelphia
FBI contractor National Center for Credibility Assessment (NCCA) –
Federal Polygraph Training School, 2018-2020.

V. Pricing

The total cost for the first polygraph exam of any day is **\$1470.00**.

For additional polygraph tests, up to a total of four (4) tests per day, the cost is **\$775.00** per exam.

James Stern Associates has contacted a number of large domestic corporations claiming a financial commitment to police reform and social justice issues to determine their willingness to commit some of their allocated funds to assist police agencies with the cost of polygraph exams.

VI. Terms and Conditions

Payment to James Stern Associates, via **EFT** (electronic funds transfer), is due at completion of all polygraph testing conducted during the examiner's visit.

Milwaukee should contact James Stern Associates via email and telephone a minimum of ten (10) days prior to the date of any desired polygraph testing to permit staffing and scheduling.

James Stern Associates will contact the agency to obtain necessary background information for the examination, determine client preference concerning post-test actions based on examination results, and schedule the examination.

James Stern Associates will contact administrators of the program either personally or telephonically and meet with personnel designated by the agency to oversee the agency's aspect of the program. Discussion will include logistics of the actual administration of the polygraph, expected outcomes of the polygraph, and introduction of the program to those persons subject to the polygraph.

Ensuring the assigned polygraph examiner has adequate information to conduct the examination is critical to the success of the program. Regarding applicants, an examiner will have access to review the applicant's application and other background information collected to date. Information regarding each person to be polygraphed will be reviewed within the agency's secure workplace and will be made available at least two hours prior to the scheduled polygraph.

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Agency will provide a room within the secure area of their office to conduct the polygraph examination. The room will be available to the examiner the entire workday polygraphs are scheduled. At a minimum the room, should be 12' by 12' in size, with electrical outlets, in a relatively quiet area. Room

should be furnished with at least one table and two chairs. The room is required to be secure enough and located to afford the examiner privacy to conduct the examination with no interruption.

The administration of the polygraph will be limited to a four-hour period to allow for the work schedule of both the examinee and the examiner. It is anticipated a polygraph will typically be about two hours in length.

Please refer to **Section III** above for further explanation of processes to be followed and expected deliverables.

Please sign below if you agree to the terms set forth in this proposal.

Thank you for this opportunity.

Date: _____