

## **Say No To Poly**

**By: Monte E. Hester; April 2003**

Evidence of a plea agreement between the state and a snitch, which includes a provision that the snitch be required to submit to a polygraph to verify his truthfulness, is not admissible in court.

As most everyone is aware, absent a stipulation, polygraph results are inadmissible. See *State v. Reay*, 61 Wn.App. 141, 810 P.2d 512, pp. 149-50.

Further, consistent with this holding as held in *State v. Rowe*, 77 Wn.2d 955, evidence of an individual's willingness to take a polygraph is likewise inadmissible. In *Rowe*, it was the defendant's offer that he was willing to take a polygraph that was ruled to be inadmissible. The court stated:

Since it is generally held that polygraph tests are not judicially acceptable, . . . it is obvious that a defendant should not be permitted to introduce evidence of his professed willingness to take such a test . . . At best such an offer is a self-serving act . . . which is made without any possible risk. If the offer is accepted and the test given, the results cannot be used in evidence . . . the conduct underlying the so-called inference of innocence can well be feigned, artificial and wholly unreliable.

. . . The defendant's offer of evidence was patently self-serving and thus inadmissible at the outset.

77 Wn.2d at 958-59 (citations omitted).

The same analysis should apply to an offer by the state that their snitch was willing to take a polygraph.

In addition, the effort to put into evidence the willingness of a person to take a polygraph if the prosecutor has doubts about truthfulness or to pull the deal if the prosecutor doesn't believe the snitch, is also error.

A prosecutor is not permitted to express personal opinion about the credibility of a witness. See *State v. Sargent*, 40 Wn.App. 340, 698 P.2d 598 (1985). Nor may a prosecutor seek

the admission of evidence from a witness that another witness is lying or telling the truth. See State v. Jerrels, 83 Wn.App. 503, 925 P2d 209. The Jerrels case involved a prosecutor asking the mother of a child who had been molested if she believed her daughter. That case was reversed even though there was no objection. Such questioning invades the province of the jury.

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