

1 IN THE CIRCUIT COURT OF YORK COUNTY, SOUTH CAROLINA
2 STATE OF SOUTH CAROLINA
3 VERSUS

4 BILLY WAYNE COPE &
5 JAMES EDWARD SANDERS

6 INDICTMENT NUMBERS: 2002-GS-46-3232-3234
7 2003-GS-46-1843-1844
8 2004-GS-46-2614-2618
9 2004-GS-46-196-199

10 HEARD AT THE MOSS JUSTICE CENTER,
11 1675 YORK HIGHWAY, YORK, SOUTH CAROLINA, ON
12 THURSDAY, SEPTEMBER 16TH, 2004, BEFORE THE
13 HONORABLE JOHN C. HAYES, III AND A JURY.

14 APPEARANCES:

15 TOMMY POPE
16 KEVIN BRACKETT
17 WILLY THOMPSON
18 16TH CIRCUIT SOLICITOR'S OFFICE
19 1675 YORK HIGHWAY
20 YORK, SC 29745
21 REPRESENTING THE STATE

22 JAMES MORTON
23 DAVID WOOD
24 MICHAEL SMITH
25 MORTON & GETTYS
1051 OAKLAND AVENUE
ROCK HILL, SC 29732

A. PHILIP BAITY
POST OFFICE BOX 275
FORT MILL, SC 29715
REPRESENTING BILLY WAYNE COPE

LELAND GREELEY
128 E. MAIN STREET SUITE 102
ROCK HILL, SC 29732
REPRESENTING JAMES EDWARD SANDERS

REPORTED BY: JANET M. RICH
CIRCUIT COURT REPORTER
1992 DOWNEY STREET
ROCK HILL, SC 29732

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ID EV

DEFENSE EXHIBIT 64 POLYGRAPH TEST

69

COURT EXHIBIT 9 E-MAIL

263

1 TIME CALLED REPLY EVIDENCE, BUT FOR ALL INTENSE
2 PURPOSES YOU HEARD THE STATE'S CASE. SO THEREFORE
3 THE DEFENSE HAS A RIGHT BUT NO OBLIGATION TO PRESENT
4 A DEFENSE IF THEY WISH SO I'LL CALL ON MR. BAITY ON
5 BEHALF OF MR. COPE.

6 MR. BAITY: YOUR HONOR, WE WOULD CALL
7 CHARLES R. HONTS PH.D. TO THE STAND.

8 CHARLES HONTS, BEING FIRST DULY SWORN
9 TESTIFIES AS FOLLOWS:

10 MR. BAITY: MAY IT PLEASE THE COURT, YOUR
11 HONOR.

12 THE COURT: CERTAINLY.

13 DIRECT EXAMINATION BY MR. BAITY:

14 Q COULD YOU PLEASE STATE YOUR FULL NAME AND
15 ADDRESS?

16 A YES. IT'S CHARLES ROBERT HONTS. H-O-N-T-S. I
17 LIVE AT 3105 SWEETWATER DRIVE IN BOISE, IDAHO.

18 Q BY WHOM ARE YOU EMPLOYED?

19 A BOISE STATE UNIVERSITY.

20 Q AND IN WHAT CAPACITY ARE YOU EMPLOYED AT BOISE
21 STATE UNIVERSITY?

22 A I'M PROFESSOR OF PSYCHOLOGY AT BOISE STATE
23 UNIVERSITY.

24 Q ALL RIGHT. DR. HONTS, WHAT IS YOUR ACADEMIC
25 TRAINING?

1 A I HAVE A BACHELOR OF SCIENCE IN PSYCHOLOGY FROM
2 VIRGINIA TECH AND A MASTER OF SCIENCE ALSO IN
3 PSYCHOLOGY FROM VIRGINIA TECH AND THEN I WENT TO THE
4 UNIVERSITY OF UTAH AND DID MY DOCTRINAL WORK AT
5 UNIVERSITY OF UTAH AND FINISHED THERE IN 1986.

6 Q YOU'VE BEEN ON BOTH SIDES OF THE COUNTRY. WHERE
7 ARE YOU ORIGINALLY FROM?

8 A I'M ORIGINALLY FROM SOUTHWEST VIRGINIA. I GREW
9 UP IN A SMALL TOWN CALLED EAGLE ROCK.

10 Q WHAT KIND OF TRAINING HAVE YOU HAD IN YOUR FIELD
11 IN ADDITION TO YOUR FORMAL ACADEMIC TRAINING?

12 A WELL, I'VE HAD TRAINING IN SEVERAL RELATED
13 AREAS, ONE AREA THAT I'VE HAD TRAINING IN IS IN
14 POLYGRAPH TESTING AND WAS ORIGINALLY TRAINED AS A
15 POLYGRAPH EXAMINER IN 1976 AND WORKED AS A PRACTICING
16 POLYGRAPH EXAMINER FOR ABOUT FIVE YEARS BEFORE I WENT
17 BACK TO GRADUATE SCHOOL. I'VE ALSO RECEIVED TRAINING
18 IN INTERVIEWING CHILDREN AND ASSESSING CREDIBILITY OF
19 CHILDREN.

20 Q WHAT POSITIONS IF ANY HAVE YOU HELD IN INDUSTRY
21 AND OTHER UNIVERSITIES?

22 A WELL, I DID WORK AS A POLYGRAPH EXAMINER FOR
23 SEVERAL DIFFERENT EMPLOYERS DURING THAT FIVE YEAR
24 PERIOD AND DID INVESTIGATIONS AND RAN TESTS
25 PARTICULARLY IN THE OIL INDUSTRY. IN 1980 I WENT

1 BACK TO GRADUATE SCHOOL AND HAVE HELD ONE SORT OF
2 ACADEMIC POSITION OR ANOTHER SINCE THEN.

3 I WORKED AS GRADUATE OF RESEARCH AND
4 TEACHING ASSISTANT AS A GRADUATE STUDENT AND THEN WAS
5 A POST DOC AT THE UNIVERSITY OF UTAH FOR TWO YEARS
6 WORKING ON MONEY PROVIDED BY THE U.S. DEPARTMENT OF
7 JUSTICE. FOLLOWING THAT, THAT WOULD HAVE BEEN 1998
8 THROUGH 1990, I WORKED FOR THE U.S. GOVERNMENT AT THE
9 DEPARTMENT OF DEFENSE POLYGRAPH INSTITUTE WHICH IS
10 THE FEDERAL TRAINING CENTER FOR POLYGRAPH EXAMINERS.
11 WE TRAIN ALL THE U.S. FEDERAL POLYGRAPH EXAMINERS FOR
12 MILITARY THE SERVICES, THE FBI, THE SECRET SERVICE,
13 CUSTOMS, TREASURY. I WAS A RESEARCH TEAM LEADER AND
14 ALSO I GAVE INSTRUCTION AT THE COURSES BOTH BASIC AND
15 ADVANCED WHILE I WORKED THERE.

16 1990 I WENT TO THE UNIVERSITY OF NORTH
17 DAKOTA, WAS THERE FOR FIVE YEARS, AND WENT THROUGH
18 THE RANKS UP TO ASSOCIATE PROFESSOR THERE AND BECAME
19 TENURED AND WAS A FULL MEMBER OF THE GRADUATE
20 FACULTY, AND THEN IN 1995 I TOOK A POSITION AT BOISE
21 STATE UNIVERSITY AND WAS PROMOTED I BELIEVE THE NEXT
22 YEAR TO FULL PROFESSOR AND HAVE BEEN THERE SINCE.

23 Q WHAT PROFESSIONAL ASSOCIATIONS AND OTHER
24 ORGANIZATIONS HAVE YOU BEEN INVOLVED IN DURING THE
25 COURSE OF YOUR CAREER?

1 A I'VE BEEN INVOLVED IN A NUMBER. MY PRIMARY
2 AFFILIATION IS WITH THE AMERICAN PSYCHOLOGY LAW
3 SOCIETY WHICH IS A PROFESSIONAL ORGANIZATION OF
4 PSYCHOLOGISTS AND LAWYERS WHO ARE INTERESTED IN HOW
5 PSYCHOLOGY AND LAW CAN WORK TOGETHER TO DO REALLY
6 WHAT WE'RE DOING TODAY AND IN OTHER SETTINGS.

7 I'M ALSO A MEMBER OF THE AMERICAN
8 PSYCHOLOGICAL SOCIETY WHICH IS A LARGE SOCIETY OF
9 PSYCHOLOGICAL SCIENTISTS PRIMARILY THOSE PEOPLE WHO
10 DO RESEARCH AND WORK IN ACADEMIC SETTINGS AND OTHER
11 RESEARCH RELATED SETTINGS AND I'M ALSO A MEMBER OF
12 THE AMERICAN PSYCHOLOGICAL ASSOCIATION WHICH IS AN
13 EVEN LARGER ASSOCIATION WHICH ALSO INCLUDES ALL THE
14 CLINICAL PSYCHOLOGISTS.

15 Q DOCTOR, HAVE YOU REVIEWED ANY JOURNALS IN THE
16 AREA OF YOUR EXPERTISE OR DONE ANY EDITING OF THOSE
17 JOURNALS?

18 A I'VE DONE BOTH. I REVIEW QUITE A BIT. ACTUALLY
19 THIS YEAR I'VE BEEN REVIEWING RATHER EXTENSIVELY,
20 IT'S BEEN TAKING UP A LOT OF TIME, BUT I HAVE
21 REVIEWED FOR THE PREMIER JOURNALS IN PSYCHOLOGY; THE
22 PSYCHOLOGY BULLETIN, THE JOURNAL OF APPLIED
23 PSYCHOLOGY, JOURNAL OF PERSONALITY AND SOCIAL PSYCH,
24 APPLIED COGNITION JOURNAL OF EXPERIMENTAL PSYCHOLOGY
25 GENERAL AND APPLIED, SO IT'S SOMETHING I DO A LOT. I

1 ALSO REVIEWED GRANTS FOR THE NATIONAL SCIENCE
2 FOUNDATION AND FOR THE U.S. DEPARTMENT OF DEFENSE AND
3 FOR SCIENCE CANADA WHICH IS THE CANADIAN EQUIVALENT
4 OF OUR NATIONAL SCIENCE FOUNDATION.

5 I SERVED AS AN, ON THE EDITORIAL STAFF OF
6 THE JOURNAL POLYGRAPH WHICH IS THE JOURNAL OF THE
7 AMERICAN POLYGRAPH ASSOCIATION AND I EDIT A JOURNAL,
8 AN ON-LINE JOURNAL, THAT IS PUBLISHED ON THE WORLD
9 WIDE WEB CALLED THE JOURNAL OF CREDIBILITY ASSESSMENT
10 AND WITNESS PSYCHOLOGY.

11 Q HAVE YOU BEEN CONSULTANT TO ANY AGENCIES OR
12 OTHER SIMILAR INSTITUTIONS?

13 A I HAVE. OVER THE YEARS I'VE CONSULTED WITH
14 NUMEROUS POLICE DEPARTMENTS, FEDERAL AGENCIES,
15 FOREIGN GOVERNMENTS. I'VE CONSULTED WITH THE U.S.
16 AIR FORCE OFFICE OF SPECIAL INVESTIGATIONS. I'VE
17 DONE WORK WITH THE FBI, THE INSPECTOR GENERALS OF
18 SEVERAL STATES, SO DONE A VARIETY OF THAT WORK.

19 Q NOW DID ANY OF THIS CONSULTING WITH THESE
20 GOVERNMENT AGENCIES INVOLVE ANY TYPE OF TRAINING ON
21 YOUR, THAT YOU RENDERED?

22 A YES, IT HAS.

23 Q AND WHAT WOULD THAT BE?

24 A I'VE DONE INVITED SEMINARS FOR THE U.S. SECRET
25 SERVICE, FOR THE FEDERAL BUREAU OF INVESTIGATIONS,

1 CENTRAL INTELLIGENCE AGENCY, NUMEROUS STATES, NORTH
2 DAKOTA, NEW MEXICO, CANADA. I'VE DONE QUITE A BIT OF
3 WORK WITH THE ROYAL CANADIAN MOUNTED POLICE. I'VE
4 TWICE BEEN INVITED TO FOREIGN COUNTRIES OTHER THAN
5 CANADA. I'VE BEEN TO NORWAY AND SWEDEN AND PUT ON
6 SEMINARS THERE FOR LAW ENFORCEMENT AND SOCIAL WORKERS
7 AND PSYCHOLOGISTS.

8 Q AND THE SUBJECT OF THIS TRAINING THAT YOU
9 RENDERED WHAT WOULD THAT BE?

10 A MOST OF THAT IS ON POLYGRAPH. ALTHOUGH I HAVE
11 ALSO SPOKEN ON CHILD WITNESSES.

12 Q WHEN YOU ARE TRAINING THESE POTENTIAL POLYGRAPH
13 EXAMINERS DO YOU TRAIN THEM IN THE SAME METHOD THAT
14 WAS USED TO ADMINISTER POLYGRAPH TO THE DEFENDANT
15 BILL WAYNE COPE?

16 A YES, I DO.

17 Q HOW ABOUT RESEARCH PUBLICATION, ARTICLES, BOOKS,
18 AND THAT SORT OF THING. HAVE YOU DONE ANY
19 PUBLISHING?

20 A YES, I HAVE.

21 Q IS IT FAIRLY EXTENSIVE?

22 A IT IS.

23 Q AND WOULD IT BE SET FORTH IN YOUR CURRICULUM
24 VITAE WHICH WE'LL GET TO IN A MOMENT?

25 A IT IS. IF YOU COUNT ALL BOOK CHAPTERS AND

1 REPORTS AND PEER REVIEW PUBLICATIONS THERE ARE OVER A
2 HUNDRED.

3 Q AND HAVE YOU DELIVERED ANY PAPERS AT SCIENTIFIC
4 MEETINGS OF EXPERTS IN YOUR FIELD OR IN THE FIELD OF
5 POLYGRAPH?

6 A YES, I HAVE, MANY.

7 Q CAN YOU GIVE US A ROUGH IDEA ABOUT HOW MANY?

8 A IT'S WELL OVER A HUNDRED. PROBABLY 120 NOW.

9 Q HOW MANY RESEARCH GRANTS HAVE YOU BEEN AWARDED
10 TO DO RESEARCH IN THE AREA OF POLYGRAPH?

11 A IN THE AREA OF POLYGRAPH ABOUT 15.

12 Q AND THEY'VE ALL DEALT WITH POLYGRAPH
13 EXAMINATION?

14 A THAT'S CORRECT, ONE ASPECT OF POLYGRAPH
15 EXAMINATION OR ANOTHER. THE POST DOCTRINAL POSITION
16 I HAD WAS TO WORK ON DEVELOPING COMPUTER ALGORITHMS
17 TO SCORE POLYGRAPH CHARTS AND SINCE THEN I HAVE
18 RECEIVED FUNDING TO DO A FIELD STUDY ON THE VALIDITY
19 OF POLYGRAPH WITH THE ROYAL CANADIAN MOUNTED POLICE
20 WHICH CAME THROUGH SCIENCE CANADA, AND I'VE DONE WORK
21 FUNDED THROUGH THE CIA ON AUTOMATING THE POLYGRAPH
22 TEST ITSELF AND THROUGH THE DEPARTMENT OF DEFENSE ON
23 VARIOUS ASPECTS OF THE TEST THAT HAVE TO DO WITH
24 SOMETHING CALLED OUTSIDE ISSUES.

25 Q CONCERNING TEACHING EXPERIENCE AS A PROFESSOR

1 AND SO FORTH, COULD YOU TELL US ABOUT YOUR TEACHING
2 EXPERIENCE AND THE USE OF STATISTICS AND RESEARCH
3 METHODS?

4 A WELL, I'VE DONE EXTENSIVE TEACHING. I'M TRAINED
5 AS A SCIENTIST. WHEN WE SAY PSYCHOLOGIST THERE ARE
6 REALLY TWO KINDS OF PSYCHOLOGISTS. THERE ARE THE
7 PSYCHOLOGISTS THAT DO THERAPY AND SEE PATIENTS, THEN
8 THERE IS ALSO A LARGE GROUP OF PSYCHOLOGISTS WHO ARE
9 SCIENTISTS AND TRAINED TO DO SCIENTIFIC RESEARCH. I
10 AM THE LATTER SO I'M TRAINED TO DO SCIENTIFIC
11 RESEARCH. I HAD HEAVY TRAINING IN STATISTICAL
12 METHODS AND RESEARCH DESIGN ISSUES AND I'VE TAUGHT
13 THAT FOR CLOSE TO 20 YEARS NOW INCLUDING GIVING
14 COURSES IN RESEARCH METHODS AND STATISTICS AT THE
15 GRADUATE LEVEL FOR DOCTRINAL CANDIDATES.

16 Q WHAT IS PSYCHOPHYSIOLOGY, DOCTOR?

17 A PSYCHOPHYSIOLOGY IS A SUB DISCIPLINE OF
18 PSYCHOLOGY THAT INVOLVES STUDYING HOW THE MIND AND
19 BODY INTERACT. THERE ARE A NUMBER OF THINGS THAT ARE
20 STUDIED UNDER THE HEADING OF PSYCHOPHYSIOLOGY. THERE
21 ARE ABOUT A THOUSAND MEMBERS TO THAT SOCIETY NOW AS I
22 RECALL WORLD WIDE. AND EVERYBODY EXPERIENCES THAT.
23 WHEN YOU EXPERIENCE SOMETHING THAT CAUSES YOU TO BE
24 NERVOUS OR AFRAID YOU KNOW YOUR BODY FEELS DIFFERENT
25 AND PSYCHOPHYSIOLOGISTS STUDY HOW THOSE THINGS RELATE

1 TO EACH OTHER, SO WE STUDY THINGS LIKE STRESS,
2 BIOFEEDBACK. ABNORMAL PSYCHOLOGY, HOW THAT CHANGES
3 YOUR PSYCHOLOGY. HOW STRESS AND THE EFFECTS ON YOUR
4 BODY CHANGE YOUR HEALTH AND THEN ONE OF THE AREAS
5 THAT IS STUDIED UNDER PSYCHOPHYSIOLOGY IS IN FACT
6 POLYGRAPH BECAUSE WE'RE USING PSYCHOPHYSIOLOGICAL
7 MEASURES TO MAKE INFERENCES ABOUT WHETHER A PERSON IS
8 TELLING THE TRUTH OR NOT.

9 Q WHAT IS YOUR PARTICULAR SPECIALTY, DOCTOR?

10 A AS A GRADUATE STUDENT I WAS TRAINED IN
11 PSYCHOPHYSIOLOGY AND THAT WAS WHERE MY PRIMARY
12 GRADUATE TRAINING CAME. SINCE GETTING MY DEGREE I'VE
13 DRIFTED A LITTLE BIT FROM THAT AND REALLY MORE
14 IDENTIFY MYSELF MORE WITH PSYCHOLOGY AND LAW SOCIETY,
15 SO I DON'T GO TO THE PSYCHOPHYSIOLOGY MEETINGS
16 ANYMORE. I GO TO THE PSYCHOLOGY AND LAW MEETINGS.
17 ALTHOUGH I STILL DO A LOT OF PSYCHOPHYSIOLOGY BECAUSE
18 I'M STILL INVOLVED IN DOING RESEARCH ON POLYGRAPH AND
19 THINGS RELATED TO POLYGRAPH.

20 Q AND IN ADDITION TO BEING TRAINED IN
21 PSYCHOPHYSIOLOGY AND SPECIALIZING IN THAT DO YOU
22 TEACH IN THAT AS WELL?

23 A I DO, YES.

24 Q DO YOU CONDUCT WORK SHOPS ON THAT SUBJECT?

25 A I CERTAINLY HAVE. FOR MANY, MANY YEARS WE

1 CONDUCTED AN ANNUAL WORK SHOP AT THE UNIVERSITY OF
2 UTAH, I WENT BACK EVEN AFTER I LEFT THERE AND
3 INSTRUCTED IN THAT, THAT ENDED IN THE EARLY 1990'S
4 WHEN MY MENTOR RETIRED, SO THERE IS NO LONGER A
5 POLYGRAPH LAB AT THE UNIVERSITY OF UTAH IN THE PSYCH
6 DEPARTMENT, BUT I CONTINUE TO GET INVITED TO DO THAT.
7 I DID ONE AT THE INVITATION OF THE STATE OF NEW
8 MEXICO A COUPLE YEARS AGO.

9 Q DOCTOR, HAVE YOU EVER GIVEN ANY COURSES OR
10 LECTURES TO LAW ENFORCEMENT AGENCIES OR TRAINING
11 POLICE OFFICERS?

12 A I HAVE, YES.

13 Q AND HAS THAT BEEN RELATIVE TO THE POLYGRAPH?

14 A OH, YES, ABSOLUTELY.

15 Q HOW OFTEN HAVE YOU DONE THAT IF YOU KNOW?

16 A OH, OVER THE YEARS QUITE A FEW TIMES. I USED TO
17 GO EVERY YEAR AND TEACH FOR THE ROYAL CANADIAN
18 MOUNTED POLICE. I WAS THEIR PRIMARY INSTRUCTOR FOR
19 THE SCIENCE OF POLYGRAPH AND ALSO HOW TO DO SCORING
20 OF POLYGRAPH CHARTS. AND THEN AT INVITATION OF OTHER
21 AGENCIES SO I'VE LECTURED AT THE FBI ACADEMY AND AT
22 THE INVITATION OF THE SECRET SERVICE AND THE CIA.

23 Q HAVE YOU EVER DONE ANY POLYGRAPH WORK FOR ANY
24 COURTS OR PROSECUTORS OR LAW ENFORCEMENT AGENCIES OF
25 ANY TYPE?

1 A I HAVE ALTHOUGH NOT FREQUENTLY. MOST OF THE
2 TIME I GET CALLS FROM DEFENSE ATTORNEYS ALTHOUGH
3 THERE ARE NOW SEVERAL JUDGES IN THE STATE OF IDAHO
4 THAT HAVE ASKED ME TO RUN TESTS WHERE ALL THE PARTIES
5 HAVE AGREED AND I'VE DONE THAT AND REPORTED DIRECTLY
6 TO THE COURT. AND IN YEARS PAST, THIS DOES NOT
7 HAPPENED RECENTLY, BUT IN YEARS PAST I ALSO HAVE DONE
8 WORK FOR LAW ENFORCEMENT AGENCIES THAT DIDN'T HAVE
9 THEIR OWN POLYGRAPH EXAMINERS. THAT NOW IS BECOMING
10 MUCH LESS COMMON BECAUSE MOST OF THEM HAVE THEIR OWN
11 POLYGRAPH EXAMINERS.

12 Q HAVE YOU EVER TESTIFIED IN COURT, DOCTOR?

13 A I HAVE.

14 Q ABOUT HOW MANY TIMES HAVE YOU BEEN QUALIFIED AS
15 AN EXPERT AND TESTIFIED IN COURT?

16 A I BELIEVE IT'S IN THE 60S NOW. THEY ARE ALL
17 REFLECTED ON MY VITAE.

18 Q AND THIS IS BOTH IN STATE AND IN FEDERAL COURTS?

19 A THAT'S CORRECT.

20 Q ALL RIGHT. AND HAVE YOU YOURSELF BEEN TRAINED
21 AS A POLYGRAPH EXAMINER?

22 A I HAVE, YES.

23 Q ALL RIGHT. AND ARE YOU LICENSED AS A POLYGRAPH
24 EXAMINER?

25 A I'M PRESENTLY LICENSED IN TWO STATES. I'M

1 LICENSED IN THE STATE OF NEW MEXICO AND THE STATE OF
2 NORTH DAKOTA.

3 MR. BAITY: AT THIS TIME, YOUR HONOR, WE
4 WOULD OFFER DR. HONTS AS AN EXPERT IN PSYCHOLOGY
5 PARTICULARLY IN THE POLYGRAPH.

6 THE COURT: ANY VOIR DIRE.

7 MR. GREELEY: NO, YOUR HONOR. AT THIS
8 POINT I WOULD STATE AN OBJECTION TO THIS BASED UPON
9 RELEVANCY. YOUR HONOR, I WOULD ANTICIPATE THAT THE
10 DOCTOR HERE IS --

11 THE COURT: YOU WANT THE JURY TO GO OUT
12 WHILE WE DISCUSS THAT.

13 MR. GREELEY: THAT WILL BE FINE.

14 THE COURT: LET ME LET YOU GO TO THE JURY
15 ROOM SO I CAN.

16 (THE JURY EXITS THE COURTROOM AT 10:36
17 AM.)

18 THE COURT: YES, SIR.

19 MR. GREELEY: YOUR HONOR, I WOULD
20 ANTICIPATE THAT THIS WITNESS HAS BEEN CALLED ON
21 BEHALF OF MR. COPE TO TESTIFY AND TO POTENTIALLY
22 ATTACK THE RESULTS OF POLYGRAPH THAT'S BEEN TESTIFIED
23 TO BY THE YORK COUNTY SHERIFF'S DEPARTMENT AS WELL AS
24 TO THE METHODOLOGY THAT MAY HAVE BEEN USED IN THIS
25 CASE. HOWEVER, THERE IS NOTHING IN THE RECORD AT

1 THIS POINT IN TIME THAT MAKES THE RESULTS OF THE
2 POLYGRAPH AT ISSUE, THAT MAKES IT SO THAT IT WAS IN
3 INCORRECT. THE ONLY PERSON WHO KNOWS KNOWSWHETHER OR
4 NOT THE RESULTS OF THAT POLYGRAPH SHOWING DECEPTION
5 WAS INCORRECT IS MR. COPE AND UNTIL MR. COPE TAKES
6 THE STAND AND TESTIFIES THAT THAT WAS AN INCORRECT
7 POLYGRAPH AND THAT IT WAS NOT TRUE, THE RESULTS THAT
8 THEY FOUND ONLY THEN DOES THE ISSUE OF THE RESULTS OF
9 THE POLYGRAPH AND THE METHODOLOGY BECOME AN ISSUE IN
10 THIS COURT, SO AT THIS POINT IN TIME THIS GENTLEMAN'S
11 TESTIMONY IS NOT RELEVANT.

12 THE COURT: MR. BRACKETT.

13 MR. BRACKETT: YOUR HONOR, ALSO THE
14 POLYGRAPH WASN'T ADMITTED FOR THE SUBSTANTIVE TRUTH
15 OF WHAT THE POLYGRAPH RESULTS WERE. AS A MATTER OF
16 FACT WE SPECIFICALLY TOLD THE JURY THAT THEY COULD
17 NOT FIND, THAT THEY COULD NOT USE THE RESULTS OF THE
18 POLYGRAPH AS SUBSTANTIVE EVIDENCE OF HIS GUILT. IF
19 THEY WANT TO ATTACK THE POLYGRAPH RESULTS AND SAY
20 THEY ARE FALSE THEN THEY ARE PUTTING THAT ISSUE INTO
21 PLAY AND THEN THIS BECOMES A SUBSTANTIVE ISSUE THAT
22 THE JURY IS GOING TO HAVE TO --

23 THE COURT: MR. BAITY, WHAT IS THE
24 RELEVANCY AND WHAT IS THE ISSUE THAT THIS --

25 MR. BAITY: WELL, YOUR HONOR, CERTAINLY

1 THE RESULTS HAVE BEEN PUT IN EVIDENCE AND HAVE BEEN
2 TESTIFIED TO THAT NOT ONLY THE POLYGRAPH WAS GIVEN TO
3 MR. COPE BUT THAT THERE WAS AN INDICATION OF
4 DECEPTION. WE CERTAINLY THINK THAT WE CAN GO INTO
5 THAT ON THIS AND CERTAINLY WE THINK THAT IS RELEVANT
6 TO OUR CASE AND TO THIS CASE THAT HE WAS IN FACT
7 GIVEN A POLYGRAPH AND HE WAS IN FACT INFORMED THAT HE
8 HAD FAILED THE TEST AND THE EFFECT THAT THAT HAD ON
9 HIM IN HIS SUBSEQUENT CONFESSIONS AND STATEMENTS.

10 THE COURT: BUT THAT'S NOT WHAT THIS MAN
11 IS TESTIFYING TO. HE'S TESTIFYING TO THE TEST AND
12 THE ONLY EVIDENCE IN THE RECORD IS HE TOOK THE TEST
13 AND HE WAS TOLD HE FAILED.

14 MR. BAITY: YES, SIR. AND THIS MAN IS
15 GOING TO TESTIFY THAT, THAT IN HIS BELIEF THAT WHAT
16 HE WAS TOLD WAS INCORRECT AND WAS IN FACT NOT
17 REFLECTED IN THE STATE'S OWN EXHIBITS, IN THE CHARTS
18 THAT WERE PRODUCED, AND WE BELIEVE THAT THAT'S A VERY
19 RELEVANT ISSUE IN THIS CASE AND GOES TO THE HEART OF
20 MR. COPE'S SUBSEQUENT ACTIONS WITH REGARD TO THE
21 CONFESSIONS THAT HAVE BEEN PLACED IN EVIDENCE IN THIS
22 CASE.

23 MR. BRACKETT: WE PRODUCED NO CHARTS.
24 THEY ARE NOT IN EVIDENCE. WE DID NOT ATTEMPT TO
25 BUTTRESS THE VALIDITY OF IT TO SAY THAT IT'S TRUE HE

1 FAILED AND THEREFOR HE'S GUILTY. WE NEVER DID THAT.
2 WE SIMPLY DID THAT BECAUSE THEY WERE ATTACKING THE
3 VOLUNTARINESS AND AS YOUR HONOR WELL KNOWS, BUT THERE
4 ARE NO CHARTS IN EVIDENCE. WE DIDN'T --

5 MR. BAITY: YOUR HONOR, I'VE BEEN TOLD
6 THAT THEY ARE GOING TO STIPULATE TO THE CHARTS AND WE
7 ALSO MET IN CHAMBERS BEFORE THIS TRIAL STARTED AND
8 YOU INDICATED YOU WERE GOING TO LET THE RESULTS IN
9 AND THAT ESSENTIALLY THAT WAS GOING TO BE PART OF THE
10 DECISION TO LET IN THE FALSE CONFESSION EXPERT UPON
11 THESE RESULTS HE HAS RELIED AND WE JUST CERTAINLY
12 THINK THAT THIS MAN OUGHT TO BE ABLE TO TESTIFY AS TO
13 HIS OPINION AS TO WHAT WAS STATED BY MR. BAKER. HE
14 JUST HAS AN OPPORTUNITY TO --

15 THE COURT: BUT I STILL DON'T SEE THE
16 RELEVANCE AS TO THE UNDERLYING -- HE WAS TOLD
17 SOMETHING AND THE QUESTION IS DID HE RELY ON THAT OR
18 DID HE NOT RELY ON THAT OR WAS THAT PART OF THE
19 EQUATION. WHETHER IT WAS TRUE OR NOT DOESN'T REALLY
20 MATTER.

21 MR. BAITY: WELL, YES IT DOES, YOUR HONOR,
22 IT DOES MATTER, AND IT MATTERS IN THAT WE BELIEVE
23 THAT THE MOTIVE THAT THE POLICE HAD IN MAKING THOSE
24 STATEMENTS AND WE BELIEVE, WE BELIEVE THAT'S IN
25 QUESTION. WE ALSO BELIEVE THAT IF MR. COPE HAD BEEN

1 TOLD SOMETHING OTHERWISE, SOMETHING THAT IS MORE
2 ACCURATELY REFLECTED IN THE TEST ITSELF THAT HIS
3 ACTIONS, WE CERTAINLY ARGUE, WOULD HAVE BEEN
4 DIFFERENT, AND WE THINK THAT IS VERY RELEVANT IF THE
5 INFORMATION THAT WAS PROVIDED TO HIM WAS INCORRECT.
6 WE BELIEVE THAT'S EXTREMELY RELEVANT IN HIS THOUGHT
7 PROCESS AND IN HIS DECISION TO MAKE THESE
8 CONFESSIONS. WE'RE GOING TO GIVE TESTIMONY IN THIS
9 CASE ABOUT HOW HE RELIED, I BELIEVE THERE IS
10 TESTIMONY ALREADY IN THIS CASE WHERE MR. COPE
11 REPEATEDLY REQUESTED THAT HE BE GIVEN A POLYGRAPH AND
12 THAT HE WOULD RELY ON THAT POLYGRAPH AND HE BELIEVED
13 IN THAT POLYGRAPH, AND WE HEARD THE THREE AND A HALF
14 HOUR TAPE, HE REQUESTED POLYGRAPH A DOZEN TIMES. AND
15 MR. BAKER SAID THAT HE FREELY AND VOLUNTARILY
16 SUBMITTED TO IT AND THEN HE WAS TOLD THAT HE HAD
17 FAILED THE POLYGRAPH EXAMINATION. WE'RE JUST SIMPLY
18 HERE TO LET THE JURY KNOW THAT THE INFORMATION THAT
19 HE WAS PROVIDED, THAT HE WAS RELYING ON, THAT HE
20 BELIEVED IN, WAS INCORRECT INFORMATION. WE BELIEVE
21 THAT'S VERY RELEVANT.

22 THE COURT: WAIT JUST A MINUTE. LET ME
23 BACK UP. MR. BRACKETT, HOW ABOUT HIS QUALIFICATIONS.
24 DO YOU OBJECT TO HIS QUALIFICATIONS OR JUST
25 RELEVANCY?

1 MR. BRACKETT: RELEVANCY AS FAR AS THIS
2 CASE. HIS QUALIFICATIONS, HE SOUNDS EMINENTLY
3 QUALIFIED.

4 THE COURT: ALL RIGHT. HOW ABOUT YOU?

5 MR. GREELEY: I WOULD, I BELIEVE THE COURT
6 WOULD FIND HIM QUALIFIED. YOUR HONOR, IF I MAY ALSO
7 ADD IN REGARDS TO THE RELEVANCY. MR. BAITY HAS BEEN
8 TALKING ABOUT HIS CLIENT RELIANCE'S UPON THIS
9 POLYGRAPH AND HOW THIS IS GOING TO FIT INTO HIS
10 RELIANCE AND MISCONCEPTION, THERE HAS BEEN NO
11 EVIDENCE IN THIS RECORD THAT HIS CLIENT RELIED ON
12 ANYTHING AND UNTIL EVIDENCE IS IN THE RECORD THAT HE
13 RELIED ON THIS, THEN THIS IS NOT RELEVANT, NONE OF
14 THIS IS RELEVANT, AND THE ONLY PERSON WHO CAN TESTIFY
15 TO THAT IS THIS GENTLEMAN SEATED HERE.

16 THE COURT: I OVERRULE THE OBJECTION. I'M
17 GOING TO ALLOW THE TESTIMONY IN. I FIND HE IS
18 QUALIFIED. I'LL MAKE A FINDING OF QUALIFICATION
19 BEFORE THE JURY. ALL RIGHT. BRING IN THE JURY.

20 I FIND IT MAYBE RELEVANT. I FIND AT THIS
21 POINT THERE IS SOME TYING UP TO DO, BUT THERE IS
22 ALWAYS A CART BEFORE THE HORSE SORT OF WHEN DO YOU
23 BRING IN WHAT, WHAT GOES FIRST AND WHAT GOES SECOND,
24 SO BASED ON REPRESENTATION OF COUNSEL THAT IT WILL BE
25 TIED UP TO SOME FACT THAT IS DEFINITELY AT ISSUE. I

1 AM FINDING BASED ON THAT IT IS RELEVANT.

2 MR. BAITY: IT WILL BE TIED UP, YOUR
3 HONOR, COMPLETELY AND MOST CERTAINLY TO YOUR
4 SATISFACTION.

5 THE COURT: WELL --

6 MR. BAITY: I CERTAINLY HOPE SO.

7 (THE JURY RETURNS TO THE COURTROOM.)

8 THE COURT: ON BEHALF OF MR. COPE,
9 MR. BAITY HAS OFFERED MR. HONTS AS AN EXPERT WITNESS
10 IN PSYCHOLOGY WITH A SPECIALITY IN POLYGRAPH AND I
11 FIND HE IS QUALIFIED.

12 MR. BAITY: THANK YOU, YOUR HONOR.

13 DIRECT EXAMINATION CONTINUED BY MR. BAITY:

14 Q DR. HONTS, I'M GOING TO -- MAY I APPROACH THE
15 WITNESS, YOUR HONOR.

16 THE COURT: CERTAINLY.

17 Q I'M GOING TO ASK YOU TO IDENTIFY THIS DOCUMENT.

18 A YES, THIS IS A COPY OF MY CURRICULUM VITAE THAT
19 WAS PREPARED ON THE THIRD OF DECEMBER 2004.

20 MR. GREELEY: YOUR HONOR, THE VITAE IS 38
21 PAGES LONG, THIS IS THE FIRST TIME I'VE SEEN IT, SO.

22 THE COURT: GO AHEAD AND YOU GOING TO
23 OFFER THAT IN EVIDENCE.

24 MR. BAITY: I WOULD.

25 THE COURT: LET'S LEAVE THAT PENDING IF WE

1 CAN. I DON'T WANT MR. GREELEY TO BE READING THAT AND
2 LISTENING TO THE EXAMINATION AT THE SAME TIME BUT.

3 MR. BAITY: WE'LL TAKE IT UP.

4 THE COURT: MR. BRACKETT HAS A COPY TO
5 REVIEW?

6 MR. BAITY: YES, SIR.

7 THE COURT: ALL RIGHT. WE'LL LEAVE THAT.
8 I HATE TO LEAVE THINGS PENDING BUT GO AHEAD.

9 MR. BAITY: UNDERSTOOD. THANK YOU, YOUR
10 HONOR.

11 DIRECT EXAMINATION BY MR. BAITY:

12 Q DR. HONTS, DID YOU EXPLAIN THE BASIC POLYGRAPH
13 TECHNICS AND WHAT POLYGRAPHS ARE ALL ABOUT?

14 A YES. AND THE VERY BASIC IDEA OF THE POLYGRAPH
15 IS THAT ONE PERSON TELLS A LIE, PHYSIOLOGICAL
16 RESPONSES OCCUR, AND THAT MAYBE FOR A VARIETY OF
17 REASONS FOR A VARIETY OF DIFFERENT PEOPLE. I THINK
18 THAT DIFFERENT PEOPLE RESPOND FOR DIFFERENT REASONS.
19 IT'S HARDER TO LIE THAN IT IS TO TELL THE TRUTH
20 BECAUSE IF YOU ARE GOING TO LIE YOU HAVE TO IN YOUR
21 MIND FORM THAT LIE AND SEPARATE IT FROM THE TRUTH AND
22 KEEP THOSE TWO THINGS GOING, SO THERE IS A CERTAIN
23 AMOUNT OF MENTAL WORK THAT GOES ON, AND THAT BY
24 ITSELF CAN CAUSE YOU TO HAVE PHYSIOLOGICAL RESPONSES.
25 SOME PEOPLE FEEL GUILTY WHEN THEY LIE. THAT CAN

1 CAUSE YOU TO HAVE PHYSIOLOGICAL RESPONSES AND MANY, I
2 THINK MOST ARE, ESPECIALLY IN SOMETHING LIKE A
3 POLYGRAPH TEST PARTICULARLY ONE BEING ADMINISTERED BY
4 A POLICE OFFICER, PEOPLE IF THEY ARE LYING OR AFRAID
5 THEY ARE GOING TO GET CAUGHT, AND SO THAT'S THE BASIC
6 PREMISE OF THE POLYGRAPH, THAT WHEN PEOPLE LIE, THEY
7 PRODUCE PHYSIOLOGICAL RESPONSES. THE PROBLEM THAT WE
8 HAVE WITH THE POLYGRAPH OR ONE PROBLEM THAT HAS BEEN
9 WORKED ON FOR A LONG TIME, POLYGRAPH'S ACTUALLY BEEN
10 AROUND FOR OVER A HUNDRED YEARS IN ONE FORM OR
11 ANOTHER, IS THAT IF, WE HAVE AN INNOCENT PERSON AND
12 WE ASK THEM, DID YOU DO IT, AND THEN WE ONLY ASK
13 OTHER TRUTHFUL QUESTIONS, SO IS YOUR NAME JOHN, IS
14 TODAY THURSDAY, ARE THERE LIGHTS ON IN THIS ROOM, YOU
15 DON'T HAVE TO BE A ROCKET SCIENTIST TO FIGURE OUT DID
16 YOU COMMIT THE MURDER, DID YOU STEAL THE MONEY FROM
17 THE SAFE, IS A MUCH MORE IMPORTANT QUESTION THAN IS
18 TODAY THURSDAY. AND SO THE VERY EARLY POLYGRAPH
19 TESTS, FIRST HALF OF THE 20TH CENTURY PRODUCED, WE
20 BELIEVE PRODUCED, A LOT OF WHAT ARE CALLED FALSE
21 POSITIVE ERRORS; THAT IS, A LOT OF INNOCENT PEOPLE
22 WHO TOOK THOSE TESTS FAILED THEM. ALMOST ALL THE
23 GUILTY PEOPLE ALSO FAILED THEM OR DECEPTIVE PEOPLE,
24 BUT A LOT OF THE TRUTHFUL PEOPLE WOULD HAVE ALSO
25 FAILED THEM AND SO ABOUT 1950 A MAN NAMED JOHN REED

1 CAME UP WITH AN IDEA FOR SOMETHING CALLED A
2 COMPARISON QUESTION AND WHAT A COMPARISON QUESTION
3 DOES IS IT'S PRESENTED TO THE PERSON TAKING THE TEST
4 AS AN IMPORTANT QUESTION BUT IT'S A QUESTION THAT WE
5 ASSUME THAT THE PERSON IS LYING TO, SO IT WOULD BE
6 SOMETHING LIKE, IF YOU TOOK THE MONEY FROM THE SAFE,
7 WE KNOW THAT DIDN'T HAPPEN BY ACCIDENT, THE PERSON
8 WHO DID THAT HAD TO PLAN TO DO THAT, THEY HAD TO GO
9 IN AND OPEN THE SAFE AND TAKE THE MONEY AND HAVE AN
10 ALIBI FOR HOW TO GET AWAY WITH IT, AND THEY DIDN'T DO
11 THAT BY ACCIDENT. IT'S NOT LIKE THEY FOUND THE MONEY
12 LAYING ON THE GROUND ON THE STREET, AND THEY'VE DONE
13 OTHER BAD THINGS BEFORE. IF I WERE TO ASK YOU SAY,
14 HAVE YOU EVER TOLD A LIE TO SOMEBODY WHO TRUSTED YOU?
15 YOU HAVEN'T DONE THAT, HAVE YOU? YOU ARE NOT THAT
16 KIND OF PERSON, ARE YOU? AND IN THAT SITUATION THE
17 PERSON MANIPULATING AND PRODUCING ANOTHER ANSWER TO
18 THAT WHEN IN REALITY ALL OF US PROBABLY HAVE TOLD A
19 LIE TO SOMEBODY WE HAVE TRUSTED OR WE HAVE TAKEN
20 SOMETHING THAT DIDN'T BELONG TO US OR WE THOUGHT
21 ABOUT DOING THINGS THAT WOULD BE EMBARRASSING IF WE
22 HAD TO ADMIT IT, AND SO YOU PUT THE PERSON IN A BIND
23 AND THE THEORY OF THIS TEST WHICH IS CALLED THE
24 COMPARISON QUESTION TEST OR SOMETIMES CALLED THE
25 CONTROL QUESTION TEST IS THAT IF YOU COMMITTED THE

1 CRIME, SO IN THIS CASE WE HAVE A HEINOUS CRIME, A
2 MURDER, WE EXPECT THAT THE PERSON WHO COMMITTED THAT
3 MURDER IS GOING TO REMEMBER HAVING DONE IT, THEY MAY
4 FEEL GUILTY ABOUT IT, THEY ARE CERTAINLY GOING TO BE
5 CONCERNED ABOUT GETTING CAUGHT IN IT, BECAUSE THERE
6 ARE VERY SERIOUS PUNISHMENTS TO BE ASSOCIATED WITH
7 THAT, THEY ARE GOING TO HAVE TO REMEMBER THAT THEY
8 DID IT AND THEN KEEP THEIR LIE STRAIGHT AS THEY ARE
9 TELLING ABOUT IT, SO ALL OF THESE THINGS ARE GOING TO
10 GO ON IN THEIR MIND AND ON A POLYGRAPH THEN WHEN WE
11 ASK DID YOU DO IT, WE EXPECT TO SEE LARGE
12 PHYSIOLOGICAL RESPONSES.

13 ON THE OTHER HAND FOR THE PERSON WHO
14 DIDN'T DO IT, IF THEY'VE BEEN ACCUSED AND NOW BEING
15 GIVEN A POLYGRAPH, WE ALSO TELL THEM THESE OTHER
16 QUESTIONS ARE IMPORTANT BECAUSE THEY TELL US ABOUT
17 YOUR CHARACTER. YOU ARE NOT THE KIND OF PERSON WHO
18 WOULD HAVE COMMITTED A MURDER, AND WE EXPECT THE
19 INNOCENT PERSON TO RESPOND TO THE COMPARISON
20 QUESTIONS AND THAT PULLS THEIR ATTENTION AWAY FROM
21 THE RELEVANCE, AND SO WE LOOK FOR THIS DIFFERENCE.
22 WE NEED TO SEE RESPONSE TO SOMETHING, WE WANT TO SEE
23 RESPONSE TO EITHER THE RELEVANCE OR THE CONTROLS, AND
24 IF THE PERSON RESPONDS PRIMARILY TO RELEVANCE,
25 FURTHER DECEPTIVE. IF THEY RESPOND PRIMARILY TO THE

1 COMPARISON OR CONTROL QUESTION THEN WE INFER THAT
2 THEY ARE TRUTHFUL ABOUT THE RELEVANCE, SO WE LOOK FOR
3 THIS DIFFERENCE. AND THAT'S A STRENGTH OF THE TEST
4 IN THAT IT PROTECTS THE TEST AGAINST, LIKE DRUGS; YOU
5 CAN TAKE DRUGS THAT WILL ALTER YOUR PHYSIOLOGY BUT IT
6 ALTERS YOUR PHYSIOLOGY TO ALL THE QUESTIONS. SO WHAT
7 WE, IF WE DON'T GET A RESPONSE TO ANYTHING, THAT'S
8 CALLED AN INCONCLUSIVE TEST, WE CAN'T MAKE UP OUR
9 MINDS ABOUT A DECISION, AND IF YOU RESPOND TO
10 EVERYTHING, THEN IT'S ALSO INCONCLUSIVE. SO WE LOOK
11 FOR THAT DIFFERENCE IN REACTION AND THAT'S HOW THE
12 COMPARISON QUESTION TEST WORKS.

13 Q NOW WHEN YOU ARE MEASURING A SUBJECT'S REACTIONS
14 PHYSIOLOGICAL THINGS ARE CONSIDERED ABOUT THAT PERSON
15 ARE MEASURED?

16 A YES.

17 Q TESTED?

18 A A TYPICAL POLYGRAPH THAT'S IN USE TODAY MEASURES
19 THREE PHYSIOLOGICAL MEASURES. IT MEASURES BLOOD
20 PRESSURE FROM A CUFF ON THE UPPER ARM WHICH IS
21 EXACTLY THE SAME CUFF THAT YOUR PHYSICIAN USES. A
22 POLYGRAPH EXAMINER TAKES YOUR BLOOD PRESSURE IN A
23 LITTLE BIT DIFFERENT WAY BECAUSE WE'RE ASKING A
24 DIFFERENT QUESTION. YOUR PHYSICIAN WANTS TO KNOW
25 WHAT YOUR BLOOD PRESSURE IS RIGHT NOW SO IS IT 120

1 OVER 70 OR 140 OVER 90 OR WHATEVER. POLYGRAPH
2 EXAMINER ACTUALLY WANTS TO KNOW WHEN I ASK YOU THIS
3 QUESTION DOES YOUR BLOOD PRESSURE GO UP, DOWN, OR
4 STAY THE SAME, SO YOU PUT A LITTLE BIT OF PRESSURE IN
5 IT, USUALLY ABOUT 65 OR 70 MILLIMETERS OF PRESSURE
6 WITH THE NEWER INSTRUMENTS MAY BE JUST A LITTLE BIT
7 LESS BUT YOU LEAVE IT ON FOR THAT WHOLE PERIOD OF
8 TIME THAT YOU ARE ASKING QUESTIONS AND YOU GET A
9 CONTINUOUS RECORDING THAT SHOWS EACH BEAT OF THE
10 HEART SO YOU CAN LEARN SOME THINGS ABOUT HOW FAST A
11 PERSON'S HEART'S BEATING, BUT THE IMPORTANT THING IS
12 TO SEE WHETHER THE BLOOD PRESSURE ITSELF IS GOING UP
13 OR DOWN.

14 Q I'M SORRY. GO AHEAD.

15 A THE SECOND THING THAT WE MEASURE IS CALLED THE
16 GALVANIC SKIN RESPONSE OR IT IS SOMETIMES CALLED THE
17 ELECTRODERMAL RESPONSE, BUT SIMPLY IT IS HOW MUCH
18 YOUR HANDS ARE SWEATING; AND THERE ARE TWO SENSORS
19 THAT ARE PLACED USUALLY ON THE PALM SIDE OF TWO
20 FINGERS AND IT'S QUITE HONESTLY A GLORIFIED OHM-METER
21 AND IT WORKS JUST THE WAY AN OHM-METER DOES, IT RUNS
22 A LITTLE BIT OF CURRENT THROUGH THE HANDS AND
23 MEASURES HOW MUCH RESISTANCE YOUR HAND HAS TO THAT
24 CURRENT. AND IT, IT'S VERY SENSITIVE AND WHAT
25 HAPPENS IS THAT IF YOUR HANDS ARE VERY DRY YOUR

1 RESISTANCE IS HIGH BECAUSE DRY SKIN DOES NOT CONDUCT
2 ELECTRICITY VERY WELL. IF YOUR HANDS ARE SWEATING A
3 LOT YOUR RESISTANCE GOES DOWN. AND IT TURNS OUT WHEN
4 YOUR MIND IS ACTIVE AND WHEN YOU ARE FRIGHTENED OR
5 AND WHEN YOU LIE YOU PRODUCE SWEATING RESPONSES IN
6 YOUR HAND AND THESE OCCUR VERY QUICKLY AND THEY ARE
7 QUITE EASY TO MEASURE.

8 THE THIRD SYSTEM THAT IS MEASURED IS
9 BREATHING, IT'S RESPIRATION, AND USUALLY THERE ARE
10 TWO SENSORS. THERE IS ONE THAT IS PLACED AROUND THE
11 UPPER PART OF THE CHEST AND ANOTHER THAT IS PLACED
12 OVER THE ABDOMEN AND THEN CAPTURED. THERE ARE TWO
13 KINDS OF BREATHING, THERE IS BREATHING THROUGH THE
14 DIAPHRAGM WHICH IS PICKED UP MOSTLY BY THE ABDOMINAL
15 SENSOR, AND THEN THERE IS BREATHING WITH THE CHEST
16 MUSCLES AND THE RIB CAGE WHICH IS PICKED UP BY THE
17 UPPER SENSOR AND PEOPLE VARY A LOT ABOUT WETHER THEY
18 BREATH WITH ONE OR BOTH AT ANY PARTICULAR TIME AND
19 WHAT WE LOOK FOR, THERE ARE THINGS THAT DECREASE
20 BREATHING. WHEN, YOU, A PERSON TELLS A LIE AND THEY
21 GET UNDER STRESS YOU TEND TO TENSE UP AND WHEN YOU
22 TENSE UP YOU HAVE A PERIOD THAT THE BREATHING IS
23 SUPPRESSED AND THE MOST EXTREME CASE WOULD BE YOU
24 STOP BREATHING ALL TOGETHER. I HAVE SEEN CASES WHERE
25 PEOPLE WOULD JUST FORGET TO BREATH FOR 10-12 SECONDS.

1 THAT IS A LITTLE UNUSUAL. IT'S MORE FREQUENT THAT
2 YOU SEE THAT THE BREATHING CYCLE BECOMES MUCH SMALLER
3 INDICATING A SUPPRESSION AND TENSENESS.

4 Q DOCTOR, HAVE YOU CONDUCTED RESEARCH AND FIELD
5 STUDIES AND CLINICAL STUDIES IN CONNECTION WITH THOSE
6 PHYSIOLOGICAL PHENOMENA YOU JUST DESCRIBED?

7 A YES, I HAVE.

8 Q WHO FUNDED THOSE STUDIES?

9 A I'VE RECEIVED FUNDING FROM A NUMBER OF DIFFERENT
10 SOURCESS FROM THE U.S. DEPARTMENT OF JUSTICE, FROM
11 THE U.S. DEPARTMENT OF DEFENSE, FROM SCIENCE CANADA,
12 THE CENTRAL INTELLIGENCE AGENCY. WHEN I WAS AT THE
13 UNIVERSITY OF UTAH WE GOT SOME MONEY FROM THE U.S.
14 SECRET SERVICE.

15 Q ALL RIGHT. SWITCH GEARS, DOCTOR. CAN YOU TELL
16 ME WHAT IS MEANT BY A FALSE POSITIVE?

17 A THERE ARE FOUR POSSIBLE OUTCOMES IN A DIAGNOSTIC
18 TEST. A TRUE POSITIVE MEANS YOU HAVE WHAT YOU ARE
19 LOOKING FOR, SO THAT, IN THIS CASE, WOULD BE A
20 DECEPTIVE PERSON WHO FAILS THE TEST. A FALSE
21 POSITIVE WOULD MEAN THAT THE DIAGNOSTIC TEST SAYS YOU
22 HAVE IT BUT YOU DON'T, SO THAT WILL MEAN YOU HAVE A
23 TRUTHFUL PERSON WHO WE SAID FAILS.

24 THE OTHER TWO OUTCOMES ARE NEGATIVE AND A
25 NEGATIVE OUTCOME HERE WOULD MEAN THAT WE SAY YOU PASS

1 THE TEST AND IN FACT YOU WERE TRUTHFUL AND A FALSE
2 NEGATIVE WOULD MEAN THAT THE POLYGRAPH EXAMINER SAYS
3 YOU PASS THE TEST BUT YOU WERE IN FACT LYING.

4 Q DOCTOR, IS THERE A PARTICULAR TEST KNOWN AS THE
5 DIRECTED LIE CONTROL TEST?

6 A THERE IS. IT'S JUST A VARIANT OF THE COMPARISON
7 QUESTION TEST.

8 Q THAT YOU'VE ALREADY GONE INTO?

9 A YES, I HAVE.

10 Q ARE THERE CERTAIN TYPES OF PEOPLE THAT CAN BEAT
11 A POLYGRAPH?

12 A I DON'T BELIEVE SO. IN SCIENCE WE ALWAYS LOOK
13 FOR EXCEPTIONS AND SO WE WOULD HAVE TO FIND -- I
14 CAN'T SAY FOR CERTAIN THAT THERE ISN'T A PARTICULAR
15 KIND OF PERSON THAT CAN BEAT THE POLYGRAPH, BUT THE
16 EVIDENCE RIGHT NOW SUGGESTS THERE IS NOT. WE'VE DONE
17 EXTENSIVE RESEARCH. THERE ARE A NUMBER OF PUBLISHED
18 STUDIES NOW ON PSYCHOPATHS BECAUSE WE'VE BEEN VERY
19 CONCERNED ABOUT PSYCHOPATHS AND THE POLYGRAPH.

20 PSYCHOPATHS ARE PEOPLE INVOLVED IN CRIMINAL ACTIVITY,
21 THEY ARE PEOPLE WHO LIE ALL THE TIME, AND THE CONCERN
22 WAS THAT IF YOU ARE A HABITUAL LIAR THAT IT'S NOT
23 GOING TO HAVE THE PHYSIOLOGICAL RESPONSES ASSOCIATED
24 WITH IT AND BOTH LABORATORY AND FIELD WORK HAS SHOWN
25 US IN FACT PSYCHOPATHS ARE JUST AS DETECTABLE AS

1 ANYBODY ELSE AND ACTUALLY TO ME AS A PSYCHOLOGIST
2 THAT MAKES SENSE BECAUSE THE KIND OF PROBLEM A
3 PSYCHOPATH HAS TO DO WITH EMPATHY FOR THE VICTIM BUT
4 THEY DO UNDERSTAND WHAT THEY HAVE TO LOSE WHEN THEY
5 TAKE A POLYGRAPH AND SO THERE HAVE BEEN IN FACT A
6 NUMBER OF VERY FAMOUS PSYCHOPATHS WHO HAVE BEEN GIVEN
7 POLYGRAPHS AND FAILED.

8 Q LIKEWISE, CAN PEOPLE BE TRAINED TO BEAT A
9 POLYGRAPH?

10 A THAT IN FACT IS POSSIBLE. A GREAT DEAL OF MY
11 RESEARCH HAS BEEN FOCUSED ON THAT. I BEGAN WORKING
12 ON THAT PROBLEM IN 1981 IN SORT OF A DIFFERENT
13 SETTING THAN THIS. WE WERE PARTICULARLY CONCERNED IN
14 THAT PERIOD OF TIME, IT'S HARD TO REMEMBER BACK THAT
15 FAR IN SOME WAYS, BUT THE COLD WAR WAS ON HARD AND
16 HEAVY AT THAT TIME AND OUR GOVERNMENT WAS RELYING
17 HEAVILY ON THE USE OF POLYGRAPH TO LOOK FOR SPIES AND
18 AN IMPORTANT QUESTION WAS CAN PEOPLE BE TRAINED TO
19 BEAT THE POLYGRAPH AND EVADE OUR SCREENING SYSTEM
20 THAT WAY, AND I BEGAN A SERIES OF STUDIES WHICH IS
21 ACTUALLY STILL ONGOING, BUT WHAT WE FOUND IS THAT IN
22 THE LABORATORY SETTING WHERE, WE DO ALL OF THIS IN A
23 LABORATORY SETTING SO WE KNOW WHO GETS WHAT TRAINING,
24 WE KNOW WHO DID THE CRIME AND WHO DIDN'T BECAUSE WE
25 ALL SET IT UP THAT WAY, BUT WE CAN TEACH A PERCENTAGE

1 OF PEOPLE TO FOOL THE TEST IN THE LABORATORY. THERE
2 IS NOT, THERE IS REALLY VERY LITTLE EVIDENCE THAT
3 THAT HAPPENS OFTEN IN THE REAL WORLD. IN FACT, THE
4 NUMBER OF REAL CASES WHERE WE KNOW THE POLYGRAPH HAS
5 BEEN BEATEN ARE FEWER THAN FIVE THAT I KNOW OF.

6 Q WHAT ABOUT SOMEONE WHO HAS CONVINCED HIMSELF
7 THAT HE, THAT HE DID NOT DO THE ACTS THAT HE'S
8 CHARGED WITH?

9 A WELL, THAT'S SOMETHING THAT'S OFTEN RAISED ABOUT
10 POLYGRAPH AND I THINK, I THINK THAT A PERSON UNLESS
11 THAT PERSON IS MENTALLY ILL AND AS A PSYCHOLOGIST
12 THERE IS A CATEGORY OF MENTAL ILLNESSES THAT INVOLVE
13 DISTORTIONS OF THOUGHT, SO SCHIZOPHRENIA WOULD BE ONE
14 OF THOSE, CERTAIN ASPECTS OF MANIC DEPRESSIVE
15 DISORDER, WHERE PEOPLE ARE NO LONGER IN TOUCH WITH
16 REALITY AND THEY DEVELOP DELUSIONS THAT THEY
17 GENUINELY BELIEVE.

18 IN THE ABSENCE OF THAT I THINK THE ANSWER
19 IS NO. I DON'T THINK YOU CAN CONVINCCE YOURSELF TO
20 BEAT THE POLYGRAPH. WE ACTUALLY HAVE EVIDENCE ON
21 THAT. IN OUR LABORATORY STUDIES, WE'VE CONDUCTED A
22 NUMBER OF LABORATORY STUDIES OVER THE YEARS, AND ONE
23 OF THE NICE THINGS ABOUT WORKING IN A LABORATORY
24 SETTING IS YOU GET TO DEBRIEF PEOPLE AFTER THE
25 POLYGRAPH AND WE TALK EXTENSIVELY WITH THEM ABOUT

1 WAYS THAT THEY'VE TRIED TO BEAT THE POLYGRAPH AND
2 PEOPLE DO TRY TO BEAT IT. ABOUT 60 PERCENT OF OUR
3 LABORATORY SUBJECTS REPORT DOING SOMETHING IN AN
4 EFFORT TO BEAT THE POLYGRAPH. AND ONE THING THAT
5 THEY OFTEN TRY TO DO IS CONVINCING THEMSELVES THEY
6 DIDN'T REALLY COMMIT A CRIME, THAT THIS IS A
7 LABORATORY EXPERIMENT, WE'RE PAYING THEM TO BE THERE,
8 AND THEY ARE JUST UNIVERSALLY NOT SUCCESSFUL AT
9 PULLING THAT OFF. IT'S ONLY WHEN WE GIVE PEOPLE VERY
10 SPECIFIC TRAINING IN HOW TO MANIPULATE THEIR
11 PHYSIOLOGY THAT THEY ARE ABLE TO BEAT THE TEST AND
12 YOU CAN DO THAT BY CONTROLLING YOUR MUSCLE TENSIONS
13 SO THERE ARE MUSCLES YOU CAN TENSE. YOU CAN TENSE
14 THE BIG MUSCLES IN YOUR LEG. YOU CAN MAKE YOUR BLOOD
15 PRESSURE GO UP AND IF YOU ARE VERY CAREFUL ABOUT HOW
16 YOU DO THAT, DO IT EXACTLY THE RIGHT TIME ON THE
17 COMPARISON QUESTIONS, WE CAN TRY TO TRAIN SOME PEOPLE
18 TO BEAT POLYGRAPH.

19 Q ARE POLYGRAPH EXAMINATIONS APPROPRIATE AT ALL
20 TIMES OR ARE THERE ARE SOME TIMES WHEN THEY ARE
21 INAPPROPRIATE?

22 A NO, THERE ARE CLEARLY SOMETIMES WHEN THEY ARE
23 INAPPROPRIATE.

24 Q WOULD A PROPER POLYGRAPH EXAM INCLUDE SOME
25 PRETEST QUESTIONS TO DETERMINE THAT THE SUBJECT OF

1 THE TEST IS AN APPROPRIATE PERSON TO BE TESTED?

2 A YES, IT SHOULD.

3 Q AND DOES A TEST REQUIRE SUCH COMPARISON OF THE
4 CONTROLLED QUESTIONS TO THE RELEVANT QUESTIONS?

5 A IT REQUIRES EXTENSIVE COMPARISON OF THE CONTROL
6 AND RELEVANT QUESTIONS.

7 Q DOCTOR, IS THERE A TESTABLE SCIENTIFIC
8 HYPOTHESIS CONCERNING THE POLYGRAPH AND POLYGRAPH
9 EXAMINATION?

10 A THERE ARE ACTUALLY SEVERAL. THE BASIC PREMISE
11 THAT WE TALKED ABOUT IS TESTABLE. THAT IS WE CAN ASK
12 THE SCIENTIFIC QUESTION DO PEOPLE GIVE PHYSIOLOGICAL
13 RESPONSES WHEN THEY LIE AND THAT'S TESTABLE BY THE
14 METHODS OF SCIENCE. AND THEN WE CAN ASK SPECIFIC
15 MORE ENGINEERING KINDS OF QUESTIONS ABOUT THE VARIOUS
16 TECHNIQUES. DOES THIS TECHNIQUE WORK BETTER THAN
17 THAT TECHNIQUE. DOES THIS METHOD OF SCORING WORK
18 BETTER THAN THAT METHOD OF SCORING. IF WE GIVE
19 PEOPLE DRUGS DOES THAT ENABLE THEM TO BEAT THE
20 POLYGRAPH SO THERE ARE MANY SCIENTIFIC QUESTIONS THAT
21 CAN BE ASKED.

22 Q AND HAS THIS HYPOTHESIS BEEN TESTED?

23 A IT HAS, MANY OF THEM HAVE, YES. BUT THE BASIC
24 PREMISE OF DO PEOPLE RESPOND WHEN THEY TELL LIES HAS
25 BEEN TESTED EXTENSIVELY AND PUBLISHED IN PEER REVIEW

1 JOURNALS AND QUESTIONS ABOUT THE ACCURACY OF THE
2 COMPARISON QUESTION TEST THAT I DESCRIBED EARLIER
3 HAVE ALSO BEEN CONDUCTED AND THERE HAVE BEEN MANY
4 PUBLICATIONS IN GOOD PEER REVIEW JOURNALS.

5 Q IS THERE AN KNOWN ERROR RATE?

6 A THERE ARE ESTIMATES OF ERROR RATE AND THEY TEND
7 TO CENTER AROUND TWO OR THREE PERCENT WITH GUILTY
8 PEOPLE AND ABOUT TEN PERCENT WITH THE INNOCENT.

9 Q I BELIEVE YOU'VE ALREADY STATED THIS HYPOTHESIS
10 AND TECHNIQUE HAS BEEN SUBJECTED TO PEER REVIEW AND
11 PUBLICATION.

12 A IT HAS EXTENSIVE AND IN VERY GOOD JOURNALS.
13 SOME OF THE JOURNALS THAT I PUBLISH IN, FOR EXAMPLE,
14 JOURNAL OF APPLIED PSYCHOLOGY AND PSYCHOPHYSIOLOGY
15 TEND TO REJECT ABOUT 85 TO 90 PERCENT OF THE ARTICLES
16 THAT ARE SUBMITTED SO THESE ARE NOT PRO FORMA
17 PUBLICATIONS. THESE ARE PUBLICATIONS THAT HAVE BEEN
18 PUT UNDER A LOT OF SCIENTIFIC SCRUTINY AND HAVE BEEN
19 FOUND TO MEET RIGOROUS SCIENTIFIC STANDARDS.

20 Q AND IS THE THEORY UPON WHICH THE HYPOTHESIS AND
21 THE TECHNIQUE IS IT BASED GENERALLY ON ACCEPTED
22 PRINCIPLES WITHIN THE SCIENTIFIC COMMUNITY?

23 A I BELIEVE IT IS, YEAH.

24 Q DOCTOR, HAVE YOU HAD AN OPPORTUNITY TO REVIEW
25 THE CHARTS AND THE SCORING AND THE TEST RESULTS OF

1 THE POLYGRAPH EXAMINATION THAT WAS GIVEN TO THE
2 DEFENDANT MR. BILLY WAYNE COPE HERE?

3 A I HAVE.

4 Q I ASK YOU TO TAKE A LOOK AT THIS. CAN YOU
5 IDENTIFY IT?

6 A YES. THIS IS A PHOTOCOPY OF THE MATERIALS THAT
7 YOU SENT TO ME, SO THESE ARE THE MATERIALS THAT I
8 REVIEWED.

9 Q AND WHAT IS YOUR UNDERSTANDING OF WHAT THOSE
10 ARE?

11 A MY UNDERSTANDING IS THAT THIS WAS A POLYGRAPH
12 THAT WAS ADMINISTERED TO BILLY WAYNE COPE ON, IT'S
13 IDENTIFIED ON THE CHART, ON NOVEMBER 30, 2001.

14 Q THANK YOU.

15 MR. GREELEY: I HAVEN'T SEEN THESE, SO
16 I'LL JUST DEFER TO THE STATE BECAUSE THEY KNOW
17 WHETHER OR NOT IT IS ACCURATE.

18 MR. BRACKETT: THESE WERE THE CHARTS WE
19 PROVIDED.

20 MR. BAITY: YOUR HONOR, I WOULD MOVE THIS
21 BEING ADMITTED INTO EVIDENCE.

22 MR. BRACKETT: WITHOUT OBJECTION.

23 MR. GREELEY: SUBJECT TO PREVIOUS
24 OBJECTION.

25 MR. BAITY: THANK YOU, YOUR HONOR.

1 (DEFENSE EXHIBIT 64 POLYGRAPH TEST IN
2 EVIDENCE.)

3 Q DR. HONTS, I'M HANDING YOU A, I BELIEVE IT'S A,
4 13 PAGE DOCUMENT THAT HAS BEEN COLLECTIVELY MARKED AS
5 DEFENSE EXHIBIT NUMBER 64 AND I ASK THAT YOU REFER TO
6 THAT IN THE NEXT QUESTIONS I HAVE FOR YOU. DOCTOR,
7 INCLUDED IN THAT EXHIBIT THAT I JUST HANDED TO YOU,
8 DOES THAT INCLUDE THE CHARTS MONITORING THE
9 PHYSIOLOGICAL REACTIONS OF THE SUBJECT OF THIS TEST?

10 A YES, IT DOES.

11 Q AND DOES THAT EXHIBIT ALSO INCLUDE THE SCORING
12 SUMMARIES AND SHEETS THAT WERE CONDUCTED, THAT WERE
13 FILLED OUT BY THE POLYGRAPH EXAMINER?

14 A YES, IT DOES.

15 Q ALL RIGHT. AND DOES IT INCLUDE THE RESULTS OF
16 THE POLYGRAPH EXAMINATION?

17 A IT DOES.

18 Q ALL RIGHT. IS THAT A TYPICAL REPORT THAT YOU'VE
19 SEEN OF OTHER POLYGRAPH EXAMS?

20 A THE REPORTS ARE VERY BRIEF. USUALLY THERE IS
21 MORE DETAIL GIVEN IN REPORTS, BUT I'VE SEEN OTHER
22 REPORTS LIKE THIS BEFORE.

23 Q ALL RIGHT. AND ARE YOU ABLE TO UNDERSTAND IT
24 AND UNDERSTAND WHAT WENT ON DURING THE EXAMINATION OF
25 MR. COPE?

1 A TO A DEGREE. SINCE THERE IS NOT A TAPE
2 RECORDING OF IT OR I WAS NOT PROVIDED A TAPE
3 RECORDING OF IT, THERE ARE CERTAINLY SOME THINGS I
4 CAN'T KNOW ABOUT IT, BUT THERE IS SUFFICIENT MATERIAL
5 TO EVALUATE THE POLYGRAPH RECORDING.

6 Q DO YOU RECOGNIZE THE TYPE OF TEST?

7 A I DO.

8 Q THERE ARE DIFFERENT TYPES OF TESTS?

9 A THERE ARE.

10 Q AND YOU RECOGNIZE THAT AS ONE THAT'S BEEN
11 ACCEPTED?

12 A I DO.

13 Q IS THERE A PROPER PROCEDURE FOR AN EXAMINER TO
14 FOLLOW IN CONDUCTING A TEST OF THIS TYPE?

15 A THERE IS.

16 Q AND CAN YOU TELL FROM LOOKING AT THAT REPORT DID
17 THE EXAMINER, IN THIS CASE IT WOULD BE DETECTIVE
18 BAKER, FOLLOW THE PROPER PROCEDURE?

19 A I CAN CERTAINLY TELL SOME THINGS ABOUT WHETHER
20 THE PROPER PROCEDURE WAS FOLLOWED. THERE IS A LIST,
21 A COMPLETE LIST, OF THE QUESTIONS THAT WERE RUN AND
22 THEY ARE IN THE PROPER FORM FOR A COMPARISON QUESTION
23 TEST. THERE ARE THREE RELEVANTS AND THREE COMPARISON
24 QUESTIONS AND THE FORM OF THE QUESTIONS IS FINE.

25 Q ALL RIGHT. AGAIN NOW I JUST WANT TO MAKE SURE

1 EVERYONE UNDERSTANDS THE DIFFERENCE BETWEEN THE
2 RELEVANT QUESTIONS AND CONTROL QUESTIONS YOU ARE
3 TALKING ABOUT. MAYBE YOU CAN JUST GO OVER THAT
4 BRIEFLY?

5 A CERTAINLY. THERE ARE THREE RELEVANT QUESTIONS
6 ON THIS TEST WHICH WENT TO THE ISSUE THAT WAS BEING
7 INVESTIGATED AND THEY ARE DID YOU CHOKE AMANDA, DID
8 YOU CHOKE AMANDA CAUSING HER TO DIE, AND WERE YOU IN
9 THE ROOM WHEN AMANDA DIED, AND SO THOSE WOULD BE
10 CALLED THE RELEVANT QUESTIONS BECAUSE THEY GO
11 DIRECTLY TO THE ISSUE. AND THEN THERE WERE THREE
12 COMPARISON QUESTIONS, WHERE THEY INDICATED IT'S
13 COMPARITIVE QUESTIONS, AND THEY FIT THAT FORM AND I
14 DON'T KNOW EXACTLY HOW THEY WERE PRESENTED SINCE
15 THERE WAS NO TAPE RECORDING, BUT THEY WOULD HAVE BEEN
16 PRESENTED AS CHARACTER QUESTIONS SO THAT THESE ARE
17 IMPORTANT QUESTIONS TO SHOW YOU ARE NOT THE KIND OF
18 PERSON WHO WOULD HAVE DONE THIS. AND THEY ARE:
19 BEFORE THIS SUMMER DID YOU EVER LOSE YOUR TEMPER AND
20 HURT ANYONE, BEFORE THIS SUMMER DID YOU EVER FORCE
21 ANYONE TO DO SOMETHING YOU WANTED, AND BEFORE THIS
22 SUMMER DID YOU HAVE FANTASIES ABOUT FORCING SOMEONE
23 TO DO SOMETHING AGAINST THEIR WILL, AND THOSE ARE
24 APPROPRIATE HERE BECAUSE THIS IS AN ISSUE ABOUT FORCE
25 SO THEY ARE RELATED IN TERMS OF CHARACTER AND THEY

1 COULD EASILY BE PRESENTED AS, THESE WOULD SHOW
2 SOMETHING ABOUT YOUR CHARACTER THAT WOULD INDICATE
3 YOU ARE THE KIND OF PERSON WHO MIGHT HAVE DONE THIS
4 UNDER THE ASSUMPTION THAT THIS GENTLEMAN PROBABLY HAS
5 DONE THESE THINGS. HE PROBABLY HAS HAD FANTASIES
6 ABOUT FORCING SOMEBODY TO DO SOMETHING AGAINST THEIR
7 WILL AND THAT HE MAY HAVE FORCED SOMEBODY TO DO
8 SOMETHING THAT THEY DIDN'T WANT TO AND THAT HE MAY
9 HAVE LOST HIS TEMPER AND HURT SOMEONE WHICH I THINK
10 FAIRLY SAFE WITH MOST ADULT MALES THAT, YOU KNOW, IF
11 YOU READ THOSE QUESTIONS LITERALLY WE MOST POSSIBLY,
12 LIKELY HAVE DONE ALL OF THOSE THINGS, SO IT WOULD BE
13 CALLED A PROBABLE LIE IN THAT SENSE.

14 Q DOCTOR, DO YOU HAVE DISPUTE WITH THE CONTROLLED
15 QUESTIONS THAT WERE MADE A PART OF THIS TEST?

16 A I DO NOT.

17 Q ALL RIGHT, SIR. NOW CAN YOU COMMENT ON THE
18 SETTING AS YOU UNDERSTAND IT. WELL, BEFORE I ASK YOU
19 THAT QUESTION. WHAT ELSE HAVE YOU REVIEWED IN
20 ADDITION TO THE DOCUMENTS THAT YOU HAVE IN YOUR HAND
21 IN THAT EXHIBIT?

22 A THE ONLY OTHER THINGS THAT I REVIEWED WAS AN
23 E-MAIL FROM YOU, THAT YOU CONTACTED ME INITIALLY BY
24 E-MAIL, AND I ALSO REVIEWED A TRANSCRIPT OF A FAMILY
25 COURT HEARING WHERE THE POLYGRAPH EXAMINER TESTIFIED.

1 Q THAT WOULD BE DETECTIVE BAKER?

2 A YES, THAT'S CORRECT.

3 Q WERE YOU ABLE TO GAIN ANY TYPE OF INFORMATION
4 ABOUT THE SETTING THAT THIS POLYGRAPH WAS
5 ADMINISTERED IN?

6 A I GAINED SOME FROM BOTH OF THOSE SOURCES, YES.

7 Q AND DO YOU HAVE ANY COMMENTS ON THE SETTING AS
8 IT BEING APPROPRIATE?

9 A WELL, THERE ARE SOME THINGS THAT CAUSED ME SOME
10 CONCERN. ONE, THIS IS VERY, VERY RECENT AFTER THE
11 CRIME, IT'S THE NEXT DAY, AND IT'S A LITTLE UNUSUAL
12 TO RUN POLYGRAPHS THAT QUICKLY. I HAVE, IN FACT,
13 BEEN CRITICIZED FOR RUNNING POLYGRAPH IN A MURDER
14 CASE A WEEK AFTER THE MURDER BECAUSE IT'S VERY
15 EMOTIONALLY PARTICULARLY WHEN IT'S A FAMILY MEMBER
16 AND FROM A POLYGRAPH EXAMINER'S POINT OF VIEW WHAT
17 YOU HAVE TO THINK ABOUT IS THE TRUTH OF THE PERSON.
18 YOU DON'T KNOW. WHEN YOU BEGAN A POLYGRAPH TEST YOU
19 DON'T KNOW, THAT'S WHY YOU'RE RUNNING A POLYGRAPH,
20 AND A POLYGRAPH EXAMINER, IF THEY DO THEIR JOB
21 PROPERLY, HAS TO HAVE AN OPEN MIND THAT THIS PERSON
22 COULD BE TELLING THE TRUTH OR THEY MIGHT NOT BE
23 TELLING THE TRUTH. IN A SETTING LIKE THIS IF THE
24 PERSON IS TELLING THE TRUTH, IN THIS CASE A FATHER
25 WHO HAS DISCOVERED HIS DAUGHTER BRUTALLY MURDERED, IN

1 SOME WAYS HE'S ALMOST THE VICTIM, AND IF HE IS
2 TELLING THE TRUTH THAT'S VERY TRAUMATIC, AND IT MAKES
3 RUNNING A POLYGRAPH VERY DIFFICULT PARTICULARLY THAT
4 SOON AFTER THE CRIME.

5 I ALSO UNDERSTAND THAT HE WAS INTERVIEWED,
6 INTERROGATED, LATE INTO THE EVENING AND THERE IS A
7 LITTLE BIT OF DISPUTE ABOUT THE TIMING WHEN THAT
8 ENDED BUT IT ENDED IN THE EARLY MORNING HOURS, MAYBE
9 BETWEEN TWO AND THREE O'CLOCK, AND HE WAS THEN
10 ARRESTED FOR MURDER, AND THEN I ALSO UNDERSTAND THAT
11 AT AGAIN A VERY EARLY HOUR 4:30 - 4:20 IN THAT
12 NEIGHBORHOOD HE WAS ACTUALLY BROUGHT BEFORE A
13 MAGISTRATE AND ARRAIGNED; AND THEN SIX HOURS AFTER
14 THAT HE'S BEING GIVEN A POLYGRAPH AND HE MAY OR MAY
15 NOT HAVE SLEPT IN THAT PERIOD OF TIME, BUT IT'S
16 CERTAINLY DIFFICULT FOR ME TO IMAGINE ANYONE COULD
17 HAVE SLEPT WELL AND HAVE BEEN RESTED AFTER THAT
18 PERIOD OF TIME, SO ALL OF THOSE THINGS CAUSED ME
19 CONCERN. I WOULD NOT HAVE RUN A POLYGRAPH UNDER
20 THOSE SETTINGS BUT THEN THAT'S A DECISION THAT A
21 POLYGRAPH EXAMINER HAS TO MAKE.

22 Q IS IT IMPORTANT THAT SOMEONE HAVE A, APPROPRIATE
23 REST BEFORE THEY ARE GIVEN THE TEST?

24 A WELL, I BELIEVE IT IS. I WOULD LIKE PEOPLE TO
25 BE FULLY RESTED BECAUSE THE PHYSIOLOGY IS LIKELY TO

1 BE MORE ACTIVE AND RESPONSIVE AND THEY ARE ALSO
2 MENTALLY LIKELY TO BE MORE ALERT AND PAY BETTER
3 ATTENTION TO WHAT'S GOING ON SO I THINK HAVING A
4 RESTED AND RELATIVELY NOT STRESSED PERSON IS VERY
5 ADVANTAGEOUS FOR RUNNING POLYGRAPH.

6 Q DOCTOR, IN YOUR OPINION WAS BILLY WAYNE COPE A
7 PROPER SUBJECT FOR POLYGRAPH EXAMINATION?

8 A WELL, I CAN'T KNOW. I WASN'T THERE AND WE DON'T
9 HAVE A RECORDING. THAT IS A CALL THAT POLYGRAPH
10 EXAMINERS ARE TRAINED TO MAKE AND DETECTIVE BAKER
11 DECIDED THAT HE WAS AN APPROPRIATE SUBJECT AND I
12 DON'T HAVE THE INFORMATION THAT HE BASED THAT ON.
13 THERE ARE THINGS THAT CAUSE ME CONCERN.

14 Q HAVE YOU HAD AN OPPORTUNITY, AN AMPLE
15 OPPORTUNITY, TO REVIEW THE CHARTS THAT ARE NOW IN
16 EVIDENCE IN EXHIBIT NUMBER --

17 A 64.

18 Q 64, HAVE YOU HAD AN OPPORTUNITY TO REVIEW THOSE
19 CHARTS AND FORM AN OPINION AS TO THEM?

20 A I HAVE.

21 Q HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE
22 SCORING OF THOSE CHARTS THAT WAS PERFORMED BY
23 DETECTIVE BAKER?

24 A YES.

25 Q AND DID HE FILL OUT A FORM OR A CHART HIMSELF

1 INDICATING WHAT HIS SCORES WERE?

2 A HE DID. HE HAD A SCORE SHEET.

3 Q NOW, DOCTOR, JUST BRIEFLY IF YOU WOULD, EXPLAIN
4 TO THE LADIES AND GENTLEMEN OF THE JURY WHAT GOES ON
5 IN THE SCORING PROCESS?

6 A OKAY. THAT WILL BE FINE. LET ME TALK ABOUT HOW
7 MY PROCEDURES WENT.

8 Q ALL RIGHT.

9 A BECAUSE I WAS CONTACTED BY YOU AND THEN YOU SENT
10 ME SCANNED VERSIONS OF THESE VIA E-MAIL AND MY NORMAL
11 PRACTICE AND I'M CALLED TO DO THIS FREQUENCY TO
12 REVIEW POLYGRAPHS THAT ARE RUN BY OTHER PEOPLE IS I
13 LIKE TO LOOK AT THE CHARTS FIRST AND SO THE FIRST
14 THING I DID WAS TO PRINT THE IMAGES OF THE CHARTS
15 THAT YOU SENT TO ME AND THEY HAVE STANDARD CHART
16 MARKINGS WHICH I'M ALWAYS HAPPY TO SEE, SO RELEVANT
17 QUESTIONS ARE MARKED 'R' AND COMPARISON QUESTIONS ARE
18 MARKED 'C' SO THAT MAKES IT VERY EASY. SO THE VERY
19 FIRST THING I DID WAS SCORE THE CHARTS. THE SECOND
20 THING I DID WAS TO LOOK AT THE QUESTIONS AND THE
21 THIRD THING I DID WAS TO EXAMINE DETECTIVE BAKER'S
22 SCORING. I HONESTLY HAD ASSUMED THAT HE HAD FOUND
23 HIM DECEPTIVE SINCE I WAS CONTACTED BY DEFENSE
24 ATTORNEY AND BROUGHT IN TO TAKE A LOOK AT THIS. BUT
25 THEN I SCORED. AFTER I SCORED THEN I LOOK AT HIS

1 SCORES.

2 Q SO YOU HAVE SCORED THIS TEST BASED ON THE CHARTS
3 THAT WERE SENT TO YOU?

4 A I HAVE.

5 Q AND OF COURSE YOU HAVE DETECTIVE BAKER'S
6 SCORING?

7 A I DO.

8 Q HOW DO THE TWO COMPARE?

9 A WELL, THEY DON'T COMPARE VERY WELL AND I DIDN'T
10 ACTUALLY GET TO FINISH THE PREVIOUS QUESTION --

11 Q I'M SORRY.

12 A ---YOU ASKED.

13 Q PLEASE FINISH.

14 A BECAUSE YOU ASKED ME TO TALK TO YOU ABOUT HOW
15 SCORING IS DONE.

16 Q YES, SIR.

17 A AND THE WAY SCORING IS DONE IS THAT YOU GO TO
18 THE ACTUAL PHYSIOLOGICAL RECORDINGS AND THERE ARE
19 RULES AND THE SYSTEM THAT I USE, THERE ARE THREE
20 SYSTEMS FOR SCORING POLYGRAPH CHARTS, THE SYSTEM I
21 USED WAS DEVELOPED AT THE UNIVERSITY OF UTAH. IT'S
22 THE ONE THAT I BELIEVE HAS THE MOST SCIENTIFIC
23 VALIDATION SCIENTIFICOR NUMBER OF PUBLISHED STUDIES
24 ON IT. IT'S A VERY SIMPLE SYSTEM. THERE ARE
25 ACTUALLY 11 DIFFERENT THINGS WE LOOK FOR IN THE

1 CHARTS CALLED CRITERIA. SO, FOR EXAMPLE, WE'LL GO TO
2 THE CHART, I LOOK AT THE FIRST RELEVANT QUESTION,
3 IT'S BRACKETED BY TWO COMPARISONS SO THERE IS ONE
4 RIGHT BEFORE IT AND THEN THERE IS ONE RIGHT AFTER IT.
5 AND THE STANDARD RULE IN THE SCORING SYSTEMS,
6 ACTUALLY I BELIEVE IN ALL THREE SCORING SYSTEMS, NOW
7 IS THAT YOU GO WITH THE STRONGER COMPARISON QUESTION
8 BECAUSE IF THE TEST IS GOING TO MAKE A MISTAKE IT IS
9 THAT THE COMPARISON QUESTIONS DON'T WORK WELL ENOUGH.
10 SO YOU GO TO RELEVANT QUESTION IN THE BLOOD PRESSURE,
11 FOR EXAMPLE, I ACTUALLY HAVE A PLASTIC RULER MARK
12 WITH MILLIMETERS THAT I LAY OVER THE CHARTS SO I CAN
13 LOOK THROUGH IT AND ACTUALLY MEASURE HOW LARGE AN
14 INCREASE THERE WAS IN BLOOD PRESSURE IN TERMS OF
15 DEFLECTION ON THE CHARTS. SO I MEASURE THAT AND THEN
16 THERE ARE RULES. I MEASURE THE TWO COMPARISON
17 QUESTIONS, I MEASURE THE RELEVANT QUESTION, AND THE
18 RULE IS THAT YOU HAVE TO HAVE A DIFFERENCE OF AT
19 LEAST ONE AND A HALF TO ONE TO SCORE IT. SO YOU NEED
20 SEVEN AND A HALF MILLIMETERS VERSUS FIVE TO MAKE A
21 SCORING, FOR EXAMPLE.

22 THEN YOU MOVE UP TO THE NEXT CHANNEL WHICH
23 WOULD BE THE ELECTRODERMAL CHANNEL. YOU DO THE SAME
24 THING. YOU PUT THE RULER ON IT, YOU MEASURE AND
25 AGAIN THERE ARE RATIO RULES. HERE IT TAKES A TWO TO

1 ONE TO GIVE IT A SCORE. AND YOU MOVE ON UP TO THE
2 BREATHING AND THE BREATHING IS A LITTLE MORE
3 DIFFICULT IN THAT WE'RE LOOKING FOR PATTERNS IN THE
4 BREATHING AND I TALKED ABOUT THE FACT THAT WE SCORE
5 SUPPRESSIONS. THEY CAN OCCUR IN SEVERAL WAYS. YOU
6 CAN FORGET TO BREATHE, YOU CAN BREATHE MORE SHALLOW,
7 YOU CAN BREATHE MORE SLOWLY, THE SHAPE CAN CHANGE.
8 THE BASE LINE CAN CHANGE. ONE THAT THING THAT
9 ACTUALLY MR. COPE SHOWS FAIRLY FREQUENTLY IS HIS
10 DIAPHRAGM GETS VERY TENSE AND HIS BREATHING PATTERN
11 ACTUALLY SHIFTS UPWARD EVEN THOUGH THE BREATHING
12 CYCLES ARE GETTING SMALLER. SO YOU GO THROUGH THAT
13 VERY SYSTEMATICALLY FOR EACH RELEVANT QUESTION AND
14 ASSIGN SCORES. SCORES ARE ASSIGNED ON A SEVEN POINT
15 SCALE. ZERO MEANS THERE IS NO DIFFERENCE AND THAT
16 COULD BE THE PERSON DIDN'T RESPOND TO ANYTHING OR IT
17 COULD MEAN THEY GAVE AN EQUAL RESPONSES TO BOTH.

18 A PLUS ONE WOULD MEAN THAT THE CONTROL
19 QUESTION WAS SLIGHTLY LARGER BUT SCORIBLY LARGER THAN
20 THE RELEVANT. PLUS TWO WOULD MEAN THERE IS A BIGGER
21 DIFFERENCE AND PLUS THREE THERE IS A REALLY, REALLY A
22 DRAMATIC HUGE DIFFERENCE.

23 AND THEN IN THE MINUS DIRECTION THAT MEANS
24 THAT THE RELEVANCE IS BIGGER SO MINUS ONE MEANS THE
25 RELEVANT IS JUST BARELY BIGGER. MINUS TWO MEANS IT'S

1 SIGNIFICANTLY BIGGER. MINUS THREE MEANS IT'S
2 DRAMATICALLY BIGGER. SO YOU GO THROUGH AND YOU
3 ASSIGN SCORES IN EACH SPOT ON EACH RELEVANT QUESTION.
4 IN THIS CASE THE QUESTIONS ARE REPEATED THREE TIMES
5 SO THERE ARE NINE PLACES THAT YOU COLLECT SCORES.

6 Q SO DOCTOR, USING THE TECHNIQUES YOU JUST
7 DESCRIBED YOU DID IN FACT SCORE THE CHARTS THAT WERE
8 PROVIDED TO YOU IN THIS CASE THAT WERE SHOWN IN THAT
9 EXHIBIT?

10 A I DID.

11 Q AND THEN YOU COMPARED THAT SCORING WITH THE
12 SCORING THAT WAS RENDERED BY DETECTIVE BAKER?

13 A THAT'S CORRECT.

14 Q I BELIEVE I ASKED YOU EARLIER HOW DID THOSE TWO
15 SCORINGS COMPARE?

16 A WELL, THEY DIDN'T COMPARE WELL AT ALL.
17 DETECTIVE BAKER ENDED UP WITH A TOTAL SCORE OF MINUS
18 15 WHICH WOULD BE A STRONG DECEPTIVE OUTCOME AND I
19 ACTUALLY ENDED UP WITH A SCORE OF PLUS 12 WHICH IS A
20 STRONG TRUTHFUL OUTCOME SO I WAS PRETTY SURPRISED TO
21 SEE THAT LEVEL OF DIFFERENCE IN SCORING.

22 Q IN USING THE CHARTS, DOCTOR, CAN YOU ILLUSTRATE
23 EITHER ON THE OVERHEAD OR SIMPLY REFERRING TO THE
24 CHARTS THE POINTS THAT YOU DISAGREE ON?

25 A I COULD CERTAINLY SHOW SOME OF THEM, YES.

1 Q ALL RIGHT.

2 A I THINK USING THE ELMO WOULD PROBABLY BE THE
3 BEST WAY TO GO.

4 MR. BRACKETT: WE HAD SOME TECHNICAL
5 DIFFICULTIES YESTERDAY. WE JUST BARELY GOT THE
6 LAPTOP GOING. I DON'T THINK THIS IS HOOKED UP. WE
7 HAD TO UNHOOK THIS OVER THE NIGHT.

8 THE COURT: YOU WANT TO TAKE A SHORT BREAK
9 AND HOOK IT UP FOR US.

10 MR. BRACKETT: YES, SIR.

11 THE COURT: WE'LL TAKE A SHORT BREAK SO WE
12 CAN UTILIZE THIS.

13 MR. BAITY: THANK YOU, YOUR HONOR.

14 (COURT'S IN RECESS AT 11:19 AM.)

15 (COURT RESUMES AT 11:25 AM.)

16 MR. GREELEY: I WOULD JUST LIKE TO PUT
17 SOMETHING ON THE RECORD.

18 THE COURT: AS SOON AS MR. SANDERS GETS IN
19 HERE.

20 MR. GREELEY: OKAY.

21 (DEFENDANTS ARE PRESENT.)

22 THE COURT: MR. GREELEY.

23 MR. GREELEY: YOUR HONOR, I WOULD SUBMIT TO
24 THE COURT THAT IN JUST THE LAST TESTIMONY THAT WAS
25 EXHIBITED, THAT WAS PRESENTED BY THE EXPERT IN THIS

1 CASE WAS A RESULT OF THE POLYGRAPH, HIS RESULT, HIS
2 SCORE BASED UPON THE GRAPHS. I WOULD MOVE TO STRIKE
3 AT THIS TIME HIS OPINION AS TO THAT SCORE AND THE
4 BASIS FOR THAT IS THE SOUTH CAROLINA COURTS HAVE NOT
5 YET ACCEPTED THE POLYGRAPH AS A SCIENTIFIC ANALYSIS
6 THAT IS ADMISSIBLE IN COURT, THE RESULTS ARE NOT
7 ADMISSIBLE IN COURT, AND I WOULD SUBMIT TO THE COURT
8 THAT WHAT THIS EXPERT JUST DID WAS ESSENTIALLY A
9 RESULT OF HIS INTERPRETATION OF THE POLYGRAPH, AND I
10 WOULD MOVE TO STRIKE ON THAT BASIS.

11 THE COURT: I DENY THE MOTION. BRING IN
12 THE JURY. JUST FOR THE RECORD I GUESS I HAVE SOME
13 QUESTION AS TO MR. SANDERS' STANDING TO MAKE
14 OBJECTIONS TO THIS LINE OF QUESTIONING BUT EVEN, I'M
15 ASSUMING THAT HE DOES HAVE STANDING AND MY RULINGS
16 ARE BASED ON MY ASSUMPTION THAT HE DOES HAVE
17 STANDING, BUT IF THE MATTER GOES FURTHER I WANT THE
18 RECORD TO REFLECT THAT I DID FACTOR THAT INTO MY
19 THINKING.

20 MR. GREELEY: MY POSITION ON STANDING IS
21 THAT WE HAVE POTENTIALLY FOUR CONFESSIONS FROM MR.
22 COPE IN REGARDS TO THIS CRIME, NONE OF THEM INCLUDE
23 MY CLIENT WHICH IS EXCULPATORY TO MY CLIENT.

24 THE COURT: OKAY.

25 (THE JURY RETURNS TO THE COURTROOM AT

1 11:27 AM.)

2 DIRECT EXAMINATION BY MR. BAITY:

3 Q DOCTOR, I BELIEVE THAT YOU SAID YOU WISHED TO
4 USE THIS APPARATUS?

5 A YES.

6 Q TO EXPLAIN YOUR FINDINGS HERE AND PLEASE STEP
7 DOWN.

8 THE COURT: YOU MAY.

9 A THANK YOU.

10 MR. BAITY: WITH PERMISSION OF THE COURT.

11 A THE CLEAREST ILLUSTRATION OF WHERE WE DIFFER,
12 THESE ARE FROM COPIES, THE ORIGINALS WOULD HAVE BEEN
13 CONTINUAL, OCCURS AT THE FIRST RELEVANT QUESTION ON
14 THE SECOND CHART. AT THAT POINT DETECTIVE BAKER
15 ASSIGNED A SCORE OF MINUS FIVE FOR THAT QUESTION AND
16 I GAVE IT A SCORE PLUS TWO, SO THERE IS A SEVEN POINT
17 DIFFERENCE, THAT'S THE ONE QUESTION WHERE WE HAVE
18 GREATEST DIFFERENCE ALTHOUGH WE DIFFER IN MANY
19 PLACES.

20 Q DOCTOR, LET ME GIVE YOU A LASER.

21 A THAT WOULD BE GREAT. THANK YOU VERY MUCH. IF
22 WE LOOK AT THIS, THE TRACING AT THE BOTTOM IS THE
23 BLOOD PRESSURE TRACING, AND EACH ONE OF THOSE LITTLE
24 MOVEMENTS IS A BEAT OF THE HEART JUST TO ORIENT YOU.
25 THE GRAPH, THE GRID THERE, EACH OF THOSE BARS IS FIVE

1 SECONDS, SO THAT SORT OF ORIENTS YOU IN TIME, AND
2 TIME IS MOVING IN THIS DIRECTION. LET ME MOVE THAT
3 UP A LITTLE BIT SO WE CAN SEE THE QUESTION. SO THERE
4 WAS A COMPARISON QUESTION ASKED HERE C-4, IT'S
5 ACTUALLY TYPED OVER ON THE COMPUTER, BUT AT C-4, SAYS
6 R-5 THEN THAT'S C-6, SO THIS IS THE FIRST RELEVANT
7 QUESTION, FIRST CONTROL, SECOND CONTROL, AND THIS IS
8 BLOOD PRESSURE, THIS IS SWEATING IN THE PALM, AND
9 IT'S TURNED OVER SO THAT IT ACTUALLY REPRESENTS
10 INCREASE SWEATING WHEN IT MOVES UP SO THAT'S A
11 DECREASE IN RESISTANCE. THEN THESE TWO ARE THE
12 BREATHING. THIS IS ABDOMINAL BREATHING AND THIS IS
13 THE THORACIC BREATHING AND UNFORTUNATELY THAT DOESN'T
14 PROJECT REALLY WELL BUT I THINK WE CAN SEE WHAT WE
15 NEED TO SEE HERE. DETECTIVE BAKER SCORED THE BLOOD
16 PRESSURE HERE AS A MINUS ONE AND IF YOU MEASURE THIS
17 RESPONSE, THIS IS WHAT YOU ARE MEASURING IS RIGHT
18 HERE, AND IF YOU LOOK AT THE COMPARISON QUESTION WHAT
19 YOU ARE MEASURING IS RIGHT THERE. I MEAN, TO ME THAT
20 ONE IS PRETTY EASY TO SEE THAT THERE IS A MUCH LARGER
21 CHANGE IN BLOOD PRESSURE HERE THAN THERE IS THERE AND
22 TO ME, AND THAT SCORES OUT, ACTUALLY IF YOU MEASURE
23 IT IT'S MORE THAN TWO TO ONE SO THAT WOULD SCORE A
24 PLUS TWO.

25 IN THE SKIN RESPONSE IN THIS CASE THE

1 ACTUAL RESPONSES TO THE RELEVANT IS MUCH LARGER AND
2 DETECTIVE BAKER GIVE IT A MINUS THREE, I GAVE IT A
3 MINUS TWO, SO WE'RE NOT THAT FAR OFF ON OUR SCORING.
4 IT SHOULD MEASURE FOUR TO ONE, IF YOU ACTUALLY
5 MEASURE IT DOESN'T QUITE MAKE IT, SO I WAS SORT OF A
6 STICKLER FOR THE RULES AND DIDN'T GIVE IT THE THREE
7 BUT IT'S CLOSE. I'LL GIVE HIM THAT.

8 THE MAIN PLACE THAT I ENDED UP WITH
9 DISAGREEMENTS WITH HIM HAD TO DO WITH THE SCORING IN
10 THE BREATHING AND IF YOU'LL LOOK AT THE PERIOD
11 FOLLOWING THE RELEVANT QUESTION YOU'LL NOTICE THE
12 CYCLES ARE PRETTY LARGE AND FAIRLY, YOU KNOW, HE'S
13 TAKING DEEP RELAXED BREATHS, BUT IF YOU LOOK THROUGH
14 THE COMPARISON SECTIONS THERE ARE VERY SMALL
15 SUPPRESSED BREATHS, PARTICULARLY THROUGH HERE. IF
16 YOU LOOK JUST IN THIS SECTION, THIS DOESN'T PROJECT
17 VERY WELL, YOU CAN SEE IT BETTER ON THE PAPER, BUT
18 THESE ARE DOWN AND THERE REALLY IS NOTHING HERE TO
19 SCORE, SO I GAVE THAT ALSO A PLUS TWO AND HE GAVE IT
20 A ZERO. AND IF WE GO THROUGH THE CHART SECTION BY
21 SECTION BY SECTION WE SEE THINGS LIKE THAT.

22 AGAIN ON, IF WE WERE TO LOOK AT THE SECOND
23 RELEVANT IN THAT ONE, I HAVE A SCORE OF PLUS ONE AT
24 THAT SPOT AND DETECTIVE BAKER HAS A SCORE OF MINUS
25 TWO, SO WE HAVE A THREE POINT DIFFERENCE. ACTUALLY

1 WE AGREED ON THE SKIN RESPONSE. THIS SKIN RESPONSE
2 IS MUCH LARGER THAN THIS COMPARISON QUESTION AND WE
3 BOTH SCORED THAT A MINUS ONE. AND ACTUALLY YOU CAN'T
4 SEE THE NEXT COMPARISON. THE NEXT COMPARISON IS OVER
5 HERE. WE BOTH SCORED THIS AS ZERO BUT AGAIN LOOK AT
6 THAT BREATHING. THAT'S DEEP RELAXED BREATHING.
7 THERE IS NOT ANY INDICATION OF STRESS THERE BUT THERE
8 IS A BIG RESPONSE TO QUESTION C-6 SO I GAVE THAT A
9 PLUS TWO IN THE BREATHING AND THAT'S VERY TYPICAL OF
10 HOW WE DISAGREED IN THE WAY OF SCORING.

11 Q ALL RIGHT. DOCTOR, DID YOU PUT YOUR SCORING
12 THAT YOU JUST DESCRIBED IN PREVIOUS QUESTIONS IN
13 WRITTEN FORM?

14 A I DID.

15 MR. BRACKETT: YOUR HONOR, WE PROVIDED A
16 TREMENDOUS AMOUNT OF DISCOVERY IN THIS CASE AND
17 REPEATEDLY ASKED FOR RECIPROCAL DISCOVERY AND WERE
18 NEVER PROVIDED THIS.

19 THE COURT: DO YOU OBJECT?

20 MR. BRACKETT: YES, SIR.

21 THE COURT: I SUSTAIN THE OBJECTION.

22 MR. BAITY: HE'S ALREADY TESTIFIED TO IT.
23 ALL RIGHT. THANK YOU, YOUR HONOR.

24 THE COURT: MR. GREELEY, YOU WANT TO CHIME
25 IN WITH ANYTHING?

1 MR. GREELEY: I WOULD OBJECT TOO.

2 THE COURT: BOTH OBJECTIONS ARE SUSTAINED.

3 Q DR. HONTS, BASED ON YOUR EXAMINATION OF THE
4 EXHIBIT, THE CHARTS THAT WE'VE BEEN DISCUSSING TODAY,
5 HAVE YOU FORMED AN OPINION AS TO MR. COPE'S
6 PERFORMANCE ON THIS TEST?

7 A YES.

8 Q DO YOU BELIEVE THAT BASED ON THOSE CHARTS THAT
9 YOU REVIEWED DID MR. COPE'S PERFORMANCE ON THIS TEST
10 INDICATE DECEPTION OR TRUTHFULNESS?

11 A THEY INDICATE TRUTHFULNESS TO ME.

12 Q IF MR. COPE WAS INFORMED FOLLOWING THIS TEST
13 THAT HIS PERFORMANCE INDICATED DECEPTION WOULD THAT
14 BE TRUE OR CORRECT OR WOULD IT BE FALSE?

15 A I BELIEVE IT WOULD BE INCORRECT, THAT HE SHOULD
16 HAVE BEEN TOLD THAT HE PASSED IT.

17 Q THANK YOU. ANSWER ANY QUESTIONS THE STATE
18 WOULD HAVE.

19 THE COURT: THE STATE. THE STATE GOES
20 FIRST.

21 CROSS EXAMINATION BY MR. BRACKETT:

22 Q GOOD AFTERNOON, SIR. WELCOME TO SOUTH CAROLINA.

23 A THANK YOU.

24 Q HOW ARE YOU?

25 A IT'S GOOD. IT'S NICE TO BE BACK IN THE SOUTH.

1 Q YES, SIR. EVEN WITH THE HURRICANE WE ARE
2 HAVING.

3 A EVEN WITH THE HURRICANE.

4 Q YOU SAID YOU RELIED ON AN E-MAIL, A TRANSCRIPT,
5 AND THOSE CHARTS THAT ARE NOW IN EVIDENCE?

6 A THAT'S CORRECT.

7 Q DO YOU HAVE THAT E-MAIL WITH YOU?

8 A NOT WITH ME HERE, NO.

9 Q NOT WITH YOU NEAR OR HERE?

10 A HERE.

11 Q WHERE WOULD THAT BE?

12 A I MIGHT HAVE IT IN MY BRIEFCASE IN THE CAR.

13 Q ALL RIGHT. I'D LIKE TO SEE THAT E-MAIL IF I
14 COULD. IF YOU RELIED ON IT IN FORMING HIS OPINION
15 I'D LIKE TO KNOW ALL THE INFORMATION THAT DR. HONTS
16 REVIEWED PRIOR TO CROSS EXAMINATION. I DON'T KNOW
17 WHAT THAT SAYS.

18 THE COURT: HOW LONG WILL IT TAKE TO GET
19 IT.

20 A CAR'S RIGHT OUTSIDE.

21 MR. BAITY: TAKE HIM TO THE CAR, YOUR
22 HONOR.

23 THE COURT: DO THAT RATHER THAN TAKE A
24 BREAK WE'LL JUST SIT IN HERE.

25 MR. BAITY: I MIGHT BE ABLE TO PROVIDE IT

1 MYSELF.

2 THE COURT: WELL, IF YOU CAN THAT IS THE
3 QUICKEST WAY.

4 MR. BAITY: YES SIR. I'LL HAVE TO GO TO
5 THE LIBRARY BECAUSE THAT'S WHERE IT IS.

6 THE COURT: ALL RIGHT. THANK YOU.

7 MR. BAITY: YES, SIR.

8 (COMPLIES.)

9 Q IS THIS THE E-MAIL YOU RECEIVED FROM MR. BAITY?

10 A YES, IT IS.

11 Q OKAY.

12 A (READING THE E-MAIL.)

13 Q ALL RIGHT. SIR, ARE YOU FAMILIAR WITH THE
14 CONTENTS OF THIS E-MAIL?

15 A I AM.

16 Q AND THIS E-MAIL WAS SENT TO YOU TWO OR THREE
17 WEEKS AGO?

18 A YES.

19 Q THAT WAS YOUR FIRST INVOLVEMENT IN THIS CASE?

20 A IT WAS.

21 Q AND WOULD IT BE SAFE TO CHARACTERIZE THIS E-MAIL
22 AS BASICALLY SAYING THE DEFENSE VERSION OF THE CASE?

23 A ABSOLUTELY.

24 Q THIS IS NOT THE STATE'S VERSION?

25 A OH, I WOULDN'T THINK SO.

1 Q OKAY. SO THIS IS PARTIALLY WHAT YOU RELIED ON
2 IN FORMING YOUR OPINION?

3 A PARTIALLY.

4 Q ALONG WITH THIS TRANSCRIPT?

5 A THAT'S CORRECT.

6 Q FROM THE FAMILY COURT HEARING AT SOME OTHER
7 POINT IN TIME?

8 A THAT'S CORRECT.

9 Q AND THOSE DOCUMENTS THERE THAT ARE NOW MARKED IN
10 EVIDENCE, THE POLYGRAPH --

11 A YES, EXHIBIT 64. IT WAS MOSTLY 64. THE CHARTS
12 THEMSELVES, THEY SPEAK FOR THEMSELF.

13 Q AND WOULD YOU AGREE THAT AS AN EXPERT THAT IN
14 ORDER TO FORM AN OPINION AND HAVE THAT OPINION BE
15 VALID THE MORE INFORMATION YOU HAVE THE BETTER YOUR
16 OPINION IS GOING TO BE?

17 A THAT'S CORRECT.

18 Q THE LESS INFORMATION, THE LESS VALUABLE YOUR
19 OPINION IS?

20 A THAT'S CERTAINLY TRUE.

21 Q OKAY. NOW YOU HAD INDICATED THAT THERE SEEMED
22 TO BE A SCARCITY OF INFORMATION ON THE, IN THE FORM
23 OF NOTES FROM DETECTIVE BAKER, THAT IT WAS KIND OF A
24 THIN SORT OF REPORT THAT YOU HAD, DIDN'T REALLY HAVE
25 A WHOLE LOT OF DETAIL?

1 A THE REPORT ITSELF. IT WOULDN'T NECESSARILY BE
2 NOTES. THE REPORT IS ONE PAGE. IT'S THAT FIRST ONE.

3 Q THIS ONE THAT SAYS POLYGRAPH REPORT WHERE IT
4 INDICATES THAT HE FAILED?

5 A THAT'S CORRECT.

6 Q THEN THE BULK OF THE REST OF THIS IS ALL REALLY
7 SCORING INFORMATION, ISN'T THAT RIGHT?

8 A IT'S MATERIAL, YES, THAT WAS GENERATED AS PART
9 OF THE TEST.

10 Q OKAY. BUT IT DOESN'T REALLY DETAIL ANY OF THE
11 FACTORS SURROUNDING THE INTERVIEW AND ALL THAT SORT
12 OF THING?

13 A THAT'S CORRECT.

14 Q AND THAT'S IMPORTANT AND YOU SAY IT'S HARD FOR
15 YOU TO FORM AN OPINION BECAUSE YOU DON'T HAVE THAT
16 INFORMATION?

17 A THAT IS ALSO CORRECT.

18 Q ALL RIGHT. SO I TAKE IT THEN, SIR, THAT YOU
19 NEVER WERE SHOWN BY THE DEFENSE THIS FOUR PAGE, ONE
20 TWO, THREE, FOUR, FOUR PAGE SUMMARY OF THE INTERVIEW,
21 OF THE REPORT DETAILING ALL THE CIRCUMSTANCES THAT
22 WAS PREPARED BY MIKE BAKER THAT SAME DAY JUST AFTER
23 HE ADMINISTERED THE POLYGRAPH?

24 A I HAVE NOT SEEN THIS, NO.

25 Q OKAY. AND THAT WOULD BE IMPORTANT FOR YOU IN

1 FORMING YOUR OPINION, RIGHT?

2 A I HAVEN'T READ IT YET SO I DON'T KNOW.

3 Q WELL, IF IT CONTAINS ALL THE DETAILS AND THE
4 CIRCUMSTANCES SURROUNDING THE ADMINISTRATION OF THE
5 POLYGRAPH THEN IT WOULD BE IMPORTANT, WOULD IT NOT?

6 A IF IT CONTAINS INFORMATION ABOUT THINGS THAT
7 HAPPENED BEFORE.

8 Q BEFORE THE POLYGRAPH?

9 A BEFORE THE CHARTS WERE COLLECTED.

10 Q AND DURING THE ADMINISTRATION AND THE DETAILS OF
11 THE INTERVIEW AND ALL THAT SORT OF THING AND THE
12 CIRCUMSTANCES OF THE PREPOLYGRAPH INTERVIEW.

13 A THE PREPOLYGRAPH WOULD HAVE BEEN OF INTEREST TO
14 ME AND I HAD, THAT WAS DISCUSSED SOMEWHAT IN THE
15 TRANSCRIPT THAT I READ.

16 Q OKAY.

17 A AND THIS WAS REFERED TO IN THAT TRANSCRIPT.

18 Q YES, SIR. BUT YOU DIDN'T REVIEW THIS?

19 A I HAVE NOT SEEN THAT.

20 Q THE DEFENSE DIDN'T PROVIDE THIS TO YOU?

21 A THEY DID NOT.

22 Q ALL RIGHT. NOW LIKEWISE WHAT MR. BAKER ACTUALLY
23 SAID IN THIS TRIAL COULD BE VERY SIGNIFICANT?

24 A IT COULD HAVE SOME IMPACT, YES, SIR.

25 Q YES, SIR.

1 A IT WOULDN'T AFFECT MY SCORING OF THE CHARTS.

2 Q NO. WE WILL GET TO THAT IN JUST A SECOND, BUT
3 IT COULD BE SIGNIFICANT AND YOU AS AN EXPERT AGAIN
4 COMING BACK TO YOU WANT TO HAVE AS MUCH INFORMATION
5 AS POSSIBLE TO FORM YOUR OPINION, WHAT HE ACTUALLY
6 TESTIFIED TO ABOUT THE ADMINISTRATION AND HIS SCORING
7 AND ALL THOSE DETAILS THAT WOULD BE IMPORTANT TO YOU?

8 A I WOULD LIKE TO HAVE HEARD IT, YES.

9 Q YES, SIR. BUT YOU WEREN'T INVITED TO COME DOWN
10 HERE TO VIEW THAT TESTIMONY?

11 A I DID NOT HEAR IT, NO.

12 Q THEY DID NOT PROVIDE YOU WITH A SUMMARY OF WHAT
13 HE SAID?

14 A NO.

15 Q OF COURSE, WE HAVE ALREADY SEEN THEIR SUMMARY OF
16 THE CASE AND THAT'S ALL DEFENSE ORIENTED, ISN'T IT?

17 A YES.

18 Q SO LIKEWISE JUST DISCUSSING THE CASE WITH
19 DETECTIVE BAKER WOULD HAVE BEEN OF HELP, RIGHT?

20 A THE MAIN THING THAT WOULD HAVE BEEN OF HELP TO
21 ME IN EVALUATING THE TEST WOULD HAVE BEEN A TAPE
22 RECORDING.

23 Q OKAY. WELL, IN THE ABSENCE OF A TAPE RECORDING,
24 YOU DON'T HAVE ONE, IN THE ABSENCE OF THAT, CALLING
25 MR. BAKER ON THE TELEPHONE AND ACTUALLY HAVING A

1 CONVERSATION WITH HIM, EXPERT TO EXPERT SO TO SPEAK
2 ABOUT HOW THIS POLYGRAPH WAS PERFORMED, THAT WOULD
3 HAVE BEEN OF USE IN FORMING YOUR OPINION, WOULDN'T
4 IT?

5 A I DON'T THINK IT WOULD HAVE HELPED MUCH.

6 Q WELL NOW WAIT A MINUTE. YOU JUST SAID THAT IT
7 WOULD HAVE BEEN OF HELP TO YOU TO HEAR HIS TESTIMONY
8 BUT IT WOULDN'T HAVE BEEN OF HELP TO YOU TO HAVE A
9 CONVERSATION WITH HIM WHERE YOU COULD ASK HIM
10 QUESTIONS?

11 A HIS TESTIMONY IS SWORN.

12 Q YES, I UNDERSTAND THAT. BUT ACTUALLY DISCUSSING
13 IT WITH HIM AND ASKING HIM QUESTIONS HE WOULD HAVE
14 HAD TO TELL YOU ONE THING OR ANOTHER AND THEN IF HE
15 SAID SOMETHING DIFFERENT TO YOU THEN HE CAME IN COURT
16 AND SAID, YOU COULD HAVE TESTIFIED ABOUT THAT TOO,
17 RIGHT?

18 A THAT'S POSSIBLE.

19 Q BUT YOU DIDN'T CALL HIM?

20 A I DID NOT.

21 Q ALL RIGHT. LIKewise YOU SAID YOU DIDN'T HEAR
22 ANY OF THE OTHER EVIDENCE, ANY OF THE STATE'S CASE,
23 YOU HADN'T HEARD THE AUDIO TAPES OF THE INTERVIEW
24 FROM THE NIGHT BEFORE?

25 A NO.

1 Q YOU HAVEN'T HEARD HIS Demeanor, HOW HE WAS
2 BEHAVING WITH THE POLICE?

3 A NO.

4 Q THE FACT THAT WHEN THEY WERE ASKING HIM HOW HE
5 REACTED TO THE FACT THAT HIS DAUGHTER HAD BEEN
6 SEVERELY BEATEN AND RAPED AND SO FORTH HIS REACTION
7 WAS TO DESCRIBE A CHICKEN SANDWICH DELIVERY TO
8 LANCASTER?

9 A NO.

10 Q YOU DIDN'T HEAR ABOUT ALL THAT?

11 A I DID NOT.

12 Q OKAY. SO WHEN YOU SAID YOUR OPINION AS REGARDS,
13 AS REGARDS TO HIM BEING A VICTIM AND BEING DISTRAUGHT
14 AND NOT BEING A GOOD CANDIDATE REALLY THE BEST WAY TO
15 KNOW WHAT HIS Demeanor WAS AND WHAT HIS PHYSICAL
16 CONDITION AND EMOTIONAL STATE WAS WOULD HAVE BEEN TO
17 ACTUALLY LISTEN TO THOSE TAPES THAT WERE DONE THE
18 NIGHT BEFORE THEN YOU COULD HAVE HEARD WHAT HIS
19 Demeanor AND HOW DISTRAUGHT OR NOT DISTRAUGHT HE WAS?

20 A NO, BECAUSE THAT WAS THE NIGHT BEFORE. I'D LIKE
21 TO KNOW WHAT HAPPENED, THE ONLY THING I WAS ASKED TO
22 EVALUATE WAS THE POLYGRAPH TEST.

23 Q OKAY.

24 A AND SO THE ONLY THING THAT WOULD HAVE HELPED
25 THERE WOULD HAVE BEEN TO KNOW WHAT HE WAS LIKE DURING

1 THE POLYGRAPH TEST.

2 Q OKAY. BUT THE BEST JUDGE OF THAT I THINK YOU
3 TESTIFIED ON DIRECT, THE BEST JUDGE OF THAT WOULD BE
4 THE ACTUAL POLYGRAPH OPERATOR?

5 A YES.

6 Q AND THE POLYGRAPH OPERATOR IS TYPICALLY TRAINED
7 TO OBSERVE FOR THOSE PHENOMENA AND TAKE THEM INTO
8 ACCOUNT AND MAKE A DECISION?

9 A THAT'S CORRECT.

10 Q AND IN FACT IN THIS CASE WERE YOU AWARE THAT
11 THEY ATTEMPTED TO RUN A POLYGRAPH IN THE MIDDLE OF
12 THE NIGHT AFTER THE INTERVIEW CONCLUDED?

13 A YES, ACTUALLY THAT'S IN THE TRANSCRIPT THAT I
14 READ AND DETECTIVE BAKER, TO HIS CREDIT, REFUSED TO
15 DO THAT AT 3:30 IN THE MORNING OR WHENEVER THAT WAS.

16 Q SO YOU HAVE GOOD REASON TO BELIEVE THAT HE WAS
17 COGNIZANT OF THESE PROBLEMS AND AWARE OF THEM AND WAS
18 TAKING THEM INTO ACCOUNT AS HE WAS MAKING HIS
19 DECISIONS AS TO WHETHER TO ADMINISTER THE POLYGRAPH
20 OR NOT?

21 A IT SEEMS THAT I HE DID, YES.

22 Q YES, SIR. YOU SAID THAT THERE WERE TWO, THREE
23 SYSTEMS FOR SCORING, AND THE ONE THAT YOU USE IS FROM
24 THE UNIVERSITY OF UTAH?

25 A THAT'S CORRECT.

1 Q OKAY. NOW THE OTHER TWO SYSTEMS, YOU KNOW WHICH
2 SYSTEM THAT HE USED TO SCORE?

3 A I DON'T KNOW FOR SURE. IT LOOKS LIKE THE U.S.
4 MILITARY SYSTEM, BUT I DON'T KNOW THAT FOR SURE. THE
5 THREE SYSTEMS ARE QUITE SIMILAR.

6 Q OKAY. NOW THE SYSTEM THAT HE USED, OBVIOUSLY,
7 HE HAS AS MUCH FAITH IN THAT AS YOU HAVE IN YOUR
8 SYSTEM?

9 A HE MAY, YES.

10 Q HE MAY, BUT YOU DON'T?

11 A I DON'T.

12 Q AND LIKEWISE HE -- SO THAT'S A SUBJECTIVE ISSUE
13 THAT COULD VARY FROM EXPERT TO EXPERT?

14 A NO, I BELIEVE THAT'S A SCIENTIFIC ISSUE THAT
15 ACTUALLY WE HAVE DATA ON AND THE DATA SHOW THAT THE
16 UTAH SYSTEM IS THE MOST ACCURATE SYSTEM.

17 Q OBVIOUSLY IT'S NOT CONCLUSIVE BECAUSE WE HAVE
18 THOSE OTHER TWO SYSTEMS AND THEY ARE STILL IN USE?

19 A WELL, THAT HAPPENS IN LOTS OF AREAS BUT THERE IS
20 CLEAR SCIENTIFIC DATA ON IT.

21 Q THE MILITARY SYSTEM THAT YOU WERE TALKING ABOUT
22 THAT'S A DIFFERENT ONE, WHERE IS THAT USED; WHO USES
23 THAT?

24 A THAT'S USED, THAT'S A SYSTEM TAUGHT BY THE
25 FEDERAL GOVERNMENT AT THE POLYGRAPH INSTITUTE. I'M

1 TRAINED IN THAT SYSTEM AS WELL.

2 Q OKAY.

3 A IT'S VERY SIMILAR AND ACTUALLY IF YOU SCORE
4 CHARTS WITH THE MILITARY SYSTEM AND WITH THE UTAH
5 SYSTEM THE CORRELATION IS USUALLY VERY HIGH.

6 Q NOW I BELIEVE YOU, IN YOUR PUBLICATIONS THAT YOU
7 WENT THROUGH YOU DIDN'T MENTION THIS ONE
8 SPECIFICALLY, BUT IT IS LISTED, YOU SUBMITTED SOME
9 INFORMATION IN REGARDS TO A CASE THAT WAS PENDING
10 BEFORE THE SUPREME COURT, UNITED STATES OF AMERICA
11 VERSUS EDWARD G. SCHEFFER?

12 A YES.

13 Q IN 1977?

14 A YES.

15 Q AND YOU WROTE A, BASICALLY A BRIEF IN SUPPORT OF
16 A POSITION --

17 A THAT'S CORRECT.

18 Q ---THAT WAS IN DISPUTE IN THAT CASE.

19 A I CO-AUTHORED AN AMICUS BRIEF, YES, SIR.

20 Q AND I'LL SHOW YOU A DOCUMENT AND ASK DO YOU
21 RECOGNIZE THAT AS BEING THE, YOU WILL HAVE TO TURN
22 THE PAGE, THE SECOND PAGE ON THAT WHERE THE BRIEF
23 ACTUALLY STARTS, DO YOU RECOGNIZE THAT AS BEING THE
24 BRIEF THAT YOU SUBMITTED?

25 A I'VE NOT SEEN THIS FORM OF IT, BUT IT LOOKS THE

1 CORRECT CONTENT.

2 Q IF YOU WILL JUST TAKE A MOMENT TO REVIEW THAT
3 AND CONFIRM, SATISFY YOURSELF THAT THAT IS IN FACT
4 THE CONTENT OF THE BRIEF THAT YOU SUBMITTED.

5 A (READS.) IT DOES.

6 Q ALL RIGHT, SIR. NOW YOU HAD MENTIONED BEFORE
7 THE DEPARTMENT OF DEFENSE SCORING METHOD AND
8 METHODOLOGY, YOU DISCUSS SOME OF THE DEPARTMENT OF
9 DEFENSE TRAINING METHODS IN THIS, DON'T YOU?

10 A YES.

11 Q OKAY. AND IS IT FAIR TO CHARACTERIZE YOUR --
12 THE COURT: KEEP YOUR VOICE LEVEL UP A
13 LITTLE BIT.

14 Q YES, SIR. ON PAGE THREE OF THIS DOCUMENT.

15 A OKAY.

16 Q THE SECOND FULL PARAGRAPH, SECOND SENTENCE, ARE
17 YOU WITH ME?

18 A WHAT'S THE PARAGRAPH START WITH?

19 Q THE PRIMARY PROBLEM. THE SECOND SENTENCE,
20 HOWEVER POLYGRAPH EXAMINERS IN THE UNITED STATES
21 MILITARY GENERALLY RECOGNIZED RECOGNIZEDAS SOME OF
22 THE BEST TRAINED EXAMINERS IN THE WORLD.

23 A YES.

24 Q MOREOVER THE UNITED STATES MILITARY POLYGRAPH
25 PROGRAMS MAINTAIN A HIGH LEVEL OF QUALITY CONTROL

1 OVER THE ADMINISTRATION OF POLYGRAPH EXAMINATIONS.

2 A IT'S TRUE.

3 Q THESE FACTORS WORK TO ENSURE THAT THE QUALITY OF
4 POLYGRAPH PRACTICE IN THE UNITED STATES MILITARY IS
5 QUITE HIGH.

6 A YES.

7 Q YOU ARE REFERRING TO THE DEPARTMENT OF DEFENSE
8 POLYGRAPH INSTITUTE WHICH IS LOCATED IN FORT JACKSON
9 HERE IN SOUTH CAROLINA, ISN'T THAT RIGHT?

10 A IT IS NOW, YES.

11 Q YES, SIR. ON PAGE SEVEN OF 18, FIRST FULL
12 PARAGRAPH AT THE TOP OF THE PAGE, THE SENTENCE
13 BEGINS, THE RESULTING PHYSIOLOGICAL. I'M RIGHT HERE.
14 YOU WITH ME?

15 A I AM.

16 Q THE SECOND SENTENCE: INDEPENDENT EVALUATIONS BY
17 PERSONS WHO HAVE ACCESS TO ONLY THE PHYSIOLOGICAL
18 DATA ARE USEFUL FOR EVALUATING THE INFORMATIONAL
19 CONTENT OF THOSE DATA, HOWEVER, THE DECISIONS
20 RENDERED BY THE ORIGINAL EXAMINERS PROBABLY PROVIDE A
21 BETTER ESTIMATE OF THE ACCURACY OF POLYGRAPH
22 TECHNIQUES AS THEY ARE ACTUALLY EMPLOYED IN THE
23 FIELD. STAND BY THAT STATEMENT?

24 A YES.

25 Q OKAY. NEXT PAGE, BOTTOM PARAGRAPH, YOU WITH ME

1 THERE?

2 A I AM.

3 Q HIGH QUALITY SCIENTIFIC RESEARCH FROM THE
4 LABORATORY IN THE FIELD CONVERGE ON THE CONCLUSION
5 THAT THE QUALITY QUESTION, THAT'S THE CQT WHICH
6 STANDS FOR?

7 A COMPARISON QUESTIONS.

8 Q COMPARISON QUESTION. IS A HIGHLY ACCURATE
9 DISCRIMINATOR OF TRUTH TELLERS AND DECEIVERS, AND YOU
10 SAW NO PROBLEM WITH THE COMPARISON QUESTIONS IN THIS
11 TEST?

12 A NO.

13 Q OKAY. THE RESEARCH RESULTS CONVERGE ON AN
14 ACCURACY ESTIMATE THAT EXCEEDS 90 PERCENT.

15 A YES.

16 Q MOREOVER ORIGINAL EXAMINERS WHO ARE MOST LIKELY
17 TO OFFER TESTIMONY PRODUCE EVEN HIGHER ESTIMATES OF
18 ACCURACY. THERE MAY BE A TENDENCY FOR THE COMPARISON
19 QUESTION TO PRODUCE MORE FALSE POSITIVE THAN NO FALSE
20 NEGATIVE ERRORS BUT THIS TREND IN THE CURRENT
21 LITERATURE IS NOT PARTICULARLY STRONG.

22 A THAT'S TRUE.

23 Q THAT'S A LITTLE BIT AT VARIANCE WITH WHAT YOU
24 TESTIFIED TO EARLIER, IS IT NOT, REGARDING THE FALSE
25 POSITIVE BEING HIGHER THAN FALSE NEGATIVE?

1 A NO, THAT'S WHAT I SAID. THERE IS A TENDENCY FOR
2 IT TO BE MORE FALSE POSITIVE THAN FALSE NEGATIVE AND
3 THE TREND IN THE CURRENT LITERATURE SO IT IS
4 REFERENCING THE MOST RECENT STUDIES IS THAT IT'S NOT
5 PARTICULARLY STRONG. ALTHOUGH IF YOU LOOK AT THE
6 WHOLE BODY OF LITERATURE THE NUMBERS I GAVE ARE
7 CORRECT.

8 Q OKAY. NO TENDENCY, NEXT PAGE. NO TENDENCY
9 TOWARD FALSE POSITIVE ERRORS IS SEEN IN THE DECISIONS
10 OF THE OTHER EXAMINERS.

11 A THAT WAS TRUE FOR THE DATA AND WE REFERENCED IT.

12 Q YES, SIR. AND THAT WOULD BE MIKE BAKER THE
13 ORIGINAL EXAMINER IN THIS CASE?

14 A YES.

15 Q YES. THE SCIENTIFIC VALIDITY OF A PROPERLY
16 ADMINISTERED POLYGRAPH EXAM IN THE REAL LIFE CASE
17 COMPARES FAVORABLY WITH SUCH OTHER FORMS OF
18 SCIENTIFIC EVIDENCE, X-RAYS, ELECTROCARDIOGRAMS,
19 FIBER ANALYSIS, AND IS FAR MORE RELIABLE THAN OTHER
20 FORMS OF EXPERT TESTIMONY INCLUDING PSYCHOLOGICAL, IS
21 THAT RIGHT?

22 A YES.

23 Q FINALLY PAGE 15 OF 18.

24 A MY PAGES AREN'T NUMBERED SO YOU WILL HAVE TO.

25 Q AT THE TOP RIGHT HAND CORNER OFF THE INTERNET

1 PRINTING.

2 A NO, MINE DOESN'T HAVE THAT.

3 Q WELL, IT IS THE SECOND TO THE LAST PAGE.

4 A OKAY. THAT HELPS.

5 Q YES, SIR. IS THAT WRITTEN ACROSS THE TOP,
6 PROBLEMS ASSOCIATED. THE BOTTOM SECOND TO THE LAST
7 FULL PARAGRAPH, HONTS, AND THAT WOULD BE YOU, HONTS
8 AND PERRY.

9 A YES.

10 Q YOU WOULD BE THE HONTS OF THAT?

11 A I AM.

12 Q ALTHOUGH CRITICAL OF THE GENERAL LEVEL OF
13 TRAINING FOR POLYGRAPH EXAMINERS NOTE THAT THE
14 DEPARTMENT OF DEFENSE POLYGRAPH INSTITUTE IS
15 GENERALLY TO BE CONSIDERED THE BEST TRAINING FACILITY
16 FOR POLYGRAPH EXAMINERS.

17 A YES.

18 Q THE UNITED STATES, IN THE NEXT SENTENCE DOWN,
19 ALL POLYGRAPH EXAMINERS FOR THE LSI ARE TRAINED AT
20 DODPI, IS THAT WHAT IT IS CALLED, D-O-D-P-I?

21 A YES.

22 Q DODPI THAT'S THE POLYGRAPH SCHOOL?

23 A YES, THAT'S THE ACRONYM FOR IT.

24 Q YES, SIR. THE UNITED STATES MILITARY POLYGRAPH
25 PROGRAMS MAINTAIN STRICT GUIDELINES FOR THE

1 ADMINISTRATION OF POLYGRAPH TESTS AND EVERY POLYGRAPH
2 IN A CRIMINAL CASE IS REVIEWED BY QUALITY CONTROL OF
3 THE PROGRAM HEADQUARTERS. EXAMINERS WHO PRODUCE
4 SUBSTANDARD WORK RECEIVE ADDITIONAL TRAINING OR ARE
5 REASSIGNED TO OTHER DUTIES.

6 A YES.

7 Q YOU HAVE A LOT OF FAITH IN DODPI?

8 A YES.

9 Q THEY DO GOOD WORK THERE?

10 A GENERALLY, YES.

11 MR. BRACKETT: COURT'S INDULGENCE ONE
12 MOMENT.

13 Q ONE FINAL QUESTION. OBVIOUSLY YOU DON'T COME
14 ALL THE WAY FROM BOISE FOR NOTHING.

15 A YES.

16 Q HOW MUCH ARE YOU GETTING PAID AN HOUR?

17 A I CHARGE 200 AN HOUR FOR WORK IN BOISE AND 2400
18 A DAY WHEN I TRAVEL.

19 Q OKAY. HOW MANY DAYS HAVE YOU GOT IN THIS CASE?

20 A TWO.

21 Q DO YOU MAKE \$5,000?

22 A ROUGHLY.

23 MR. BRACKETT: NO FURTHER QUESTIONS.

24 THE COURT: MR. GREELEY.

25 MR. GREELEY: I DON'T HAVE ANY QUESTIONS.

1 THE COURT: REDIRECT.

2 MR. BAITY: JUST A COUPLE, YOUR HONOR.

3 REDIRECT EXAMINATION BY MR. BAITY:

4 Q DR. HONTS, IF YOU HAD BEEN GIVEN THE INFORMATION
5 THAT MR. BRACKETT ASKED YOU ABOUT CONCERNING THE
6 PRETEST SETTING AND THE QUESTIONS THAT WERE ASKED
7 DURING THAT BY MR. BAKER TO MR. COPE, WOULD THAT HAVE
8 AFFECTED THE WAY THAT YOU SCORED THIS TEST AT ALL?

9 A NO, NOT AT ALL. IN FACT, THE SCORING WOULD HAVE
10 BEEN DONE BEFORE I WOULD WANT TO HAVE ACCESS TO ANY
11 OF THAT MATERIAL.

12 Q AND YOU DID OBTAIN A FLAVOR, DID YOU NOT, OF
13 WHAT DID GO ON BY REVIEWING THE TRANSCRIPT AND BY
14 REVIEWING THE QUESTIONS, THE PRETEST QUESTIONS, THAT
15 WERE ASKED?

16 A THAT'S CORRECT.

17 Q AND BY REVIEWING THE CONTROL QUESTIONS?

18 A YES.

19 Q AND I BELIEVE YOU TESTIFIED YOU DIDN'T HAVE ANY
20 QUARREL WITH THE CONTROL QUESTIONS THAT WERE SELECTED
21 BY MR. BAKER, IS THAT CORRECT?

22 A I DO NOT.

23 Q WOULD A TAPE RECORDING OR A VIDEO TAPE OR AUDIO
24 TAPE BEEN A BETTER WAY TO UNDERSTAND THIS INFORMATION
25 THAN JUST SIMPLY THE SUMMARY FROM THE POLYGRAPH

1 EXAMINER?

2 A YES, IT WOULD HAVE.

3 Q ARE VIDEO TAPED POLYGRAPHS OR AUDIO TAPE
4 POLYGRAPHS UNHEARD OF THIS IN INDUSTRY?

5 A ABSOLUTELY NOT. IN MANY PLACES THEY ARE IN FACT
6 REQUIRED. STATE OF NEW MEXICO WHERE POLYGRAPHS ARE
7 ADMISSIBLE THAT'S A BASIC REQUIREMENT FOR
8 ADMISSIBILITY.

9 Q THANK YOU.

10 MR. BAITY: NOTHING FURTHER, YOUR HONOR.

11 THE COURT: MR. BRACKETT.

12 MR. BRACKETT: NO, SIR.

13 THE COURT: ALL RIGHT. WE APPRECIATE YOUR
14 TIME. THANK YOU. ANY REASON THIS WITNESS CAN'T BE
15 EXCUSED.

16 MR. BRACKETT: NO, SIR.

17 MR. GREELEY: NO OBJECTION.

18 THE COURT: HAVE A SAFE TRIP BACK. CALL
19 YOUR NEXT WITNESS.

20 MR. BAITY: YOUR HONOR, MAY WE BRIEFLY
21 APPROACH.

22 (BENCH CONFERENCE AT 12:00 PM)

23 THE COURT: MEMBERS OF THE JURY PANEL,
24 WE'RE GOING TO GO AHEAD AND BREAK FOR LUNCH. IT'S 12
25 O'CLOCK. I'M GOING TO ASK YOU TO BE BACK AT 1:15.

1 (THE JURY EXITS THE COURTROOM AT 12:02
2 PM)

3 THE COURT: DUE TO THE NATURE OF THE
4 CONFERENCE I THINK WE OUGHT TO PUT SOMETHING ON THE
5 RECORD. MR. BAITY.

6 MR. BAITY: YOUR HONOR, IT'S BEEN MY
7 UNDERSTANDING, PERHAPS IT'S NOT BEEN CLEARLY STATED,
8 BUT THAT THE CONFERENCE ROOM WAS TO BE USED BY THE
9 DEFENSE.

10 THE COURT: THE LIBRARY.

11 MR. BAITY: THE LIBRARY, I'M SORRY. USED
12 BY THE DEFENSE TO PREPARE ITS CASE AND TO STORE ITS
13 RECORDS AND FILES AND SO FORTH. YESTERDAY AFTERNOON
14 I USED THAT ROOM FOR THAT PURPOSE QUITE EXTENSIVELY.
15 WHILE COURT WAS GOING ON I WAS WORK USING THE PHONE
16 AND USING THE CONFERENCE TABLE THAT WAS FURTHEST BACK
17 IN THE LIBRARY, LIBRARY YOUR HONOR. I GOT UP AT ONE
18 POINT TO GO TO THE RESTROOM AND RETURNED DIRECTLY TO
19 THAT TABLE AND AN IMPORTANT WORK PRODUCT WAS MISSING
20 AND I MEAN IT WASN'T A MATTER OF, I DIDN'T GO
21 ANYWHERE EXCEPT TO THE RESTROOM, IT WASN'T A MATTER
22 OF ME MISPLACING IT BUT IT IS GONE. IT IS NOT
23 CRITICAL TO THE CASE AND QUITE FRANKLY I RECREATED IT
24 AGAIN LAST NIGHT.

25 THIS MORNING, YOUR HONOR, I HAVE NOTES

1 THAT WERE PREPARED IN ANTICIPATION OF MY NEXT
2 WITNESS, HIS DIRECT EXAMINATION, AND I HAVE FOUND A
3 PORTION OF THOSE NOTES WHICH WERE STORED IN THE
4 LIBRARY, HOWEVER A PORTION OF THEM ARE MISSING AGAIN,
5 AND I CAN STATE TO THIS COURT WITHOUT ANY HESITATION
6 THAT I KNOW THEY WERE THERE, THAT I REVIEWED THEM
7 THIS MORNING. I REVIEWED THEM RIGHT BEFORE I CALLED
8 DR. HONTS AND JUST LEFT THEM IN THE LIBRARY, NOT
9 LAYING OUT, BUT ACTUALLY STORED WITH MY BRIEF CASE
10 AND I CAN RECREATE THOSE. IT'S NOT A PROBLEM. I
11 HAVE EXTRA COPIES IN MY OTHER FILES. IT WAS JUST
12 SORT OF A SUMMARY. I HAVE NO IDEA WHAT MAY BE GOING
13 ON AND I DIDN'T FEEL IT NECESSARY TO REPORT YESTERDAY
14 WHAT I MENTIONED. BUT I DO FEEL THE NEED TO DO IT
15 NOW AND I BELIEVE IT'S MADE IT DIFFICULT BUT
16 CERTAINLY NOT IMPOSSIBLE FOR US TO GO FORWARD AND I
17 WILL BE PREPARED SHORTLY IF I CAN HAVE 30 MINUTES TO
18 SIMPLY JOT SOME THINGS DOWN.

19 THE COURT: WELL, YOU INDICATED YOUR BRIEF
20 CASE WAS MISSING.

21 MR. BAITY: MY BRIEF CASE, WHAT I MEANT TO
22 SAY WAS MY BRIEF CASE WAS NOT IN THE SAME POSITION
23 WHERE IT WAS AND THERE IS AND I HAD THE FILE SITTING
24 ON TOP OF THAT AND THERE ARE SOME THINGS THAT ARE
25 MISSING FROM THAT FILE, NOT FROM MY BRIEF CASE. THEY

1 WERE STORED, AS I SAID STORED WITH MY BRIEF CASE.

2 THE COURT: BUT YOUR BRIEF CASE IS NOT
3 MISSING.

4 MR. BAITY: NO, MY BRIEF CASE IS HERE,
5 YOUR HONOR.

6 THE COURT: WELL, WE'LL BREAK FOR LUNCH
7 AND COME BACK AT 1:15 AND HOPEFULLY YOU'LL BE ABLE TO
8 RECONSTRUCT IT BUT I'M GOING TO MAKE, SEE IF WE CAN
9 FIND OUT WHAT HAPPENED. OUR CLEANING CREW USUALLY
10 COMES IN AT NIGHT.

11 MR. BAITY: THIS WAS BEFORE FIVE O'CLOCK

12 THE COURT: MR. MORTON.

13 MR. MORTON: YOUR HONOR, I DON'T HAVE
14 ANYTHING ON THAT ISSUE. I JUST WANTED TO MENTION ONE
15 THING. MR. BRACKETT INDICATED THAT WE HAVE PROVIDED,
16 IN THE SPEAKING OF THE OBJECTIONS, ALL THE DISCOVERY
17 THAT HAD BEEN PROVIDED TO THE DEFENSE I DIDN'T WANT
18 TO GET UP AND OBJECT TO ALL THE DISCOVERY THAT THEY
19 DIDN'T PROVIDE THE DEFENSE UNTIL THIS CASE STARTED.
20 I WOULD JUST ASK MR. BRACKETT TO REFRAIN FROM THOSE
21 KIND OF SPEAKING OBJECTIONS TO THE JURY WHICH IMPLIES
22 TO THE JURY THEY WERE DOING THINGS FOR US THAT WE ARE
23 NOT DOING FOR THEM.

24 THE COURT: AND I THINK THAT IS
25 REASONABLE. IF YOU HAVE AN OBJECTION, MAKE THE