

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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1 OBJECTION, AND IF YOU NEED TO EXPAND ON IT JUST SAY
2 WELL I NEED TO IT TAKE UP OUTSIDE THE PRESENCE OF THE
3 JURY BECAUSE SPEAKING OBJECTIONS ARE NOT PROPER. I'M
4 NOT FINDING -- ANYWAY GO AHEAD.

5 MR. GREELEY: YOUR HONOR, DURING
6 MR. HONTS DIRECT EXAMINATION MR. BAITY DID HAND ME
7 HIS VITAE AND I SAT IT OVER HERE AND I HAVE NO
8 OBJECTION TO HIM PUTTING IT INTO EVIDENCE AT THIS
9 TIME. SINCE I KIND --

10 MR. BRACKETT: NO OBJECTION.

11 THE COURT: BE RECEIVED WITHOUT OBJECTION.

12 MR. BAITY: THANK YOU, YOUR HONOR.

13 (COURT IN RECESS AT 12:07 PM).

14 (COURT RESUMES AT 1:20 PM AND THE
15 DEFENDANTS ARE PRESENT AND THE JURY RETURNS TO THE
16 COURTROOM AT 1:27 PM)

17 THE COURT: CALL YOUR NEXT WITNESS.

18 MR. BAITY: PLEASE THE COURT, YOUR HONOR.
19 WE CALL SAUL M. KASSIN TO THE STAND.

20 SAUL KASSIN, BEING FIRST DULY SWORN,
21 TESTIFIED AS FOLLOWS.

22 DIRECT EXAMINATION BY MR. BAITY:

23 Q DR. KASSIN, WOULD YOU PLEASE GIVE US YOUR FULL
24 NAME AND ADDRESS?

25 A SAUL KASSIN. S-A-U-L K-A-S-S-I-N.

1 WILLIAMSTOWN, MASSACHUSETTS.

2 Q PLEASE SPEAK UP IF YOU CAN AND UNFORTUNATELY
3 THAT MICROPHONE WILL GET NO CLOSER.

4 A OKAY.

5 Q YOU ARE GOING TO NEED TO PROJECT JUST A BIT.
6 DOCTOR, WHAT IS YOUR PROFESSION AND CURRENT
7 EMPLOYMENT.

8 A I'M A SOCIAL PSYCHOLOGIST AND A PSYCHOLOGY
9 PROFESSOR AT WILLIAMS COLLEGE IN MASSACHUSETTS.

10 Q AND WHERE IS WILLIAMS COLLEGE LOCATED?

11 A IT'S THE NORTHWEST CORNER OF MASSACHUSETTS,
12 COUPLE OF MILES SOUTH OF VERMONT, JUST EAST OF NEW
13 YORK.

14 Q COULD YOU GIVE US A SUMMARY OF YOUR EDUCATIONAL
15 BACKGROUND PLEASE?

16 A I HAVE A PH.D. IN SOCIAL PSYCHOLOGY 1978 FROM
17 THE UNIVERSITY OF CONNECTICUT. I HAVE HAD A POST
18 DOCTRINAL FELLOWSHIP AT THE UNIVERSITY OF KANSAS IN
19 1979. I WAS A VISITING PROFESSOR AT STANFORD
20 UNIVERSITY 1985. A JUDICIAL FELLOW AT THE U.S.
21 SUPREME COURT IN 1984. AND I'VE BEEN AT WILLIAMS
22 COLLEGE EVER SINCE. I'M A PROFESSOR OF PSYCHOLOGY
23 THERE AND CHAIR OF LEGAL STUDIES.

24 Q AND CHAIR OF?

25 A OF LEGAL STUDIES.

1 Q LEGAL STUDIES. THANK YOU. PRIOR TO BECOMING A
2 PROFESSOR OF PSYCHOLOGY AT WILLIAMS COLLEGE WHAT
3 OTHER POSITIONS DID YOU HOLD?

4 A I WAS A, AN ASSISTANT PROFESSOR OF PSYCHOLOGY AT
5 PURDUE UNIVERSITY AND AGAIN I HAD, FOR ONE YEAR, A
6 VISITING POSITION AT STANFORD UNIVERSITY.

7 Q COULD YOU DESCRIBE ANY HONORS THAT YOU RECEIVED
8 DURING THE COURSE OF YOUR CAREER?

9 A I RECEIVED JUDICIAL FELLOWSHIP, A U.S. SUPREME
10 COURT JUDICIAL FELLOWSHIP. THE TWO POST DOCTRINAL
11 FELLOWSHIPS THAT I DESCRIBED. I'M A FELLOW OF THE
12 AMERICAN PSYCHOLOGICAL SOCIETY OF, FELLOW OF THE
13 AMERICAN PSYCHOLOGICAL ASSOCIATION, AND A FELLOW OF
14 THE AMERICAN PSYCHOLOGY LAW SOCIETY.

15 Q ARE THOSE THE LEADING ASSOCIATIONS IN YOUR
16 PROFESSION?

17 A YES.

18 Q ARE YOU INVOLVED IN THE REVIEW AND EDITING OF
19 ANY SCHOLARLY JOURNALS?

20 A I'M AN EDITOR, A CONSULTING EDITOR, ON LAW AND
21 HUMAN BEHAVIOR WHICH IS A JOURNAL THAT PUBLISHES
22 RESEARCH IN THE AREA OF PSYCHOLOGY AND THE LAW.

23 Q AND ARE THERE ANY PARTICULAR RESEARCH AREAS IN
24 WHICH YOU ARE CONCENTRATED IN YOUR PROFESSIONAL LIFE?

25 A YES. I'M A SOCIAL PSYCHOLOGIST. I STUDY SOCIAL

1 INFLUENCE AND THE AREA IN WHICH I STUDY SOCIAL
2 INFLUENCE IS LEGAL DECISION MAKING FOCUSING FOR
3 EXAMPLE ON INTERVIEWS AND INTERROGATIONS.

4 Q ALL RIGHT. WHAT ARE YOUR PRIMARY AREAS OF
5 PROFESSIONAL FOCUS IN YOUR CAREER?

6 A AGAIN AS A SOCIAL PSYCHOLOGIST MY INTEREST IS IN
7 SOCIAL INFLUENCE AND SO IN THE AREA OF FORENSIC
8 PSYCHOLOGY I STUDY POLICE INTERVIEWING TECHNIQUES,
9 DECEPTION DETECTION, INTERROGATION TECHNIQUES, AND
10 CONFESSIONS.

11 Q HAVE YOU WRITTEN OR EDITED ANY BOOKS IN YOUR
12 FIELD?

13 A YES, I'VE WRITTEN AND EDITED SEVERAL BOOKS.

14 Q CAN YOU DESCRIBE SOME OF THOSE PLEASE?

15 A I'M AUTHOR OF AN INTRODUCTORY PSYCHOLOGY
16 TEXTBOOK, COLLEGE LEVEL TEXTBOOK. I'M ONE OF THREE
17 AUTHORS ON A SOCIAL PSYCHOLOGY UNDERGRADUATE
18 TEXTBOOK. I'VE WRITTEN AND EDITED PROFESSIONALLY
19 SCHOLARLY BOOKS BOTH IN THE AREA OF SOCIAL PSYCHOLOGY
20 AND MORE SPECIFICALLY IN THE AREA OF PSYCHOLOGY AND
21 LAW.

22 Q AND HAVE YOU WRITTEN ANY ARTICLES THAT HAVE
23 APPEARED IN PROFESSIONAL JOURNALS?

24 A YES, A NUMBER OF THEM.

25 Q HAVE YOU TAUGHT ANY COLLEGE LEVEL COURSES

1 ADDRESSING THE STUDY OF EITHER SOCIAL PSYCHOLOGY OR
2 INTERROGATION IN STATEMENTS WHICH ARISE FROM AN
3 INTERROGATION?

4 A YES. WELL, I REGULARLY TEACH SOCIAL PSYCHOLOGY
5 AND I TEACH A COURSE IN PSYCHOLOGY AND THE LAW. ON A
6 COUPLE OF OCCASIONS I'VE TAUGHT AN UPPER LEVEL COURSE
7 ON THE PSYCHOLOGY OF EVIDENCE, SO YES, THAT'S PART OF
8 MY REGULAR, MY TEACHING AND RESEARCH ARE IN THE SAME
9 AREAS.

10 Q IN THE COURSE OF YOUR PROFESSION AS A
11 PSYCHOLOGIST SPECIALIZING IN THE AREA OF
12 INTERROGATION METHODOLOGY, HAVE YOU BEEN CALLED UPON
13 TO TESTIFY AS AN EXPERT WITNESS IN ANY CRIMINAL
14 PROCEEDINGS?

15 A YES.

16 Q SUCH AS THIS?

17 A YES, I HAVE.

18 Q WHAT TYPES OF SUBJECTS HAVE YOU TESTIFIED ABOUT
19 AS AN EXPERT WITNESS?

20 A I'VE TESTIFIED ABOUT INTERVIEWING INTERROGATION
21 AND CONFESSION AND I'VE TESTIFIED ABOUT EYE WITNESS
22 IDENTIFICATIONS.

23 Q DOCTOR, HAVE YOU TESTIFIED IN THE COURTS OF THIS
24 STATE AS AN EXPERT WITNESS?

25 A YES, I HAVE.

1 Q HAVE YOU TESTIFIED IN OTHER STATES OR FEDERAL
2 JURISDICTIONS AS AN EXPERT WITNESS?

3 A YES, I HAVE.

4 Q HAVE YOU BEEN HIRED AS A CONSULTANT OR EXPERT
5 WITNESS FOR BOTH PROSECUTION AND DEFENSE?

6 A ACTUALLY I HAVE. I WAS ASKED ONLY ONCE BY THE
7 PROSECUTION AND WHILE I WAS AGREEABLE TO TESTIFY
8 ULTIMATELY THEY DIDN'T NEED MY TESTIMONY, BUT, AND I
9 DON'T TESTIFY A LOT.

10 Q COULD YOU TELL US WHAT STATES YOU'VE BEEN
11 QUALIFIED AS AN EXPERT IN?

12 A CALIFORNIA, WISCONSIN, MILITARY COURT, NEW YORK,
13 MASSACHUSETTS, CONNECTICUT, SOUTH CAROLINA.

14 Q IS THE SCIENCE OF SOCIAL PSYCHOLOGY A RECOGNIZED
15 SCIENCE, DR. KASSIN?

16 A YES, IT IS.

17 Q DOES IT HAVE BODY OF WRITTEN REFERENCES AND
18 STUDIES?

19 A YES. IT'S A SUBSTANTIAL ONE AT THAT.

20 Q AND HAVE YOU PARTICIPATED IN THE CREATION OF A
21 PORTION OF THAT BODY OF WORK?

22 A YES, I HAVE.

23 Q HAVE YOU CONDUCTED CASE STUDIES AND OTHER FIELD
24 RESEARCH IN THAT AREA?

25 A IN SOCIAL PSYCHOLOGY?

1 Q YES, SIR.

2 A YES.

3 Q AND HAS THE ISSUE OF POLICE INTERROGATION BEEN
4 GIVEN ATTENTION TO BY SOCIAL PSYCHOLOGISTS OVER THE
5 YEARS?

6 A YES, SIR. IN FACT, MORE GENERALLY BY
7 PSYCHOLOGISTS NOT SOCIAL PSYCHOLOGISTS BECAUSE IT
8 INTERSECTS WITH A NUMBER OF DIFFERENT AREAS OF
9 PSYCHOLOGY. IT INTERSECTS WITH CLINICAL PSYCHOLOGY,
10 WITH DEVELOPMENTAL PSYCHOLOGY WHEN THERE ARE JUVENILE
11 CHILD ISSUES AND IT INTERSECTS IMPORTANTLY WITH
12 COGNITIVE PSYCHOLOGY AND COGNITIVE PSYCHOLOGISTS
13 STUDY HOW PEOPLE THINK AND PARTICULARLY COGNITIVE
14 PSYCHOLOGISTS STUDY MEMORY AND MANY MEMORY
15 RESEARCHERS HAVE BECOME INVOLVED IN THE STUDY OF
16 INTERROGATIONS AND CONFESSIONS.

17 Q AND YOU HAVE PERSONALLY CONDUCTED RESEARCH, CASE
18 STUDIES, AND OTHER TESTING ON --

19 A YES.

20 Q --SUBJECTS AND SOCIAL PSYCHOLOGY?

21 A YES.

22 Q SPECIFICALLY IN POLICE INTERROGATION?

23 A YES.

24 Q AND HAVE YOU PUBLISHED ANY OF YOUR WORK
25 SPECIFICALLY ON THE SUBJECT OF POLICE INTERROGATION?

1 A YES.

2 Q AND WHAT TYPE OF PUBLICATIONS?

3 A I'VE PUBLISHED, I'VE BEEN PUBLISHING ON THE
4 TOPIC OF CONFESSIONS NOW SINCE 1980. THESE ARE IN
5 SCIENTIFIC JOURNALS, JOURNALS SUCH AS THE JOURNAL OF
6 PERSONALITY AND SOCIAL PSYCHOLOGY, LAW AND HUMAN
7 BEHAVIOR, THE AMERICAN PSYCHOLOGIST, PSYCHOLOGICAL
8 SCIENCE. AND I'VE TESTIFIED, I'M SORRY, I PUBLISHED
9 IN THESE JOURNALS SINCE 1980 ON THIS SUBJECT.

10 Q HAS YOUR PUBLISHED WORK BEEN SUBJECT TO
11 CRITICISM AND PEER REVIEW?

12 A WELL, I DON'T KNOW ABOUT THE CRITICISM PART BUT
13 PEER REVIEW, I LIKE THAT TERM BETTER, YES. BASICALLY
14 WHEN YOU SUBMIT A PUBLICATION, WHEN YOU SUBMIT AN
15 ARTICLE FOR PUBLICATION TO A SCIENTIFIC JOURNAL
16 TYPICALLY WHAT WILL HAPPEN YOU WILL SEND IN MULTIPLE
17 COPIES OR SEND IN AN ELECTRONIC COPY, THE EDITOR THEN
18 SENDS IT OUT TO THREE OR FOUR PEOPLE IN THE FIELD WHO
19 TYPICALLY REVIEW IT BLIND WHICH IS TO SAY THE AUTHOR
20 DOESN'T KNOW WHO THE REVIEWERS ARE AND THE REVIEWER
21 DON'T KNOW WHO THE AUTHOR IS. AND THEY GO THROUGH
22 THIS VERY INTENSE LEVEL OF SCRUTINY. THE EDITOR THEN
23 MAKES A DECISION TO PUBLISH OR NOT PUBLISH OR TO
24 REVISE BASED ON THE REVIEWS THAT COME BACK.
25 TYPICALLY THE JOURNALS THAT I'VE PUBLISHED IN REJECT

1 BETWEEN 60 AND 90 PERCENT OF THE ARTICLES THAT ARE
2 SUBMITTED SO THESE ARE JOURNALS THAT PEER REVIEW IS,
3 IT SETS A RELATIVELY HIGH STANDARD FOR PUBLICATION.

4 Q WOULD YOU SAY THAT THE SCIENCE AND CASE STUDIES
5 I'VE JUST TALKED ABOUT ARE GENERALLY ACCEPTED BY THE
6 SCIENTIFIC COMMUNITY?

7 A YES. AGAIN THESE, I'VE PUBLISHED THESE PAPERS
8 IN PEER REVIEW SCIENTIFIC JOURNALS FOR YEARS NOW.

9 MR. BAITY: YOUR HONOR, WE WOULD OFFER DR.
10 KASSIN AT THIS TIME AS AN EXPERT IN THE AREA OF
11 SOCIAL PSYCHOLOGY OF POLICE INTERROGATION.

12 THE COURT: ALL RIGHT. VOIR DIRE.

13 MR. BRACKETT: YES, SIR.

14 CROSS EXAMINATION BY MR. BRACKETT:

15 Q GOOD AFTERNOON, SIR.

16 A GOOD AFTERNOON.

17 Q WELCOME TO SOUTH CAROLINA. HOW ARE YOU?

18 A THANK YOU. GOOD.

19 Q YOU'VE TESTIFIED A COUPLE TIMES BEFORE IN SOUTH
20 CAROLINA?

21 A YES, I HAVE.

22 Q I BELIEVE IT WAS IN '99 IN THE STATE VERSUS
23 ERNEST RIDDLE?

24 A THAT WAS A POST CONVICTION RELIEF HEARING I
25 BELIEVE.

1 Q YES, SIR. BUT THAT WAS THE TIME YOU TESTIFIED
2 AS AN EXPERT?

3 A YES.

4 Q AND THEN THE OTHER TIME WAS STATE VERSUS WESLEY
5 MAX MYERS DOWN IN CHARLESTON?

6 A YES, IT WAS ACTUALLY A THIRD OCCASION.

7 Q OKAY. AND IN ONE OF THOSE OCCASIONS YOU WERE
8 ADMITTED AS AN EXPERT ON BOTH OF THOSE OCCASIONS, IS
9 THAT RIGHT?

10 A YES.

11 THE COURT: THEY ARE HAVING TROUBLE
12 HEARING YOU. YOU GOT A SOFT VOICE AND I'M GOING TO
13 ASK THE WITNESS TO SPEAK UP TOO.

14 Q NOW DR. KASSIN, YOU HAVE PUBLISHED A NUMBER OF
15 ARTICLES, IS THAT RIGHT?

16 A CORRECT.

17 Q AND INCLUDED IN THAT IS A JOURNAL ARTICLE IN THE
18 AMERICAN PSYCHOLOGIST IN 1977?

19 A CORRECT.

20 Q AND YOU WERE NOT QUESTIONED ABOUT THIS JOURNAL
21 ARTICLE IN ANY OF THE OTHER TIMES YOU HAVE BEEN
22 QUALIFIED AS AN EXPERT IN SOUTH CAROLINA, HAVE YOU?

23 A I DON'T RECALL. I MAY HAVE.

24 Q WELL, YOU DON'T DISPUTE THAT IN THIS ARTICLE YOU
25 EVEN INDICATED THAT THE AREA OF EXPERTISE THAT YOU

1 CLAIM TO WANT TO TESTIFY ABOUT TODAY THAT YOU DON'T
2 BELIEVE THAT, THIS IS WHAT YOU SAID IN HERE, YOU
3 DON'T BELIEVE THAT IT QUALIFIES AS A SCIENTIFIC FIELD
4 SUBJECT TO THE REQUIREMENTS OF LAW UNDER DAUBERT, THE
5 STANDARD THAT WE HAVE TO FIND YOU?

6 A THAT'S NOT EXACTLY WHAT I SAID, BUT I KNOW THE
7 PASSAGE YOU ARE REFERRING TO.

8 Q LET ME READ THE EXACT WORDS. AS A RESULT OF
9 THIS NEGLECT THE CURRENT EMPIRICAL FOUNDATION MAY BE
10 TOO MEAGER TO SUPPORT RECOMMENDATIONS FOR REFORM OR
11 QUALIFY AS A SUBJECT OF SCIENTIFIC KNOWLEDGE
12 ACCORDING TO THE CRITERIA RECENTLY ARTICULATED BY THE
13 U.S. SUPREME COURT DAUBERT VERSUS MERRELL DOW
14 PHARMACEUTICALS INCORPORATED IN 1993?

15 A CORRECT.

16 Q OKAY. YOU GAVE US A LIST OF, AND PART OF THE
17 REASON FOR THAT IS YOU REALLY CAN'T SAY IF A
18 CONFESSION IS FALSE OR NOT

19 A THAT WOULDN'T BE MY PURPOSE TO DO THAT. IT
20 WOULD NOT BE MY PURPOSE TO HERE TO DO THAT, TO SAY
21 THAT A PARTICULAR CONFESSION IS TRUE OR FALSE, BUT
22 MERELY TO TALK ABOUT THE GENERAL PRINCIPLES THAT LEAD
23 PEOPLE TO CONFESS TO CRIMES THAT THEY DID OR DID NOT
24 COMMIT.

25 Q I UNDERSTAND BUT THERE IS NO SCIENTIFIC WAY TO

1 VALIDATE WHETHER A CONFESSION IS TRUE OR FALSE?

2 A IN A PARTICULAR INSTANCE?

3 Q YES.

4 A NO. NO, NOT WITHOUT CONSIDERATION OF OTHER
5 FACTORS AND OTHER TYPES OF EVIDENCE.

6 Q YES, SIR. YOU COULD BASED ON YOUR TRAINING AND
7 EXPERIENCE YOU BY YOURSELF JUST LOOKING AT THE
8 CIRCUMSTANCES CAN'T SAY WHETHER ANY GIVEN ---

9 A NOT ONLY CAN I NOT BUT I ACTUALLY HAVE AN
10 ARTICLE THAT'S COMING OUT SHOWING THAT PEOPLE CANNOT
11 DISTINGUISH TRUE OR FALSE CONFESSIONS THAT THEY VIEW;
12 THE AVERAGE PERSON CAN'T DO IT, POLICE OFFICERS CAN'T
13 DO IT, AND SOCIAL SCIENTISTS CAN'T DO IT, SO YES.

14 Q BUT SOMEBODY HAS TO DECIDE; A JURY ULTIMATELY,
15 RIGHT?

16 A YES.

17 Q OKAY. NOW IN FACT YOU GAVE US A LIST OF STATES
18 WHERE YOU ARE, YOU HAVE BEEN QUALIFIED AS AN EXPERT,
19 CALIFORNIA, WISCONSIN, BUT IF WE WERE IN THE STATE OF
20 NEW JERSEY YOU WOULD NOT BE ALLOWED TO TESTIFY, WOULD
21 YOU?

22 A NO, ACTUALLY I HAD A, I WAS OFFERED TO TESTIFY
23 IN THE STATE OF NEW JERSEY, THE TRIAL JUDGE RULED
24 THAT I SHOULD BE ALLOWED TO TESTIFY, AND THE APPEALS
25 COURT RULED THAT I SHOULD NOT.

1 Q THE SUPREME COURT IN NEW JERSEY RULED THAT YOUR
2 AREA OF EXPERTISE IS NOT AN AREA OF EXPERTISE THAT
3 THEIR COURTS WOULD RECOGNIZE, STATE VERSUS PATRICK
4 FREE?

5 A I'M NOT SURE -- I KNOW THE CASE. I'M NOT SURE
6 THAT WAS THE BASIS OF THEIR RULING.

7 Q OKAY. YOU WERE NOT ALLOWED TO TESTIFY AS AN
8 EXPERT IN THAT STATE?

9 A THAT IS CORRECT.

10 Q IF WE WERE IN NEW JERSEY YOU WOULD NOT BE
11 TESTIFYING HERE TODAY?

12 A THAT'S RIGHT.

13 Q IN FACT, YOU CAN'T EVEN TESTIFY AS TO THE
14 PREVALENCE OF FALSE CONFESSIONS AND NOBODY CAN SAY
15 PREVALENCE OF FALSE CONFESSIONS?

16 A THERE ARE THOSE WHO TRY AND BELIEVE ME THERE IS
17 NOT A METHODOLOGY FOR DERIVING AN ESTIMATE THAT IS
18 PRECISE, SO NOBODY KNOWS THE FREQUENCY OF FALSE
19 CONFESSION. WE HAVE SOME IDEAS. WE KNOW FOR EXAMPLE
20 THAT IN THE NEW DNA EXONERATION CASES LITERATURE, AS
21 DNA EXONERATION CASES HAVE COME IN, PEOPLE HAVE BEEN
22 ASTONISHED TO FIND THAT ROUGHLY 20 TO 25 PERCENT OF
23 THOSE EXONERATIONS HAD CONTAINED CONFESSIONS WHICH
24 WERE NOW KNOWN TO BE FALSE IN EVIDENCE, SO THERE ARE
25 SOME NUMBERS OUT THERE BUT THEY DON'T GIVE US THAT

1 ONE NUMBER WE'D LIKED TO HAVE, HOW OFTEN IN A YEAR,
2 FOR EXAMPLE, DOES THIS HAPPEN.

3 Q BECAUSE WE DON'T KNOW HOW MANY CONFESSIONS ARE
4 ACTUALLY TAKEN IN A YEAR?

5 A WELL, WE KNOW FOR EXAMPLE THAT, WE KNOW FOR
6 EXAMPLE THAT, FOR EXAMPLE, A RECENT STUDY BY DRIZZON
7 AND LEO IN WHICH THEY ANALYZED 125 FALSE CONFESSIONS,
8 KNOWN, DOCUMENTED FALSE CONFESSIONS. THEY ARGUE IN
9 THAT PAPER REASONABLY THAT THAT 125 IS THE TIP OF A
10 VERY LARGE ICEBERG AND THE WAY THEY HAVE ARRIVED AT
11 THAT IS WE KNOW THAT AND RESEARCH HAS SHOWN THIS THAT
12 MORE OFTEN THAN NOT FALSE CONFESSIONS OCCUR IN VERY
13 LOW PROFILE CASES, NOT IN BIG CASES THAT END UP IN
14 ARTICLES SUCH AS THEIRS, AND MORE OFTEN THAN NOT
15 FALSE CONFESSIONS ARE DISCOVERED TO BE FALSE BEFORE
16 THERE IS EVER A TRIAL AND A RECORD, SO LITTLE
17 ATTENTION IS PAID; SO THE DNA EXONERATION CASES ARE
18 STRICTLY POST CONVICTION DNA EXONERATION CASES AND IN
19 THAT REGARD THEY REPRESENT A SUB-SAMPLE OF WHATEVER
20 THAT NUMBER IS. IN TERMS WHAT THAT NUMBER IS NOBODY
21 KNOWS.

22 Q THAT'S THE ANSWER TO MY QUESTION THEN IS NO?

23 A YES.

24 Q OKAY. AND THERE IS A GREAT DEAL OF CONTROVERSY
25 SURROUNDING THIS FIELD OF EXPERTISE THAT YOU CLAIM A

1 PUBLICATIONS THAT ARE PEER REVIEWED JUST LIKE YOU
2 WERE DESCRIBING THAT CONTEST THE VALIDITY OF THIS?

3 A NOT THAT I KNOW OF.

4 Q PAUL CASSELL?

5 A PAUL CASSELL IS PUBLISHING IN LAW REVIEWS THAT
6 DO NOT, ARE NOT SUBJECT TO PEER REVIEW SCIENTIFIC
7 STANDARDS, AND I'M MORE THAN HAPPY TO TALK ABOUT SOME
8 OF THOSE WRITINGS.

9 Q I UNDERSTAND. THERE ARE, THERE IS SUBJECT TO
10 CONTROVERSY?

11 A IT'S SUBJECT TO CONTROVERSY AMONG LEGAL SCHOLARS
12 WHICH IS WHY I DON'T WANT TO GET INTO A NUMBERS
13 SITUATION BECAUSE AMONG RESEARCHERS THERE ISN'T A
14 CONTROVERSY THAT IT OCCURS, THAT IT OCCURS UNDER
15 CERTAIN CIRCUMSCRIBED CIRCUMSTANCES, AND THAT IT'S
16 PREDICTABLE BY KNOWING CERTAIN FACTORS THAT ARE IN
17 PLACE. AS FAR AS CASSELL IS CONCERNED, HIS WRITINGS
18 ARE DIRECTED AT TRYING TO ESTIMATE NUMBERS WHICH IS
19 AGAIN I THINK AN ENTERPRISE THAT IS NOT ONLY -- I
20 THINK IT'S JUST NOT POSSIBLE. THERE ARE TOO MANY
21 INVISIBLE CASES OUT THERE THAT WE DON'T KNOW ABOUT.

22 MR. BRACKETT: YOUR HONOR, I WOULD OBJECT
23 TO HIM BEING QUALIFIED IN THIS AREA ON TWO GROUNDS.
24 I DON'T BELIEVE THAT THIS IS --

25 THE COURT: WELL, DON'T GO -- LET'S TAKE

1 THE COURT: WELL, DON'T GO -- LET'S TAKE
2 IT UP OUTSIDE THE PRESENCE OF THE JURY. ALL RIGHT.
3 MR. GREELEY, DO YOU HAVE ANY VOIR DIRE.

4 MR. GREELEY: NO, YOUR HONOR, I DO NOT.

5 THE COURT: I'M GOING TO LET YOU GO TO THE
6 JURY ROOM JUST FOR A FEW MINUTES WHILE WE TAKE UP A
7 LEGAL MATTER.

8 (THE JURY EXITS THE COURTROOM AT 1:44
9 PM.)

10 THE COURT: YES, SIR.

11 MR. BRACKETT: PLEASE THE COURT, YOUR
12 HONOR. TWO REASONS: FIRST OF ALL, I DON'T BELIEVE
13 THIS IS AN AREA OF SCIENTIFIC ENDEAVOR WHICH, BY THE
14 WITNESS' OWN ADMISSION, QUALIFIES UNDER DAUBERT. I
15 DON'T BELIEVE THAT, THAT THIS QUALIFIES AS A
16 SCIENTIFIC AREA THAT IS CAPABLE OF BEING, THAT IS
17 CAPABLE OF BEING ASCERTAINED WITH ENOUGH CERTAINTY
18 THAT A JURY SHOULD RELY UPON IT IN FORMING THE
19 DECISION OF WHETHER TO CONVICT OR ACQUIT IN THIS
20 CASE. IT IS SIMPLY A HYPOTHESIS THAT IS UNPROVEN AND
21 THERE IS NO REAL WAY TO PROVE IT. THAT'S THE FIRST
22 PROBLEM.

23 AND I SUBMIT THAT, YOU KNOW, THE OTHER
24 STATES, I DON'T BELIEVE THAT THIS PARTICULAR ARTICLE
25 WAS POINTED OUT WHERE EVEN THIS WITNESS AGREES THAT

1 IT DOESN'T MEET THE STANDARDS OF DAUBERT.

2 THE COURT: HAVE WE ACCEPTED DAUBERT?

3 MR. BRACKETT: IT'S THE JONES STANDARD BUT
4 IT IS VERY SIMILAR. I SUBMIT THAT IT'S CLOSE ENOUGH
5 IF IT DOESN'T QUALIFY FOR DAUBERT I DON'T BELIEVE IT
6 WOULD QUALIFY UNDER JONES. BUT BE THAT AS IT MAY,
7 THE SECOND GROUNDS IS REALLY THE HEART OF IT. WE
8 ISSUED, WE VISITED THIS ISSUE BEFORE WITH THE
9 PREVIOUS WITNESS. IT'S NOT RELEVANT AT THIS POINT.
10 HE HASN'T DENIED THE, HE HASN'T DENIED THE
11 CONFESSION, HE HAS NOT STATED THAT THE CONFESSION IS
12 FALSE. I THINK IT IS GETTING THE CART BEFORE THE
13 HORSE AND I'M AFRAID THAT ONCE THIS TESTIMONY GETS IN
14 IF THEY DON'T CALL THE DEFENDANT AS A WITNESS, HE'S
15 THE ONLY PERSON THAT CAN DECRY THE CONFESSION AS
16 FALSE SETTING THE STAGE FOR DR. KASSIN TO COME IN IF
17 HE'S QUALIFIED AS AN EXPERT, AND OUR CONCERN IS THAT
18 IF THEY WANT TO DO THIS THEN THEY ARE GOING TO HAVE
19 TO CALL MR. COPE, THE SAME AS THE OTHER WITNESS.

20 AND THE LAST THING I WOULD POINT OUT, EVEN
21 THE DEFENSE'S OWN EXPERT, THE OTHER EXPERT THAT HAS
22 TESTIFIED TODAY, IN THE BRIEF THAT I WAS READING TO
23 HIM, HE INDICATED THAT HE THOUGHT POLYGRAPHS WERE
24 MORE RELIABLE THAN PSYCHOLOGICAL TESTIMONY AND
25 POLYGRAPHS ARE NOT ADMISSIBLE.

1 THE COURT: SO YOU WANT US TO TAKE THE
2 FULL CREDENCE TO WHAT THAT WITNESS TESTIFIED TO.

3 MR. BRACKETT: A PORTION OF THAT.

4 THE COURT: OH, YOU WANT TO PICK OUT THE
5 PORTION YOU LIKE.

6 MR. BRACKETT: WELL, THAT PARTICULAR
7 PORTION I AGREE WITH. I THINK THAT IS CORRECT.
8 THAT'S WHY I POINTED IT OUT TO THE JURY.

9 THE COURT: ALL RIGHT.

10 MR. BAITY: YOUR HONOR, WE'RE NOT A
11 DAUBERT STATE, WE ARE OF COURSE JONES, AND COUNSEL,
12 HAS BEEN CODIFIED IN RULE 702 AND THERE IS A FOUR
13 PRONG TEST. FIRST OF ALL THAT THE EVIDENCE WILL
14 ASSIST THE TRIER OF FACT; THAT THE EXPERT WITNESS IS
15 QUALIFIED; THAT THE UNDERLYING SCIENCE AND STUDY IS
16 RELIABLE; AND THAT THE PROBATIVE VALUE OF THE
17 EVIDENCE OUTWEIGHS THE PREJUDICIAL EFFECT. THIS
18 WITNESS HAS ALREADY SAID HE'S NOT GOING TO SIT UP
19 HERE AND SAY THIS IS A FALSE CONFESSION. HE'S NOT
20 GOING TO TESTIFY IN HIS STEAD. HE IS SIMPLY GOING TO
21 SAY THAT JUST BECAUSE THIS IS NOT AN EXACT
22 QUANTIFIABLE SCIENCE WHERE WE CAN GIVE YOU 72 PERCENT
23 OR 15 PERCENT OR WHATEVER THAT THERE IS NONETHELESS A
24 RECOGNIZED SCIENCE THAT HAS BEEN GATHERED AND WRITTEN
25 ABOUT AND PUBLISHED IN RESPECTED JOURNALS SHOWING

1 INFORMATION THAT IS COMMON TO KNOWN CASES OF FALSE
2 CONFESSIONS. AND AS HE SAID, THERE HAS BEEN MANY,
3 MANY CONFESSIONS THAT ARE FALSE CONFESSIONS THAT ARE
4 INVISIBLE, THAT HAVE NOT BEEN STUDIED, AND IT'S
5 IMPOSSIBLE TO SAY THAT A CERTAIN PERCENTAGE OR
6 SOMETHING OF THAT NATURE, IT CANNOT BE QUANTIFIED,
7 BUT THERE ARE KNOWN CASES OF FALSE CONFESSIONS. THIS
8 MAN, THIS DOCTOR HERE, HAS COMMITTED MOST OF THE LAST
9 TWO DECADES TO STUDYING THOSE CASES AND RECOGNIZING
10 THE HALLMARKS OF KNOWN FALSE CONFESSIONS AND SHOWING
11 THE SIMILARITIES BETWEEN THEM AND THIS IS WHAT HE'S
12 GOING TO TESTIFY TO. THIS IS WHAT HIS ARGUMENTS HAVE
13 BEEN ABOUT. HE'S NOT GOING TO SAY THAT THAT IS
14 FALSE, AND HE'S NOT GOING TO TRY TO USURP THE POWER
15 OF THE JURY. HE IS SIMPLY GOING TO SAY IN CASE
16 STUDIES THAT HAVE BEEN STUDIED IN THE AREA OF SOCIAL
17 PSYCHOLOGY BY HIMSELF AND OTHER DISTINGUISHED
18 PROFESSORS WE HAVE NOTICED THAT IN CASES WHICH
19 SUBSEQUENTLY TURNED OUT TO BE FALSE, THESE ARE
20 HALLMARKS, THESE ARE FACTORS, THESE ARE FEATURES THAT
21 ARE COMMON IN MOST OF THOSE CASES.

22 THE COURT: LET ME MAKE --

23 MR. BAITY: ---AND THAT COULD ASSIST THE
24 TRIER OF FACT IN MAKING A DETERMINATION.

25 THE COURT: LET ME LET YOU DO AN

1 ABBREVIATED PROFFER THEN. I DON'T WANT TO HEAR HIS
2 WHOLE TESTIMONY, BUT LET ME, ENOUGH TO COVER AND OF
3 COURSE, NOT IN ARGUMENTATIVE FASHION OBVIOUSLY, BUT
4 ENOUGH TO COVER THE JONES REQUIREMENTS BECAUSE FIRST
5 I GOT TO DECIDE THAT THE EVIDENCE WILL ASSIST THE
6 JURY AND HE'S QUALIFIED AND THAT THE SCIENCE IS
7 RELIABLE AND THEN OF COURSE PROBATIVE AND
8 PREJUDICIAL, SO SEE IF YOU CAN, WITHOUT GOING THROUGH
9 HIS OWN TESTIMONY, ADDRESS THOSE.

10 MR. BAITY: GIVE ME JUST A MOMENT.

11 THE COURT: OKAY. COULD I SEE THAT
12 ARTICLE THAT YOU ALLUDED TO. ALL RIGHT. GO AHEAD.
13 DIRECT EXAMINATION BY MR. BAITY:

14 Q DOCTOR, IS IT TRUE THAT PEOPLE SOMETIMES CONFESS
15 TO CRIMES THEY DID NOT COMMIT?

16 A YES.

17 Q AND HAS THIS FACT BEEN DOCUMENTED AND STUDIED IN
18 THE COURSE OF YOUR CAREER?

19 A YES, IT HAS.

20 Q HOW OFTEN WOULD YOU ESTIMATE THAT THIS OCCURS?

21 A THERE IS NO WAY TO ESTIMATE, AND AGAIN I DON'T
22 WANT TO USE THE WORD DISHONEST, BUT ANYONE WHO TRIES
23 TO DERIVE A FREQUENCY ESTIMATE OF THE PREVALENCE OF
24 FALSE CONFESSIONS IS SIMPLY TAKING A GUESS, AN
25 EDUCATED GUESS, AND SO THERE IS NO WAY TO DO THAT.

1 ON THE QUESTION OF WHERE THIS SCIENCE FITS INTO THE
2 SCHEME OF PSYCHOLOGY, I THINK I NEGLECTED TO MENTION
3 EARLIER BUT, AND I SHOULD MENTION IT NOW BECAUSE IT'S
4 RELEVANT, IS THAT THE AMERICAN PSYCHOLOGICAL SOCIETY
5 WHICH IS THE SINGLE MOST IMPORTANT GROUP,
6 ORGANIZATION, FOR THE SCIENCE OF PSYCHOLOGY AS
7 OPPOSED TO PRACTICING MENTAL HEALTH PRACTITIONERS,
8 THE AMERICAN PSYCHOLOGY SOCIETY HAS A JOURNAL CALLED
9 PSYCHOLOGY STUDY IN THE PUBLIC INTEREST. IT'S A VERY
10 PRESTIGIOUS JOURNAL. THEY PUBLISH IT TWO OR THREE
11 TIMES A YEAR AND EVERY TIME THEY PUBLISH IT IT'S
12 REPRESENTED BY A SINGLE ARTICLE. AS A MEASURE I
13 THINK OF THE STATUS OF WHERE THIS LITERATURE NOW
14 FALLS, I WAS INVITED TO SUBMIT AN ARTICLE FOR THIS
15 JOURNAL THAT WILL BE PUBLISHED IN 2005, SO MUCH HAS
16 HAPPENED SINCE 1997 AND 2005 THAT MY, MY CITATION
17 LIST HAD TO BE CUT. THERE ARE THREE NEW BOOKS
18 TOTALING THOUSANDS OF REFERENCES OF EMPIRICAL STUDIES
19 OF INTERVIEWS, INTERROGATIONS, AND CONFESSIONS. IT
20 HAS CLEARLY ATTAINED A STATUS WITHIN PSYCHOLOGY THAT
21 HAS EARNED THIS INVITATION TO WRITE FOR THIS VERY
22 PRESTIGIOUS PAPER. THERE ARE BOOKS BEING PUBLISHED,
23 THREE BOOKS ALONE IN THE LAST THREE YEARS, THOUSANDS
24 OF PAGES, THOUSANDS OF REFERENCES, WHAT SOCIAL
25 SCIENTISTS HAVE DONE IN THIS AREA. THEY'VE ASKED THE

1 QUESTION HOW CAN IT HAPPEN AND UNDER WHAT
2 CIRCUMSTANCES AND RESEARCHERS HAVE NOW TRACED THE
3 PROCESS FROM THE INITIAL INTERVIEW TO THE
4 INTERROGATION, AND MIND YOU, LOOKING AT PROFESSIONAL
5 TRAINED INTERROGATION MANUALS THEY ARE
6 PSYCHOLOGICALLY BASED. IN FACT, THE PRIMARY MANUAL
7 THAT HAS TRAINED MORE INTERROGATORS IN THIS COUNTRY
8 AND AROUND THE WORLD THAN ANYONE ELSE WHICH IS THE
9 INBAU REID MANUAL, NOW IN ITS FOURTH EDITION, HAS A
10 WHOLE CHAPTER ON THE PSYCHOLOGY OF CONFESSIONS. THEY
11 HAVE A WHOLE CHAPTER ON WHICH THEY RECITED MY
12 RESEARCH ON FALSE CONFESSIONS. IT'S ATTAINED A
13 STATUS OF NOT JUST WITHIN THE SCIENCE BUT WITHIN THE
14 PRACTICING COMMUNITY WHICH IS WHY I GIVE NUMBERS OF
15 TALKS TO GROUP OF JUDGES, LAW ENFORCEMENT GROUPS,
16 CRIMINAL JUSTICE GROUPS. I THINK THERE IS NO
17 QUESTION THAT THERE IS SCIENCE HERE AND THAT THAT
18 SCIENCE IS RELEVANT TO THE STUDY OF CONFESSIONS. BY
19 JUST ABOUT EVERY METRIC A SCIENTIST/RESEARCHER HAS
20 I'VE EXPERIENCED THAT, AS HAVE OTHERS, AND THERE ARE
21 A NUMBER OF PEOPLE IN THIS AREA. THIS IS NOW A
22 SUBSTANTIALLY SIZED AREA OF RESEARCH.

23 Q LET ME ASK YOU THIS, HAS THE HISTORY OF THIS
24 SCIENCE TAKEN ON ANY NEW DIMENSIONS IN THE LAST SAY
25 DECADE OR THE LAST FIVE OR SIX YEARS?

1 A ABSOLUTELY. IN FACT, THE STUDY OF THE
2 PSYCHOLOGY OF CONFESSIONS REALLY CAN BE TRACED TO
3 1908 AND SOME HAS BEEN WRITTEN RIGHT ON THROUGH THE
4 YEARS, BUT WHAT HAS HAPPENED OVER THE LAST DECADE OR
5 SO IS THE DNA EXONERATIONS HAVE COME ALONG AND THESE
6 OF COURSE ARE THE CASES, POST CONVICTION, WHERE
7 PEOPLE ARE NOW EXONERATED OF CRIMES FOR WHICH THEY
8 WERE CONVICTED, AND A COUPLE OF SIGNALS THAT CAME OUT
9 OF THOSE DNA EXONERATIONS BECAUSE WHEN RESEARCHERS GO
10 BACK AND AUTOPSY THOSE CASES AND ASK THE QUESTION,
11 WHY WAS THIS INNOCENT PERSON CONVICTED IN THE FIRST
12 PLACE, CLEARLY THE MOST COMMON SOURCE OF ERROR IS EYE
13 WITNESS MISIDENTIFICATION, THAT WAS NOT A SURPRISE TO
14 ANYBODY. WHAT ASTONISHED ONE SOCIAL SCIENCE
15 RESEARCHER AND LEGAL SCHOLAR AFTER ANOTHER WERE THE
16 NUMBER OF THOSE THAT CONTAINED CONFESSIONS IN
17 EVIDENCE. THE ASSUMPTION HAS ALWAYS BEEN WE AT LEAST
18 KNEW THAT THOSE IN PRISON AND ON DEATH ROW WHO HAD
19 CONFESSED WE AT LEAST KNEW THAT WAS THE GUILTY
20 SUBGROUP. BUT IT TURNS OUT AS THESE NUMBERS
21 ACCUMULATE CONSISTENTLY 20 TO 25 PERCENT OF THEM HAD
22 CONTAINED CONFESSIONS IN EVIDENCE BEGGING THE
23 QUESTION HOW CAN THAT HAPPEN, WHY WOULD SOMEBODY
24 CONFESS TO A CRIME THEY DID NOT COMMIT, AND THAT'S
25 WHERE THAT PSYCHOLOGY RESEARCH WHICH HAS EXISTED FOR

1 SO MANY YEARS BECAME NEWLY RELEVANT AND ADDITIONAL
2 RESEARCHERS HAVE BEEN DRAWN INTO THE AREA. IN FACT,
3 I COMMENT ON MY OWN DAUBERT STATEMENT FROM THE 1997
4 AMERICAN PSYCHOLOGIST ARTICLE IN THIS PAPER TO BE
5 PUBLISHED. I PUBLISH IT, I'VE CO-AUTHORED IT, WITH A
6 BRITISH RESEARCHER BY THE NAME OF GISLI GUDJONSSON
7 WHO HAS WRITTEN THE HANDBOOKS ON INTERROGATIONS AND
8 CONFESSIONS IN ENGLAND, AND WHAT WE SAY AT THE VERY
9 END IS WE COMMENT ABOUT MY DAUBERT QUOTE AND SAY THAT
10 IN FACT EVERYTHING NOW IS VERY, VERY DIFFERENT ON THE
11 BASIS OF ALL THE NEW DNA EXONERATION CASE STUDIES,
12 THE WAREHOUSE OF PSYCHOLOGY RESEARCH THAT IS RELEVANT
13 FROM THE PAST HUNDRED YEARS, AND A WHOLE NEW VARIETY
14 OF FORENSICALLY SPECIFIC RESEARCH ON INTERVIEWS,
15 INTERROGATIONS, AND CONFESSIONS AND ALL OF THE BOOKS
16 THAT HAVE BEEN PUBLISHED SINCE THAT STATEMENT IS JUST
17 NO LONGER TRUE.

18 MR. BAITY: YOUR HONOR, I WOULD REQUEST
19 PERMISSION DURING VOIR DIRE HERE TO ALLOW HIM TO READ
20 A PARAGRAPH FROM THE ARTICLE THAT HE WAS JUST
21 REFERRING.

22 THE COURT: SURE.

23 Q YOU DO HAVE THAT ARTICLE WITH YOU?

24 A I DO.

25 Q WOULD YOU READ IT INTO THE RECORD?

1 A NOW I SHOULD PREFACE IT BY SAYING THAT THIS
2 ARTICLE IS IN PRESS, THERE MAY BE SOME CHANGES YET TO
3 COME, BUT THIS IS THE IN PRESS VERSION.

4 THE COURT: WE ARE MORE INTERESTED IN WHAT
5 YOU ARE SAYING AT THIS POINT. GO AHEAD.

6 A SHALL I READ IT?

7 Q YES.

8 A OKAY. SEVERAL YEARS AGO KASSIN 1997 SUGGESTED
9 THAT THE QUOTE THE CURRENT EMPIRICAL FOUNDATION MAY
10 BE TOO MEAGER TO SUPPORT RECOMMENDATIONS FOR REFORM
11 OR QUALIFY AS A SUBJECT OF SCIENTIFIC KNOWLEDGE. IN
12 THIS NEW ERA OF DNA EXONERATIONS HOWEVER IT IS NOW
13 CLEAR THAT SUCH TESTIMONY IS AMPLY SUPPORTED NOT ONLY
14 BY ANECDOTES AND CASE STUDIES OF WRONGFUL CONVICTIONS
15 BUT BY A LONG HISTORY OF BASIC PSYCHOLOGY AND AN
16 EXTENSIVE FORENSIC SCIENCE LITERATURE AS SUMMARIZED
17 IN SEVERAL RECENTLY PUBLISHED BOOKS SUCH AS
18 GUDJONSSON 2003, LASSITTER 2004, AND MEMMON (SIC) ET
19 AL 2003.

20 Q DR. KASSIN, LET ME JUST MAKE SURE THAT WE CAN
21 UNDERSTAND THE METHODOLOGY, THE CASE STUDIES, THAT
22 YOU ARE REFERRING TO?

23 A YES.

24 Q HOW DO YOU DETERMINE THAT A FALSE CONFESSION HAS
25 TAKEN PLACE AND FROM THAT DRAW THESE CONCLUSIONS THAT

1 YOU'VE TALKED?

2 A NOW, THIS FIELD HAS GROWN SUBSTANTIALLY SO THERE
3 ARE VARIED METHODOLOGIES THAT RANGE FROM SINGLE,
4 INTENSE SINGLE CASE STUDIES TO AGGREGATED CASE
5 STUDIES WHERE YOU LOOK AT COLLECTIONS OF KNOWN
6 DOCUMENTED CASES TO NATURALISTIC OBSERVATIONS OF LIVE
7 AND VIDEO TAPED INTERROGATIONS TO STUDIES OF THE
8 INTERVIEW PROCESS AND THE ABILITY OF PEOPLE INCLUDING
9 POLICE OFFICERS TO MAKE JUDGMENTS OF TRUTH AND
10 DECEPTION. SO A NUMBER OF STUDIES BOTH EXPERIMENTAL
11 LABORATORY BASED AND FIELD STUDIES AS WELL CASE
12 STUDIES HAVE BEEN PUBLISHED. IN TERMS OF HOW DO YOU
13 KNOW A FALSE CONFESSION WHEN YOU SEE ONE WHICH IS THE
14 STARTING POINT THERE HAVE BEEN A NUMBER OF MECHANISMS
15 OF THIS. IN SOME CASES, FOR EXAMPLE, THERE HAVE BEEN
16 INSTANCES WHERE SOMEBODY HAS CONFESSED TO A CRIME
17 ONLY LATER FOR IT TO BE DISCOVERED THAT THE CRIME
18 NEVER OCCURRED. SO FOR EXAMPLE THERE WAS A WOMAN
19 WHOSE INFANT BABY HAD DIED. SHE CONFESSED AFTER
20 EXTENSIVE INTERROGATION TO A SHAKEN BABY SITUATION,
21 AND WHEN THE AUTOPSY, IN FACT IT WAS WORSE THAN THAT,
22 SHE ALSO TESTIFIED THAT SHE HAD A FRIEND ADMINISTER
23 HEROIN TO THIS CHILD FOR CRYING. WHEN THE AUTOPSY
24 RESULTS CAME IN IT WAS AN EVENT THAT THE CHILD HAD
25 DIED OF NATURAL CAUSES. THERE WAS NO HEROIN. THAT

1 THE CONFESSION ITSELF WAS FALSE. WELL, WE KNOW THAT
2 THE CRIME CONFESSED TO WAS NOT COMMITTED. THAT WAS
3 ONE MEASURE. ANOTHER VARIETY OF THESE CASES OR CASES
4 WHERE SOMEONE CONFESSES TO A CRIME THEN IS DNA
5 EXONERATED OR IN SOME OTHER WAY EXONERATED. FOR
6 EXAMPLE, SOMEBODY ELSE STEPS FORWARD AND CONFESSES;
7 FOR EXAMPLE, THERE IS A CASE IN FLORIDA WHERE A MAN
8 BY THE NAME OF PETER DALLAS NOT ONLY CONFESSES TO
9 IMPLICATE HIMSELF BUT CONFESSES AND IMPLICATES TWO
10 OTHERS IN A MURDER. THE THREE OF THEM ARE NOW
11 AWAITING TRIAL AND HAVE BEEN IN JAIL FOR SOMETIME
12 WHEN ANOTHER CRIME IS COMMITTED AND A SPECIAL
13 PROSECUTOR GOES AND DISCOVERS THAT THAT PERSON NOW
14 HAS TAKEN CREDIT OR BLAME OR CONFESSED TO THE
15 ORIGINAL CRIME AND NOT, AND CAN DO SOMETHING THAT THE
16 ORIGINAL CONFESSOR COULD NOT, WHICH IS TELL THE
17 POLICE WHERE THE MURDER WEAPON IS, AND SO HE TOLD THE
18 POLICE THE WEAPON COULD BE FOUND IN A PARTICULAR
19 LAKE, THEY FISHED IT OUT OF THE LAKE, BALLISTIC
20 EVIDENCE SHOWED THAT WAS THE WEAPON OF THE ORIGINAL
21 MURDER, SO THERE WAS A CASE WHERE WE NOW KNOW THE
22 ORIGINAL CONFESSION IMPLICATING THE THREE WAS FALSE.

23 THE COURT: DO THOSE CASES YOU JUST CITED
24 POSTDATE OR PREDATE YOUR 1997 ARGUMENT.

25 A THEY WERE ALL POST.

1 THE COURT: THEY ARE ALL POST.

2 A THESE ARE POST 1997.

3 THE COURT: ALL RIGHT.

4 A AND IT REALLY IS THE DNA EXONERATION LITERATURE,
5 YOUR HONOR, THAT I THINK HAS STIMULATED THIS
6 DISCOVERY.

7 THE COURT: ALL RIGHT. WHAT I REALLY
8 WANTED TO HEAR, ALTHOUGH THAT WAS INTERESTING AND
9 INFORMATIVE, WAS WHAT'S HE GOING TO TESTIFY TO IN
10 THIS CASE? AS FAR AS, I MEAN, MORE THINGS THAN JUST
11 THE UNDERLYING SCIENCE I GOT TO LOOK AT.

12 MR. BAITY: I THOUGHT YOU WANTED TO KNOW
13 ABOUT THAT. I THOUGHT I'D START WITH THAT. I WILL
14 CERTAINLY GO ON, YOUR HONOR.

15 Q DR. KASSIN, JUST GIVE ME JUST A MOMENT IF I MAY,
16 YOUR HONOR. FIRST OF ALL DO YOU INTEND TO TESTIFY TO
17 THIS JURY THAT THIS, THAT YOU CAN STATE TO A
18 REASONABLE DEGREE OF SCIENTIFIC KNOWLEDGE THAT THIS
19 CONFESSION IS FALSE?

20 A NO, AND LET ME TAKE ONE STEP FURTHER, THERE WAS
21 A FEDERAL CASE U.S. VERSUS HALL 1997 IN WHICH FEDERAL
22 LAW WAS MADE ABOUT THE BOUNDARIES OF EXPERT
23 TESTIMONY.

24 THE COURT: LET ME STOP YOU, WE'VE GOT A
25 JURY OUT, I WANT TO PROFFER, I WANT TO FIND OUT WHAT

1 HE'S GOING TO TESTIFY. HE'S STILL DEFENDING HIS
2 SCIENCE. I DON'T WANT TO HEAR ANY MORE ABOUT THAT AT
3 THIS TIME. I'VE ASKED FOR SOME DIFFERENT KIND OF
4 INFORMATION. IF YOU'LL JUST ANSWER THE QUESTION AS
5 ASKED I THINK WE'LL MOVE ALONG.

6 Q DR. KASSIN, WHAT WOULD YOU TESTIFY, FOR EXAMPLE,
7 ABOUT INTERROGATION TECHNIQUES AND THE HALLMARKS THAT
8 YOU MIGHT HAVE SEEN IN OTHER FALSE CONFESSION CASES?

9 A WHAT I WOULD TESTIFY TO IS THAT FALSE
10 CONFESSIONS OCCUR. WHILE WE DO NOT KNOW THE
11 FREQUENCY OF FALSE CONFESSIONS WE KNOW THE REASONS
12 THEY OCCUR, WE KNOW THEY OCCUR IN THREE TYPES. THERE
13 ARE THREE TYPES OF FALSE CONFESSIONS THAT BRING
14 DIFFERENT PSYCHOLOGICAL DYNAMICS INTO PLAY. WE KNOW
15 THAT TRAINED INTERROGATORS TYPICALLY ENGAGE A TWO
16 STEP PROCESS IN WHICH THEY FIRST INTERVIEW A SUSPECT
17 IN ORDER TO MAKE AN INITIAL DETERMINATION OF GUILT OR
18 INNOCENCE AND I'D LIKE TO TALK ABOUT THE EXTENSIVE
19 BODY OF RESEARCH ON THAT INTERVIEW AND DECEPTION
20 DETENTION PHASE OF THE PROCESS AND THEN ONCE THAT
21 INITIAL DETERMINATION IS MADE, THEY ENGAGE A PROCESS
22 OF INTERROGATION. THERE ARE A NUMBER OF DIFFERENT
23 MANUALS. THEY ARE ALL HIGHLY PSYCHOLOGICALLY BASED.
24 AGAIN THE LEADING MANUAL, THE INBAU MANUAL IN SOME
25 WAYS SERVES AS A SUMMARY OF ALL THE OTHERS BECAUSE

1 THE TECHNIQUES ARE VERY, VERY SIMILAR, BUT I WOULD --

2 Q YOU'LL TESTIFY ABOUT THOSE TECHNIQUES --

3 A I WOULD TALK ABOUT THOSE TECHNIQUES. THOSE
4 TECHNIQUES OF SOCIAL INFLUENCE THAT ARE PSYCHOLOGICAL
5 TECHNIQUES THAT ARE BROUGHT INTO THE INTERROGATION
6 ROOM AND THE ASPECTS OF TECHNIQUES THAT LEAD PEOPLE
7 TO CONFESS SOMETIMES GENERALLY TO CRIMES THEY
8 COMMITTED AND SOMETIMES TO CRIMES THEY DID NOT COMMIT.

9 Q WOULD YOU TESTIFY TO THE EFFECT, FOR EXAMPLE, OF
10 INFORMATION CONCERNING THE TAKING OF A POLYGRAPH, THE
11 WILLINGNESS TO TAKE A POLYGRAPH, AND THE EFFECTS OF
12 BEING INFORMED OF THE RESULTS OF THAT POLYGRAPH MIGHT
13 HAVE HAD?

14 A YES. MORE GENERALLY THE POLYGRAPH IS ONE
15 MECHANISM THAT IS SOMETIMES USED AS A PRESENTATION OF
16 FALSE EVIDENCE AND THE PRESENTATION OF FALSE EVIDENCE
17 IS IMPLICATED IN NEARLY EVERY FALSE CONFESSION CASE
18 KNOWN. IT IS A RISK FACTOR. IT'S A RISK FACTOR THAT
19 THE POLYGRAPH IS OFTEN IMPLICATED IN.

20 Q NOW A MOMENT AGO YOU INDICATED THAT THERE WERE
21 SEVERAL DIFFERENT TYPES OF FALSE CONFESSIONS?

22 A YES.

23 Q THERE WERE FACTORS IN EACH ONE?

24 A YES.

25 Q NOW WITHOUT GOING INTO A LENGTHY DISCUSSION OF

1 THAT, WOULD YOU ATTEMPT TO IDENTIFY THE TYPE OF FALSE
2 CONFESSION THAT MIGHT BE EXISTING IN THIS CASE?

3 A WELL, I, I, I DON'T, I'M NOT RENDERING AN
4 OPINION ABOUT THIS CASE PRESENTING A FALSE
5 CONFESSION, BUT THESE ARE THE THREE POSSIBILITIES:
6 THERE ARE VOLUNTARY FALSE CONFESSIONS, WHAT I CALL
7 COERCED COMPLIANT FALSE CONFESSIONS, AND COERCED
8 INTERNALIZED FALSE CONFESSIONS, AND THESE ARE
9 DIFFERENT TYPES. I WOULD TALK ABOUT THEM IN GENERAL
10 TERMS. AND AGAIN JUST AS A MEASURE OF HOW IMPORTANT
11 THEY ARE OUT IN THE SCIENCE IS THAT EVEN THE
12 PROFESSIONAL INTERROGATION MANUAL, THE INBAU AND REID
13 MANUAL, NOW HAS A CHAPTER USING THAT DISTINCTION SO I
14 THINK IT'S IMPORTANT TO KNOW HOW DID IT OCCUR AND WHY
15 THEY OCCUR, FOR WHAT REASONS, AND UNDER WHAT SET OF
16 CONDITIONS.

17 Q ALL RIGHT. AND YOU WOULD EDUCATE THIS JURY WITH
18 YOUR TESTIMONY AS TO THE TYPES OF DOCUMENTED FALSE
19 CONFESSIONS THAT YOU'VE STUDIED AND YOU WOULD GIVE
20 THE JURY THOSE FACTORS THAT YOU HAD SPOTTED AS BEING
21 COMMON TO THOSE TYPES OF FALSE CONFESSIONS?

22 A YES. INTERROGATION IS A SUBJECT OF PROFESSIONAL
23 TRAINING BASED ON PRINCIPLES OF PSYCHOLOGY AND THE
24 AVERAGE PERSON JUST DOESN'T KNOW THOSE PRINCIPLES.
25 IN FACT MOST AVERAGE POLICE OFFICERS UNTRAINED DON'T

1 KNOW THOSE PRINCIPLES.

2 Q AND YOU TALK ABOUT CERTAIN TYPES OF
3 INTERROGATION TECHNIQUES?

4 A CORRECT.

5 Q AND CERTAIN TYPES OF QUESTIONS OR TACTICS THAT
6 COULD BE USED IN SUCH A THING THAT WOULD BRING ABOUT
7 THESE FACTORS THAT COULD LEAD TO A FALSE CONFESSION?

8 A CORRECT.

9 Q BUT YOU'RE NOT GOING TO TESTIFY TO THE ULTIMATE
10 ISSUE. YOU'RE GOING TO LEAVE THAT TO THE TRIER OF
11 FACT?

12 A THAT'S A JURY ISSUE, YES.

13 Q DO YOU BELIEVE THE INFORMATION YOU HAVE WOULD
14 ASSIST THEM IN MAKING A DECISION AS TO THE
15 VOLUNTARINESS AND THE TRUTHFULNESS OF THE FALSE
16 CONFESSION?

17 A FROM ALL THE LECTURES I GIVE TO VARIOUS GROUPS I
18 FIND IT HARD TO BELIEVE THAT I WOULDN'T. I MEAN,
19 YES.

20 Q WOULD YOU BE ABLE TO TESTIFY AS TO THE USE OF
21 CERTAIN TECHNIQUES OR THE SETTING IN WHICH THESE
22 CONFESSIONS OCCURRED THAT WOULD HAVE CAUSED YOU SOME
23 CONCERNS VISAVIS YOUR RESEARCH IN THIS SUBJECT?

24 A YES.

25 Q FOR EXAMPLE?

1 A FOR EXAMPLE THE PRESENTATION OF FALSE EVIDENCE.
2 IT IS CLEAR THAT UNDER CERTAIN CIRCUMSTANCES IF YOU
3 HAVE, FOR EXAMPLE, A SUSPECT WHO IS VULNERABLE TO
4 MANIPULATION AS A FUNCTION OF STRESS OR FATIGUE OR
5 SLEEP DEPRIVATION OR DRUG USE AND THAT DEFENDANT,
6 THAT SUSPECT, IS PRESENTED WITH OBJECTIVE, APPARENTLY
7 OBJECTIVE AND APPARENTLY UNIMPEACHABLE FALSE EVIDENCE
8 THE VAST MAJORITY OF FALSE CONFESSION CASES CONTAIN
9 THAT TACTIC IN USE, AND THERE IS NOW A WEALTH OF
10 EXPERIMENTATION AND LABORATORY RESEARCH SHOWING THAT
11 THE PRESENTATION OF FALSE EVIDENCE CAN LEAD PEOPLE TO
12 CONFESS TO THINGS THEY DON'T DO, IT CAN LEAD PEOPLE
13 TO HAVE MEMORIES OF EVENTS THAT THEY NEVER
14 EXPERIENCED THAT NEVER OCCURRED, SO, YES, THERE IS A
15 WEALTH OF RESEARCH BOTH IN THE SOCIAL PSYCHOLOGY OF
16 INFLUENCE AND ON INFLUENCES NOT JUST ON
17 DECISION-MAKING, SHOULD I CONFESS OR NOT, BUT ON
18 ACTUAL MEMORY.

19 Q AND YOU HAVE CASE STUDIES AND EXAMPLES OF
20 PRECISELY THAT AT WORK IN CERTAIN DOCUMENTED CASES OF
21 FALSE CONFESSIONS?

22 A YES.

23 MR. BAITY: YOUR HONOR, I CAN GO FURTHER?

24 THE COURT: MR. BRACKETT.

25 MR. BRACKETT: PLEASE THE COURT, YOUR

1 HONOR. I DON'T HAVE ANY MORE QUESTIONS FOR HIM.

2 THE COURT: ALL RIGHT. MR. GREELEY.

3 MR. GREELEY: I DON'T HAVE ANYTHING.

4 MR. BRACKETT: YOUR HONOR, I SIMPLY DON'T
5 THINK THAT THIS IS GOING TO BE SOMETHING THAT IS
6 GOING TO BE USEFUL TO THIS JURY. THE THINGS THAT
7 HE'S SAYING CAN BE ARGUED AND ARE WITHIN THE REALM OF
8 COMMON SENSE. IF HE THINKS THAT THE FACTS ARE IN
9 THERE SUFFICIENT TO MAKE THAT ARGUMENT TO THE JURY,
10 IF THEY WANT TO SAY, LOOK, HE'S TIRED -- LOOK, THEY
11 TIED TO HIM -- THEY TOLD HIM THEY HAD ALL THIS
12 STUFF -- THAT'S SOMETHING THAT THE JURY CAN
13 UNDERSTAND INHERENTLY. I JUST DON'T BELIEVE THAT
14 THERE IS ENOUGH, THAT HE'S GIVEN ENOUGH OF A
15 SCIENTIFIC BASIS TO ESTABLISH FOR THIS JURY USING
16 SOME OBJECTIVE SCIENTIFIC METHOD BY WHICH THEY CAN
17 ANALYZE THE CONFESSION IN THIS CASE ANY BETTER THAN
18 THEY COULD WITH THEIR OWN COMMON SENSE. THAT'S THE
19 FIRST THING.

20 THE SECOND THING IS I HAVE A PARTICULAR
21 CONCERN AND I FILED A MOTION IN LIMINE REGARDING
22 MENTIONING OTHER CASES, THE OTHER FACT SCENARIOS
23 WHERE SOMEBODY DID CONFESS, THERE ARE THOUSANDS,
24 HUNDREDS OF THOUSANDS OF CONFESSIONS THAT ARE GIVEN
25 THROUGHOUT THE COUNTRY AND INVARIABLY THERE IS GOING

1 TO BE PROBLEMS AND THERE ARE REASONS FOR THEM. WE
2 CAN'T TRY ALL THESE OTHER CASES. HE CAN GO INTO A
3 FACT SCENARIO ON ONE CASE AND AM I ALLOWED TO THEN
4 CALL OVER TO THAT JURISDICTION AND HAVE THEM SEND ME
5 THE FILE AND MAYBE SUBPOENA A COUPLE PEOPLE FROM
6 THERE TO COME HERE AND TESTIFY THAT THE FACTS HE GAVE
7 WEREN'T RIGHT AND THERE MAY BE A MISUNDERSTANDING. I
8 MEAN, SOME OF THE CASES THAT HE'S GOING TO CITE TO I
9 SUSPECT ARE CONTROVERSIAL. THERE ARE PEOPLE WHO
10 STILL BELIEVE THOSE PEOPLE ARE GUILTY AND WE CAN'T
11 TRY ALL THESE OTHER CASES AND THAT'S CONFUSING,
12 MISLEADING, AND PREJUDICIAL AND UNDER 403 THAT
13 PARTICULAR ASPECT SHOULD CERTAINLY BE EXCLUDED. I
14 THINK THAT A JURY CAN CONCLUDE BASED ON THE EVIDENCE
15 THAT'S IN HERE USING THEIR OWN COMMON SENSE
16 EVERYTHING THAT THIS MAN CLAIMS THAT HE'S GOING TO
17 TELL THEM UNDER THE GUISE OF SCIENTIFIC EXPERTISE AND
18 I DON'T BELIEVE THAT IT'S GOING TO ASSIST THE TRIER
19 OF FACT BECAUSE IT'S NOT SCIENTIFICALLY RELIABLE.
20 SECONDLY, IT CERTAINLY ISN'T RELEVANT AT THIS POINT
21 IN TIME BECAUSE THE CONFESSION HAS NOT BEEN RECANTED,
22 THE CONFESSION HAS NOT BEEN HELD TO BE FALSE BY THE
23 DEFENDANT THROUGH HIS OWN WORDS, YOU KNOW, AND IT IS
24 A GRAVE CONCERN TO THE STATE THAT ALL THIS COMES IN
25 AND THEN THE DEFENDANT DECIDES HE DOESN'T, ARE WE

1 GOING TO MOVE TO STRIKE ALL THIS AND --

2 THE COURT: I DO HAVE SOME CONCERN ABOUT
3 THAT. THERE IS NOTHING IN THE RECORD THAT INDICATES
4 ANYTHING BUT HE MADE A CONFESSION AND THERE IS
5 NOTHING TO INDICATE OTHERWISE. OF COURSE, HE HAS A
6 RIGHT TO REMAIN SILENT AND I'M NOT GOING TO INFRINGE
7 ON THAT, SO THAT IS KIND OF ALL I CAN SAY ABOUT THAT
8 OTHER THAN THIS IS SORT OF PUTTING THE CART BEFORE
9 THE HORSE.

10 MR. BAITY: WELL, I DON'T THINK SO.
11 CERTAINLY BY HIS NOT GUILTY PLEA HE IS DENYING
12 IMPLICITLY AND EXPLICITLY THE ALLEGATIONS THAT OR THE
13 STATEMENTS THAT HE MADE. I MEAN, CLEARLY IF HE WERE
14 EMBRACING THOSE STATEMENTS AND NOT DISPUTING THEM WE
15 WOULD NOT BE HERE TODAY.

16 YOUR HONOR, WITH RESPECT TO AN EARLIER
17 STATEMENT OF MR. BRACKETT SAID THAT, ABOUT SPECIFIC
18 EXAMPLES AND SO FORTH, OUR SUPREME COURT IN THE CASE
19 OF THE STATE VERSUS WESLEY MAX MYERS AND I CAN HAND A
20 COPY OF THAT UP IF IT PLEASES THE COURT. YOUR HONOR,
21 THIS IS A CASE, IT'S A 2004 CASE, IN WHICH THIS
22 PARTICULAR WITNESS WAS QUALIFIED BY JUDGE BROWN AND
23 TESTIFIED AT THE HEARING. NOW THE ISSUE THAT WAS
24 BROUGHT UP ON APPEAL WAS THE DEFENDANT WAS CONVICTED
25 DESPITE DR. KASSIN'S TESTIMONY AND THE DEFENSE

1 APPEALED THE CONVICTION AND BASICALLY COMPLAINED THAT
2 DR. KASSIN WAS NOT ALLOWED BY JUDGE BROWN TO GO INTO
3 ANECDOTES OR INTO SPECIFIC CASE STUDIES AND TO GO
4 INTO OTHER EXAMPLES THAT HE HAS STUDIED IN THE COURSE
5 OF HIS WORK AND THE SUPREME COURT IN THAT DECISION
6 SAID NOTHING ABOUT THAT THIS IS, YOU KNOW,
7 UNRECOGNIZED SCIENCE AND HE SHOULDN'T HAVE BEEN ABLE
8 TO TESTIFY IN THE FIRST PLACE, AND SPECIFICALLY SAID,
9 WELL, ONE OF THE CASES HE TESTIFIED ABOUT WAS VERY
10 RELEVANT AND CERTAINLY SHOULD HAVE COME IN AND THEN
11 QUITE FRANKLY ANOTHER CASE THAT HE TESTIFIED HAD NO
12 CONNECTION OR, OR NO FACTUAL NEXUS AT ALL TO IT AND
13 SHOULDN'T HAVE BEEN LET IN BUT HE WAS ALLOWED TO
14 TESTIFY ON THAT AS WELL, SO IT'S IN A BACKWARDS WAY
15 BUT THE COURT MORE OR LESS SANCTIONED THE IDEA OF THE
16 USE OF SOME EXAMPLES BY FALSE CONFESSION EXPERT OR
17 SOCIAL PSYCHOLOGIST COMMENTING ON POLICE
18 INTERROGATION, THAT IT MORE OR LESS SANCTIONED THE
19 USE OF THAT AND MORE OR LESS GAVE THE TRIAL COURT
20 SOME GUIDELINES AND SAYING IF YOU WANT TO GO INTO
21 EXAMPLES THAT WOULD BE APPROPRIATE FOR A SOCIAL
22 PSYCHOLOGIST TO COMMENT ON OTHER CASE STUDIES THAT
23 HAVE A FACTUAL CONNECTION WITH THE CASE AT BAR, BUT
24 SHOULDN'T BE GOING INTO SOMETHING THAT'S COMPLETELY
25 IRRELEVANT. NOW TO ME THAT IS AN IMPLICIT ACCEPTENCE

1 OF THE SCIENCE OF THIS TYPE TESTIMONY. IT'S AN
2 IMPLICIT ACCEPTENCE BY THE COURT THAT THIS IS, COULD
3 BE, COULD ASSIST THE TRIER OF FACT. IT MORE OR LESS
4 CREATES RULES AND GUIDELINES FOR THIS TYPE OF
5 TESTIMONY AND I THINK THE COURT CERTAINLY COULD HAVE
6 SAID, YOU SHOULDN'T HAVE HAD THIS GUY HERE IN THE
7 FIRST PLACE AND THEY DIDN'T SAY THAT. THEY JUST
8 SAID, WELL, IT'S OKAY IF HE TESTIFIES TO THIS, HE
9 SHOULDN'T BE DOING THIS, AND OF COURSE THEY DID NOT
10 GRANT THE APPEAL BUT THEY DID COMMENT ON THE WAY THAT
11 THE TESTIMONY WAS RECEIVED AND THE APPROPRIATENESS OF
12 THAT, SO I WOULD CERTAINLY POINT OUT THAT CASE AS
13 BEING VERY RECENT, A VERY RECENT PRONOUNCEMENT OF THE
14 SUPREME COURT, NOT ONLY ON THIS SAME SUBJECT BUT ON
15 THIS SAME WITNESS, YOUR HONOR.

16 MR. GREELEY: YOUR HONOR, IF I MAY.

17 THE COURT: GIVE ME JUST ONE SECOND. IT
18 LOOKS LIKE THE TRIAL COURT REALLY DOESN'T ADDRESS THE
19 USE OF CASES ONE WAY OR THE OTHER.

20 MR. BAITY: THE TRIAL COURT?

21 THE COURT: NO, I'M TALKING ABOUT THE
22 APPELLATE COURT. SAID THAT THE TRIAL COURT, SAID HE
23 COULDN'T TESTIFY AS TO SPECIFIC CASES AND THEN SAID
24 HE WENT AHEAD AND TESTIFIED ABOUT THEM ANYWAY AND
25 SAYS, DR. KASSIN WAS ABLE TO TESTIFY AT LENGTH ABOUT

1 FALSE AND COERCED CONFESSIONS AND HE WAS ABLE TO
2 TOUCH BRIEFLY ON THE CONNECTICUT CASE AND KASSIN DID
3 TESTIFY ABOUT THE SPECIFIC CASES, HE JUST DID NOT USE
4 NAMES.

5 MR. BAITY: YES, SIR. IN THE FOOTNOTES OF
6 THAT OPINION, YOUR HONOR, THE COURT DID SAY THAT HIS
7 REFERENCE TO THE INDIANA CASE SHOULD NOT HAVE BEEN
8 ALLOWED BECAUSE IT HAD NO CONNECTION TO THE CASE AT
9 BAR IN THAT CASE. THAT IS IN THERE.

10 THE COURT: WELL, WHAT CASES IS HE---LET
11 ME ASK YOU THIS, ARE YOU PRESENTING TO THE COURT OR
12 ARE YOU OR ARE YOU NOT PRESENTING TO THE COURT THAT
13 DR. KASSIN IS GOING TO TESTIFY ABOUT ANY PARTICULAR
14 CASE?

15 MR. BAITY: I'M SORRY, YOUR HONOR?

16 THE COURT: IS HE GOING TO TESTIFY ABOUT A
17 PARTICULAR CASE?

18 MR. BAITY: FRANKLY, IN MY DIRECT I DON'T
19 KNOW THAT HE IS. I HAVEN'T, WE HAVEN'T DISCUSSED
20 THAT. WE HAVE DISCUSSED THAT HE IS GOING TO TALK
21 GENERALLY ABOUT THE SCIENCE AND THE METHODOLOGY AND
22 THE HALLMARKS THAT HE HAS OBSERVED, AND YOUR HONOR,
23 HE AND I HAVE DISCUSSED THE NECESSITY OF NOT JUST
24 SPEWING OUT A BUNCH OF ANECDOTES BUT TO SPECIFICALLY
25 RESPOND TO RELEVANT FACTS AND RELEVANT QUESTIONS. I

1 DON'T THINK THAT HE'S GOING TO TESTIFY, CERTAINLY NOT
2 MY PLAN AND I DON'T HAVE IT IN MY NOTES, TO CALL ANY
3 REFERENCE TO ANY SPECIFIC OTHER CASE. HE'S GOING TO
4 TALK ABOUT GENERALLY THE SCIENCE THAT IS RECOGNIZED,
5 CERTAIN HALL, MARKS AND CERTAIN FACTORS THAT ARE
6 COMMON TO KNOWN CASES OF FALSE CONFESSION.

7 THE COURT: ALL RIGHT. WELL, I'LL FIND
8 THAT THE EVIDENCE WILL ASSIST THE JURY, THAT HE IS
9 QUALIFIED. THE UNDERLYING SCIENCE DOES APPEAR IN
10 THIS POINT IN HISTORY TO BE RELIABLE EVEN THOUGH IN
11 1997 THIS SAME WITNESS SAYS IT WAS NOT. I FIND THAT
12 THE PROBATIVE VALUE IS NOT OUTWEIGHED BY THE
13 PREJUDICIAL VALUE BUT THE WITNESS CANNOT TESTIFY
14 ABOUT PARTICULAR CASES UNLESS THEY ARE ON ALL FOURS
15 WITH THIS PARTICULAR CASE, AND YOU'VE TOLD ME THAT,
16 PRETTY MUCH INDICATED THAT YOU DON'T KNOW OF ANY.

17 MR. BAITY: I HAVE NOT, I AM NOT GOING TO
18 ASK HIM ABOUT THOSE, YOUR HONOR. I DON'T KNOW
19 EVERYTHING THAT THIS MAN IS GOING TO TESTIFY.

20 THE COURT: I KNOW BUT HE'S HERE
21 LISTENING, IF HE STARTS GOING INTO THAT, I'M NOT
22 FINDING FAULT WITH YOU, YOU WANT TO DEFEND YOUR
23 POSITION, BUT EARLIER WHEN I ASKED WHAT HE WAS GOING
24 TO TESTIFY IN THIS CASE, HE WENT OFF INTO JUSTIFYING
25 FROM OTHER CASES AND AGAIN I'M JUST TELLING YOU, IF

1 HE STARTS DOING THAT I'M GOING TO STOP HIM. I'M NOT
2 EVEN GOING TO LET THEM OBJECT, I AM GOING TO STOP HIM
3 AND IF HE GOES, IF HE CAN'T TESTIFY WITHOUT VIOLATING
4 MY RULES, THEN I'M STOP HIM ENTIRELY.

5 MR. BAITY: YES, SIR, YOUR HONOR. IF I
6 COULD JUST MAKE ONE POINT, SIR. THERE MAY BE A
7 FACTOR IN THIS CASE THAT IS PRECISELY THE SAME. IT
8 MAY NOT BE A CASE WHERE THERE IS TWO DEFENDANTS AND
9 THE DNA IS ON ONE AND THERE IS A CONFESSION ON THE
10 OTHER, I MEAN, I DON'T KNOW OF ANY CASES THAT ARE
11 PRECISELY ON ALL FOURS IN THAT REGARD; HOWEVER, THERE
12 MAY BE CASES WHERE SOMEONE DID MAKE A CONFESSION THAT
13 CERTAIN TYPE FACTORS ARE IN THAT WOULD MATCH THE
14 CIRCUMSTANCES THAT ARE IN THIS CASE.

15 THE COURT: WELL, LET ME TELL YOU ONE OF
16 THE CONCERNS THAT I HAVE, HASN'T BEEN ARTICULATED BY
17 THE SOLICITOR BUT I'M SURE IT'S IN HIS MIND, IF
18 MR. COPE'S COUNSEL PARADES OUT BEFORE THE JURY A
19 HORRIBLE STRING OF INJUSTICE, THAT IS ALL OF THESE
20 INDIVIDUALS WHO HAVE, IN SPITE OF OVERWHELMING DNA
21 AND BEING IN JAIL WHEN IT HAPPENED, CONFESSED, THEN
22 THAT PREJUDICIAL VALUE DOES OUTWEIGH THE PROBATIVE
23 VALUE. THAT'S NOT GOING TO HELP THAT JURY TO HAVE
24 ANY, YOU KNOW, INQUIRE MAGAZINE KIND OF, AND AGAIN I
25 SAY THAT, I DON'T USE THAT, I GUESS I'M TOO

1 EXPRESSIVE SOMETIMES, BUT TO GO THROUGH A LITANY OF
2 HORROR CASES, CASES OF HORROR AS TO PEOPLE ON DEATH
3 ROW WHO ARE SITTING IN THE CHAIR WHEN THE GOVERNOR
4 FOUND OUT THAT THE DNA AND THIS PERSON HAD CONFESSED,
5 I'M NOT GOING TO TOLERATE THAT. SO WITH THOSE
6 GUIDELINES I'M GOING TO LET HIM TESTIFY. WE'RE GOING
7 TO TAKE A SHORT BREAK BEFORE WE DO. MR. GREELEY.

8 MR. GREELEY: I'VE BEEN QUIET. IF I MAY
9 JUST --

10 THE COURT: YOU CERTAINLY HAVE.

11 MR. GREELEY: YOUR HONOR, JUST IN REPLY TO
12 ONE OF THE THINGS MR. BAITY BROUGHT UP, HE MENTIONED
13 HIS CLIENT HAS PLEAD NOT GUILTY AND ABOUT HOW THAT IS
14 IN ITSELF AN ASSERTION THAT THE CONFESSION IS FALSE.
15 I WOULD LIKE TO SUBMIT TO THE COURT THAT'S NOT TRUE.
16 WHEN A DEFENDANT, I'VE BEEN DOING THIS FOR AWHILE,
17 WHEN A DEFENDANT ENTERS A PLEA OF NOT GUILTY HE IS
18 TELLING THE STATE YOU'VE MADE YOUR ALLEGATION, YOU
19 NEED TO PROVE YOUR ALLEGATION. IT IS NOT AN
20 AFFIRMATIVE ADDRESS TO ANY PARTICULAR PIECE OF
21 EVIDENCE THAT THE STATE MAY HAVE AND IT'S NOT EVEN A
22 CLAIM OF INNOCENCE, IT'S A PLEA OF NOT GUILTY, AND SO
23 THE FACT THAT MR. COPE HAS ENTERED A PLEA OF NOT
24 GUILTY DOES NOT AFFIRMATIVELY ADDRESS THE CONFESSIONS
25 AND THUS DOES NOT BY IMPLICATION MAKE THEM FALSE AND

1 SO WE STILL HAVE THE RELEVANCY ISSUE.

2 THE COURT: WELL, I UNDERSTAND THAT, BUT I
3 BELIEVE THE PLEA OF NOT GUILTY AT LEAST PUTS ALL
4 THOSE ISSUES INTO PLAY AND I AGREE EXACTLY WHAT YOU
5 SAY, IT SIMPLY PLACES THE BURDEN ON THE STATE TO
6 PROVE HIM GUILTY OF THESE BEYOND A REASONABLE DOUBT,
7 BUT I FIND IT IS RELEVANT. WE'LL TAKE A SHORT BREAK.

8 MR. BAITY: THANK YOU, YOUR HONOR.

9 (COURT'S IN RECESS AT 2:19 PM)

10 (COURT RESUMES AT 2:26 PM)

11 THE COURT: MR. BAITY, YOU ARE TENDERING
12 HIM AS A, IN SOCIAL PSYCHOLOGY WITH FOCUS ON
13 INTERVIEWING AND INTERROGATION.

14 MR. BAITY: YES, SIR, INTERROGATION,
15 THAT'S CORRECT.

16 THE COURT: BRING IN THE JURY.

17 (THE JURY RETURNS TO THE COURTROOM AT
18 2:30 PM.)

19 THE COURT: MEMBERS OF THE JURY PANEL, I
20 HAVE FOUND DR. KASSIN TO BE QUALIFIED IN THE AREA OF
21 SOCIAL PSYCHOLOGY WITH THE FOCUS ON INTERROGATION AND
22 INTERVIEWS.

23 MR. BAITY: THANK YOU, YOUR HONOR. MAY IT
24 PLEASE THE COURT.

25 DIRECT EXAMINATION BY MR. BAITY:

1 Q DR. KASSIN, HAVE YOU PREPARED A CURRICULUM VITAE
2 RECENTLY?

3 A YES, I HAVE.

4 Q I ASK YOU IF YOU RECOGNIZE THAT DOCUMENT AND I
5 HAVE ALREADY PROVIDED THIS TO COUNSEL?

6 A YES.

7 Q IS THIS YOUR CV?

8 A THIS IS THE CV.

9 MR. BAITY: YOUR HONOR, AT THIS TIME I
10 WOULD OFFER HIS CV INTO --

11 MR. BRACKETT: NO OBJECTION.

12 MR. GREELEY: NO OBJECTION.

13 THE COURT: BE RECEIVED WITHOUT OBJECTION.

14 (DEFENSE EXHIBIT NUMBER 66 CURRICULUM
15 VITAE RECEIVED INTO EVIDENCE.)

16 Q DR. KASSIN, WHAT AREAS OF SPECIALIZATION SERVE
17 AS A BASIS FOR THE STUDY OF CONFESSIONS?

18 A EARLY SOCIAL AND COGNITIVE PSYCHOLOGY.

19 Q AND PLEASE SPEAK UP SO WE CAN ALL HEAR YOU.
20 WHAT IS THE SUBJECT MATTER OF SOCIAL PSYCHOLOGY.

21 A SOCIAL PSYCHOLOGISTS STUDY PERSUASION, WE STUDY
22 COMPLIANCE, CONFORMITY, OBEDIENCE TO AUTHORITY. WE
23 STUDY THE WAYS IN WHICH SOCIAL FORCES INFLUENCE
24 PEOPLE AND THEIR BEHAVIOR.

25 Q AND WHAT IS THE SUBJECT MATTER OF COGNITIVE

1 PSYCHOLOGY?

2 A COGNITIVE PSYCHOLOGISTS STUDY, THEY ARE THE
3 PSYCHOLOGISTS THAT ACTUALLY DO STUDY THE MIND. THEY
4 STUDY THINKING AND LANGUAGE AND MEMORY. COGNITIVE
5 PSYCHOLOGISTS HAVE STUDIED THE WAYS IN WHICH PEOPLE
6 PROCESS INFORMATION THEN MAKE DECISIONS ON THE BASIS
7 OF THAT INFORMATION.

8 Q AND ARE YOU FAMILIAR WITH ALL OF THOSE SUBJECTS?

9 A YES, I AM.

10 Q AND IS THE STUDY OF CONFESSIONS, THE STUDY OF
11 CONFESSIONS, AN AREA THAT YOU ARE ALSO FAMILIAR WITH?

12 A YES.

13 Q WHAT WERE YOU ASKED TO DO IN THIS CASE, DR.
14 KASSIN?

15 A BASICALLY TO DETERMINE WHETHER OR NOT -- IN
16 LOOKING AT THE MATERIALS WHETHER OR NOT THERE WAS A
17 RELEVANT SCIENCE THAT COULD BE APPLIED TO HELP
18 UNDERSTAND THESE MATERIALS AND MY ANSWER WAS YES.

19 Q AND WHAT WERE SOME OF THE MATERIALS THAT YOU
20 USED AND RELIED UPON IN THIS CASE?

21 A MY PRIMARY MATERIALS WERE THE DEFENDANT'S
22 STATEMENTS. THERE WERE THREE HANDWRITTEN -- WELL,
23 TWO HANDWRITING AND, TWO HANDWRITTEN STATEMENTS,
24 TYPED STATEMENTS, AND THEN THERE WAS AN AUDIO TAPE
25 ACCOMPANIED BY A TRANSCRIPT AND THE VIDEO TAPE

1 RE-ENACTMENT, SO ESSENTIALLY THAT WAS THE MAIN
2 MATERIAL.

3 IN ADDITION I LOOKED AT THE POLICE
4 REPORTS, I LOOKED PRIOR TESTIMONY FROM DETECTIVES
5 BAKER, BLACKWELDER, WALDROP, AND I FORGET WHO THE
6 FOURTH.

7 Q CABINESS?

8 A CABINESS, THAT'S RIGHT, CAPTAIN CABINESS. I
9 LOOKED AT POLICE REPORTS, I LOOKED AT THOSE PRIOR
10 TESTIMONIES, AND ALL OF THE DEFENDANT'S STATEMENTS.
11 I'M TRYING TO THINK IF THERE WAS ANYTHING ELSE. I
12 THINK THAT'S IT.

13 Q WERE YOU FAMILIAR WITH THE POLYGRAPH EXAM THAT
14 WAS --

15 A YES.

16 Q ---GIVEN TO MR. COPE IN THIS CASE?

17 A YES.

18 Q WERE YOU GIVEN A COPY OF THE STATEMENT THAT WAS
19 GIVEN BY THE POLYGRAPH EXAMINER?

20 A I WAS GIVEN DETECTIVE BAKER'S STATEMENT, THE
21 PROTOCOL, YES.

22 Q ALL RIGHT.

23 A AS WELL AS HIS TESTIMONY.

24 Q ALL RIGHT. WERE THERE ANY MATERIALS THAT YOU
25 WOULD HAVE LIKED TO HAVE HAD BUT YOU WERE NOT

1 PROVIDED?

2 A WELL, THEY WERE NOT AVAILABLE. IN AN IDEAL
3 WORLD I WOULD HAVE LIKED TO HAVE HAD A VIDEO TAPE
4 VIDEO OF THE ENTIRE INTERVIEW AND INTERROGATION.

5 Q AND TO YOUR KNOWLEDGE THERE IS NO SUCH THING?

6 A TO MY KNOWLEDGE IT WAS VERY SELECTIVE. THERE
7 WAS THAT ONE AUDIO TAPE AND THEN SOME OFF TAPE
8 INTERVIEWS BEFORE AND AFTER AND THEN THERE WAS THAT
9 ONE VIDEO TAPE RE-ENACTMENT WITH OFF TAPE MATERIAL
10 BEFORE AND AFTER, SO IT WAS PIECE MEAL.

11 Q ALL RIGHT, SIR. AND YOU RECEIVED THIS
12 INFORMATION FROM MY OFFICE AND FROM MR. MORTON'S
13 OFFICE, IS THAT CORRECT?

14 A YES, THAT'S CORRECT.

15 Q AND WE CAME TO VISIT WITH YOU IN MASSACHUSETTS
16 TO PROVIDE YOU WITH THAT MATERIAL?

17 A YES.

18 Q DID YOU PERSONALLY INTERVIEW THE DEFENDANT BILLY
19 WAYNE COPE?

20 A NO.

21 Q WHY DID YOU NOT INTERVIEW HIM OR SEEK TO
22 INTERVIEW HIM?

23 A WELL, IT'S NOT MY ROLE TO JUDGE HIM OR HIS
24 STATEMENT. IT WAS MY ROLE, I FELT, TO APPLY THE
25 RELEVANT SCIENCE WHICH DOESN'T REQUIRE MY

1 INTERVIEWING OF A DEFENDANT BUT SIMPLY TO TALK ABOUT
2 THE EXPERIENCES. AND THE MATERIALS THAT I RELY ON
3 ARE NOT FOR EXAMPLE WHAT THE DEFENDANT WOULD TELL ME
4 HAPPENED, BUT WHAT I CAN DETERMINE HAPPENED FROM
5 ACTUAL OBJECTIVE MATERIALS, SO THE TAPES AND THE
6 TRANSCRIPTS AND THE MATERIALS THAT CAN ACTUALLY BE
7 USED OBJECTIVELY WITHOUT SOMEONE ELSE'S SELF REPORT,
8 THAT'S THE MATERIAL THAT I RELY ON, AND THAT'S THE
9 REASON A FULL VIDEO TAPED PROTOCOL WOULD HAVE BEEN
10 IDEAL.

11 Q DOCTOR, IS IT TRUE THAT SOMETIMES PEOPLE CONFESS
12 TO CRIMES THAT THEY DID NOT COMMIT?

13 A YES.

14 Q AND HOW OFTEN WOULD YOU ESTIMATE THAT THIS
15 OCCURS?

16 A CAN'T ESTIMATE. OTHERS HAVE TRIED. I THINK
17 IT'S NOT POSSIBLE TO DERIVE A NUMBER. PART OF THE
18 PROBLEM IS THAT WE KNOW MORE ABOUT POST CONVICTION
19 DNA EXONERATIONS FOR EXAMPLE FOR WHICH PEOPLE HAVE
20 CONFESSED, WE HAVE COME TO KNOW WHAT THOSE NUMBERS
21 LOOK LIKE; WHAT WE KNOW LESS ABOUT, SITUATIONS IN
22 WHICH PEOPLE CONFESS TO CRIMES WHICH THEY DIDN'T
23 COMMIT AND THEN WERE EXONERATED AND NEVER TRIED AND
24 THERE IS A WHOLE NUMBER OF THOSE CASES AND WE KNOW
25 LESS ABOUT VERY, VERY LOW PROFILE CASES THAT NEVER

1 REALLY REACH MEDIA OR SOCIAL SCIENTIFIC ATTENTION.
2 SO THERE IS AN INVISIBLE NUMBER OF CASES THAT HAVE
3 LEAD SOME RESEARCHERS RECENTLY WHO REVIEWED 125
4 RECENT FALSE CONFESSIONS CASES TO ARGUE THAT THAT
5 SAMPLE THAT THEY WERE LOOKING AT WAS THE TIP OF A
6 MUCH LARGER ICEBERG, BUT THEY ACKNOWLEDGED AS I WOULD
7 THAT NOBODY REALLY KNOWS THE SIZE OF THAT ICEBERG.

8 Q ALL RIGHT. NOW YOU MENTION THE TERM FALSE
9 CONFESSION, HOW DO YOU KNOW IN YOUR STUDY IN THE
10 COURSE OF YOUR FOCUS IN YOUR CAREER HOW DO YOU KNOW
11 WHEN A CONFESSION IS FALSE?

12 A THE ONLY WAY TO KNOW IF A CONFESSION IS FALSE IS
13 TO KNOW THE FINAL OUTCOME ON A PARTICULAR CASE, SO
14 FOR EXAMPLE THERE ARE CASES IN WHICH SOMEBODY
15 CONFESSES TO A CRIME, THEY OFTEN GIVE A VERY DETAILED
16 CONFESSION OF WHAT THEY DID, AND THEN AT SOME POINT
17 AFTERWARD IT IS DISCOVERED THAT THAT CRIME WAS NEVER
18 ACTUALLY COMMITTED IN THE FIRST PLACE. AND SO THERE
19 ARE THOSE TYPES OF EXAMPLES WHERE IT TURNS OUT THAT
20 CRIME NEVER OCCURRED AND THAT PERSON IS RELEASED AND
21 TYPICALLY NOT TRIED WHICH AGAIN THOSE BECOME PART OF
22 A POPULATION OF CASES THAT WOULDN'T MAKE IT INTO A
23 NUMBER.

24 THEN THERE ARE CASES WHERE A PERSON GIVES
25 A CONFESSION TO A CRIME, AGAIN OFTEN VERY, VERY

1 DETAILED CONFESSION TO A CRIME AND OFTEN STATEMENTS
2 ABOUT WHY THEY DID WHAT THEY DID, ONLY LATER TO FIND
3 OUT THAT ANOTHER CULPRIT IS APPREHENDED OR STEPS
4 FORWARD AND GIVES A CONFESSION OR EVIDENCE THAT WAS
5 NOT OTHERWISE AVAILABLE SHOWING THE INNOCENCE OF THE
6 FIRST PERSON. THERE ARE A WHOLE NUMBER OF THOSE
7 TYPES OF CASES.

8 THEN THERE ARE A NUMBER OF CASES IN WHICH
9 SCIENTIFIC EVIDENCE, LIKE DNA, SHOWS IN FACT THAT THE
10 PERSON WHO GAVE THE CONFESSION, OFTEN A VERY DETAILED
11 STATEMENT, WAS NOT THE CULPRIT, WAS NOT THE
12 PERPETRATOR. SO THOSE ARE THE METHODS AND THESE
13 AGAIN ARE CASES THAT HAVE BEEN RESOLVED SO THAT THERE
14 ISN'T A DISPUTE.

15 Q SO WHEN YOU REFER TO FALSE CONFESSIONS THAT YOU
16 HAVE STUDIED, THESE ARE THE TYPES OF CASES THAT YOU
17 HAVE STUDIED, IS THAT WHAT YOU ARE SAYING?

18 A YES.

19 Q THAT HAVE BEEN SHOWN IN THE METHOD THAT YOU JUST
20 DESCRIBED TO BE UNTRUE OR INCORRECT?

21 A CORRECT.

22 Q ARE THERE DIFFERENT TYPES OR KINDS OF FALSE
23 CONFESSIONS?

24 A YES.

25 Q COULD YOU EXPLAIN WHAT THOSE ARE?

1 A SEVERAL YEARS AGO AND THIS GOES BACK ABOUT 20
2 YEARS WHEN I WAS LOOKING INTO THE TOPIC OF FALSE
3 CONFESSIONS AND THAT WAS THE POINT AT WHICH I
4 REALIZED IT WAS ABSOLUTELY IMPOSSIBLE TO DERIVE AN
5 HONEST ESTIMATE OF HOW OFTEN THIS HAPPENS. WE KNOW
6 IT HAPPENS WITH SOME REGULAR FREQUENCY BUT WE DON'T
7 KNOW THE SIZE OF THAT FREQUENCY. WHAT I DID DO IS GO
8 BACK OVER THE PAGES OF HISTORY LOOKING AT ACTUAL
9 KNOWN CASE STUDIES OF FALSE CONFESSIONS, PEOPLE WHO
10 WERE FOUND INNOCENT SUBSEQUENT TO CONFESSING, AND I
11 FOUND THAT THEY NATURALLY SERVED THEMSELVES INTO
12 THREE PILES AND I DID THIS WORK WITH A
13 PROFESSOR/MENTOR PROFESSOR LAWRENCE WRIGHTSMAN OF THE
14 UNIVERSITY OF KANSAS AND WHAT WE DISCOVERED WAS THAT
15 THERE WERE THREE TYPES OF FALSE CONFESSIONS
16 ESSENTIALLY AND THERE ARE DIFFERENT WAYS YOU CAN
17 CATEGORIZE; IT'S KIND OF LIKE, YOU KNOW, THE SLICES
18 OF A PIE, YOU CUT IT IN DIFFERENT WAYS, BUT
19 ESSENTIALLY WHAT WE FOUND IS THERE ARE A CATEGORY OF
20 KNOWN VOLUNTARY FALSE CONFESSIONS. THESE SEEM KIND
21 OF PUZZLING BUT EVERY NOW AND THEN WE COME ACROSS A
22 CASE AND IT TURNS OUT A SIZABLE NUMBER OF THESE WHERE
23 PEOPLE CONFESS VOLUNTARILY TO CRIMES THEY DIDN'T
24 COMMIT. THEY WEREN'T PRESSURED INTO IT, THEY WEREN'T
25 INTERROGATED FOR LONG HOURS, THEY SIMPLY WALKED IN OR

1 CALLED IN A CONFESSION. AN EXAMPLE, A HISTORIC
2 EXAMPLE WHEN CHARLES LINDBERGH'S BABY WAS KIDNAPPED
3 IN THE 1930'S 200 PEOPLE CALLED IN CONFESSIONS.

4 NOW AS A SOCIAL PSYCHOLOGIST I'M
5 INTERESTED IN THE SITUATIONS THAT MAKE PEOPLE BEHAVE
6 AND THE SITUATIONS THAT LEAD PEOPLE TO MAKE CERTAIN
7 DECISIONS. A VOLUNTARY FALSE CONFESSION SAYS MORE
8 ABOUT THE CONFESSOR THAN IT DOES ABOUT THE SITUATION
9 HE'S IN, SO IT TURNS OUT THAT THE REASONS PEOPLE GIVE
10 VOLUNTARY FALSE CONFESSIONS, SOMETIMES IT'S TO
11 PROTECT SOMEBODY ELSE, SOMETIMES THEY ARE FEELING
12 GUILTY ABOUT SOMETHING THEY'VE DONE IN THE PAST OR
13 GUILTY ABOUT MAYBE NOT BEING THERE FOR THE VICTIM IN
14 THIS PARTICULAR CRIME, SOMETIMES THEY SIMPLY WANT TO
15 GET ATTENTION. IT'S NOT UNCOMMON FOR PEOPLE TO
16 CONFESS TO HIGH PROFILE CRIMES THAT ARE ON TV AND IN
17 THE NEWS AND SO THERE ARE A NUMBER OF DIFFERENT
18 REASONS AND MY READING OF THOSE CASES TELLS ME THE
19 POLICE ARE PRETTY GOOD GENERALLY AT BEING ABLE TO
20 SORT OUT THOSE VOLUNTARY CONFESSIONS THAT ARE FALSE
21 FROM THOSE THAT HAVE SOME TRUTH TO THEM AND THE WAY
22 THEY DO THAT IS TO SEEK OUT CORROBORATION. THEY ASK
23 THEMSELVES QUESTIONS. LET'S LOOK AT THE STATEMENT
24 THAT'S BEING GIVEN TO ME VOLUNTARILY; IS THAT
25 STATEMENT CLEAR AND CONSISTENT OR DOES IT CONTRADICT

1 ITSELF IN ODD WAYS. DOES THAT STATEMENT MATCH THE
2 ACTUAL KNOWN FACTS OF THE CRIME. AND TYPICALLY
3 BECAUSE THIS IS COMMON POLICE PRACTICE IN
4 INTERVIEWING A SUSPECT YOU'D WANT TO KNOW THAT THE
5 SUSPECT IS ABLE TO PROVE THE GUILT BEHIND THE
6 ADMISSION THAT I DID IT AND HOW DO YOU PROVE GUILT?
7 WELL, YOU DON'T TELL THE SUSPECT CERTAIN THINGS ABOUT
8 THE CRIMES, CERTAIN PRIVILEGED DETAILS SO ONLY THE
9 PERPETRATOR CAN KNOW THOSE DETAILS AND WHAT POLICE
10 ARE OFTEN PRETTY GOOD AT DOING WHEN A VOLUNTARY FALSE
11 CONFESSION COMES IN, AND I'VE SEEN MULTIPLE VOLUNTARY
12 FALSE CONFESSIONS IN A SINGLE CASE, IS THEY DEMAND
13 CORROBORATION. THEY ASK A SUSPECT THE CONFESSOR TO
14 ESSENTIALLY PROVE IT, TO PROVE TO ME THAT YOU WERE
15 THERE, PROVE TO ME THAT YOU KNOW THINGS THAT NOBODY
16 ELSE COULD HAVE KNOWN EXCEPT FOR THE PERPETRATOR.
17 AND SO IN A CASE LIKE THAT THEY DEMAND THAT THE
18 CONFESSOR GIVE THEM INFORMATION THEY DIDN'T ALREADY
19 KNOW. OR LEAD THEM TO EVIDENCE LIKE A WEAPON OR
20 CLOTHING OR A PURSE THAT THEY DIDN'T ALL READY HAVE
21 AND SO THERE ARE A NUMBER OF THESE CASES OUT THERE.
22 THEY REALLY ARE THE DOMAIN MORE FOR A CLINICAL
23 PSYCHOLOGIST WHO STUDIES MENTAL ILLNESS, PEOPLE WHO
24 HAVE A PATHOLOGICAL NEED FOR FAME OR RECOGNITION OR
25 ATTENTION THAN A SOCIAL PSYCHOLOGIST, BUT THERE IS

1 THAT CATEGORY AND IT IS SUBSTANTIAL.

2 THE OTHER TWO CATEGORIES OF CONFESSIONS
3 THAT -- I HOPE I'M NOT TALKING FOR TOO LONG.

4 Q NO.

5 A ARE THE KINDS OF CONFESSIONS THAT COME FROM
6 INTERROGATION, POLICE INDUCED TYPES OF CONFESSIONS,
7 AND HERE THERE WERE TWO TYPES. THE MOST COMMON SENSE
8 TYPE, PSYCHOLOGICALLY THE TYPE THAT WE ALL COULD
9 UNDERSTAND, ARE WHAT WE REFER TO IN 1985 AS COERCED
10 COMPLIANT FALSE CONFESSIONS. COMPLIANCE IS A TERM
11 THAT SOCIAL PSYCHOLOGISTS USE TO DESCRIBE WHAT PEOPLE
12 SOMETIMES DO WHEN THEY GO ALONG WITH THE CROWD OR
13 OBEY A COMMAND, PRIVATELY THEY DON'T AGREE WITH IT,
14 PRIVATELY THEY KNOW WHAT THE TRUTH IS, BUT PUBLICLY
15 THEY GO ALONG BECAUSE THEY JUST DON'T WANT TO STAND
16 OUT. THEY DON'T WANT TO BE RIDICULED. COMPLIANCE,
17 THAT TERM, APPLIED TO COERCED COMPLIANT FALSE
18 CONFESSIONS, THESE ARE CONFESSIONS WHERE SOMEBODY
19 MIGHT CONFESS TO A CRIME COMPLETELY KNOWING HE'S
20 INNOCENT BUT HE'S IN A SITUATION WHERE BECAUSE OF A
21 COMBINATION OF STRESS AND THE KINDS OF INTERROGATION
22 TACTICS THAT ARE USED THE SITUATION HAS JUST GOTTEN
23 SO UNPLEASANT FOR SO LONG THAT THE SUSPECT IS LOOKING
24 FOR A WAY OUT AND SO HE GIVES A CONFESSION IN THE
25 HOPE OF TERMINATING A BAD SITUATION OR AVOIDING SOME

1 THREATENED OR IMPLIED HARM OR TRYING TO GAIN SOME
2 REWARD, MAYBE GAINING LENIENCY, AND DOES IT KNOWING
3 THAT HE'S INNOCENT. PRIVATELY HE KNOWS. WE KNOW
4 THOSE CASES BECAUSE THE MOMENT THE PERSON LEAVES THIS
5 PRESSURE FILLED SITUATION USUALLY TURNS TO A LAWYER
6 AND SAYS I CONFESSED BUT I DIDN'T DO IT. AND THOSE
7 ARE THE KINDS OF STATEMENTS, THOSE ARE THE KINDS OF
8 CONFESSIONS THAT ARE PROBABLY THE MOST COMMON OF
9 FALSE CONFESSIONS. THESE WERE EXHIBITED, TO GIVE ONE
10 EXAMPLE JUST LIKE THAT IN THE RECENT CENTRAL PARK
11 JOGGER CASE. THIS IS A CASE IN 1989.

12 MR. BRACKETT: YOUR HONOR, I OBJECT.

13 THE COURT: I SUSTAIN THE OBJECTION. MOVE
14 ON.

15 MR. BAITY: YOUR HONOR --

16 MR. MORTON: ONE SECOND.

17 MR. BAITY: YOUR HONOR, COULD WE TAKE UP
18 SOMETHING OUTSIDE THE PRESENCE OF THE JURY.

19 THE COURT: LET THE JURY GO TO THE JURY
20 ROOM.

21 (THE JURY EXITS THE COURTROOM AT 02:46
22 PM.)

23 THE COURT: I THOUGHT I MADE IT CLEAR THAT
24 I WOULDN'T ALLOW TESTIMONY REGARDING FACTORS IN A
25 CONFESSION, AND I THOUGHT I MADE IT CLEAR THAT I DID

1 NOT WANT TESTIMONY THAT, I HATE TO USE SENSATIONAL,
2 BUT BORDERS ON SENSATIONAL. I DON'T WANT THIS JURY
3 PUT IN FEAR THAT THEY ARE GOING TO HAVE TO LIVE THE
4 REST OF THEIR LIVES IF THEY PUT AN INNOCENT MAN IN
5 JAIL BECAUSE THE JOGGERS AND ALL THIS OTHER STUFF
6 HAPPENED. I WANT THEM, IF YOU WANT TO HELP THE JURY,
7 THEN I THOUGHT MY RULING WAS GIVE THEM THE TOOLS, NOT
8 THE EXAMPLES. I THOUGHT THAT'S WHAT I RULED.

9 MR. BAITY: YES, YOUR HONOR, AND IF I MAY,
10 THE POINT THAT WE'RE TRYING TO MAKE HERE IS THAT THIS
11 IS A RELATIVELY RECENT SCIENCE THAT'S HEAVILY
12 DEPENDENT ON CASE STUDY AND THAT THE FACTORS THAT HE
13 WISHES TO IDENTIFY FOR THE BENEFIT OF THE JURY TO SEE
14 IF THEY CAN RECOGNIZE THEM IN THIS CASE, ARE
15 DEPENDENT ON CASE STUDIES AND, WHICH HE WAS
16 ATTEMPTING TO GO INTO. NOW PERHAPS IT WOULD BE
17 BETTER NOT TO MENTION THE FAMOUS CENTRAL PARK JOGGER
18 CASE BUT A CASE IN WHICH, I'M NOT SURE EXACTLY HOW
19 YOU CAN SAY IT, BUT IF HE JUST DOESN'T PUT A NAME TO
20 IT BUT JUST SAYS THAT THERE WAS A CASE STUDY THAT, IN
21 WHICH THIS OCCURRED. THESE ARE CASE SPECIFIC, THESE
22 ARE CASE STUDIES FROM WHICH THESE FACTORS WHICH ARE
23 VERY IMPORTANT, WE BELIEVE, IN THIS CASE AND ARE VERY
24 EXISTENT IN THIS CASE THAT HE HAS LEARNED FROM
25 WORKING ON OR STUDYING THESE PARTICULAR FALSE

1 CONFESION CASES IF I CAN USE THAT TERM. AND I MET
2 WITH DR. KASSIN IN THE BREAK AND HE BASICALLY SAID HE
3 DOESN'T KNOW HOW HE CAN ILLUSTRATE OR FULLY
4 EXPLAIN --

5 THE COURT: THAT'S NOT THE COURT'S
6 PROBLEM. THE COURT'S PROBLEM IS OR THE COURT'S
7 SITUATION IS THIS IS SUPPOSED TO HELP THE JURY. ITS
8 PROBATIVE VALUE HAS TO BE OUTWEIGHING THE
9 PREJUDICIAL. I THINK YOU ARE CROSSING THE LINE WHEN
10 YOU MOVE INTO THE SENSATION AND THESE CASES TEND TO
11 BE SENSATION, BUT HE CAN TESTIFY, HE'S SUPPOSED TO BE
12 AN EXPERT, HE'S SUPPOSED TO BE SMARTER THAN THE REST
13 OF US OR HE WOULDN'T BE HERE.

14 MR. MORTON: YOUR HONOR --

15 THE COURT: SO HE OUGHT TO BE ABLE TO
16 TESTIFY AS TO WHAT THE, WHAT FACTORS HE LOOKS AT.

17 MR. BAITY: AND HE'S TRYING, FOR HIM
18 SIMPLY TO SAY THERE WAS A CLINICAL STUDY AND THIS WAS
19 THE RESULT, I MEAN, THAT IS ONLY A PORTION OF HIS
20 SCIENCE, THAT IS A PORTION OF IT, BUT THEN THERE IS A
21 VERY LARGE PORTION OF IT THAT IS CASE SPECIFIC ON
22 THESE OTHER CASES THAT HE'S DEALT WITH. NOW MAYBE,
23 YOU KNOW, YEARS DOWN THE ROAD WE MIGHT HAVE A PURELY
24 CLINICAL SCIENCE THAT WE CAN PRESENT, BUT THAT'S NOT
25 WHAT'S GOING ON. WE HAD OUR HANDWRITING EXPERT UP

1 HERE THE OTHER DAY THAT ILLUSTRATED HOW CERTAIN
2 THINGS THAT HE'S LOOKING FOR, HE DOESN'T HAVE A
3 SPECIFIC QUANTIFIABLE SCIENCE THAT HE WAS TALKING
4 ABOUT, BUT HE CAN STATE HIS OPINION AND HE COULD
5 DRAW, SOMETIMES WHEN PEOPLE TRY TO DO THIS THEIR HAND
6 SHAKES AND HE ILLUSTRATED THAT, THIS IS PRECISELY THE
7 SAME TYPE OF OPINION TESTIMONY THAT DR. KASSIN IS
8 TRYING TO GET ACROSS.

9 THE COURT: WELL, NOBODY RAISED THE ISSUE
10 OF PREJUDICIAL VALUE OUTWEIGHING PROBATIVE AND I'M
11 FINDING THAT IT DOES. IF HE CAN'T TESTIFY WITHOUT IT
12 THEN HE CAN'T TESTIFY.

13 MR. BAITY: YOUR HONOR --

14 THE COURT: I'M NOT GOING TO ARGUE.

15 MR. BAITY: I'M NOT TRYING TO ARGUE. I'M
16 JUST TRYING TO UNDERSTAND YOUR RULING.

17 THE COURT: MR. MORTON WANTS TO TALK,
18 ALTHOUGH USUALLY HAVE THE PERSON WHO HAS THE WITNESS
19 IS THE ONE WHO DEFENDS THAT WITNESS' POSITION.

20 MR. BAITY: YES, SIR.

21 THE COURT: UNLESS --

22 MR. BAITY: I'LL BE HAPPY TO YIELD --

23 THE COURT: YOU CAN'T YIELD TO HIM UNLESS
24 COUNSEL WAIVES THE RULE IN HIS FAVOR. DO YOU MIND
25 MR. MORTON SAYING ANYTHING?

1 MR. BRACKETT: YOUR HONOR, I WILL DO
2 NOTHING THAT WILL ASSIST IN MAKING THIS HAPPEN
3 BECAUSE IT IS SO TERRIBLE PREJUDICIAL.

4 THE COURT: ALL RIGHT.

5 MR. MORTON: SO HE DOESN'T WANT ME TO
6 RESPOND.

7 THE COURT: RIGHT AND USUALLY ONE PERSON.

8 MR. MORTON: CAN I --

9 THE COURT: YOU CAN TALK TO HIM. COACH
10 HIM ALL YOU WANT BUT.

11 MR. BAITY: YOUR HONOR, THANK YOU FOR
12 THAT. YOUR HONOR, WE WOULD LIKE TO PROFFER DR.
13 KASSIN'S TESTIMONY FOR YOU TO HEAR AND TO MAKE A
14 DECISION AS TO THE PREJUDICIAL VALUE, ALLOW HIM TO BE
15 CROSS EXAMINED, WE BELIEVE THAT IS THE ONLY WAY THAT
16 WE'RE GOING TO BE ABLE TO GET THIS TESTIMONY IN, WE
17 BELIEVE IT'S BEEN ALLOWED IN OTHER CASES, AND
18 THEREFORE IF YOU ARE NOT GOING TO ALLOW HIM TO MAKE
19 ANY REFERENCE TO ANY OTHER CASE STUDIES, I CERTAINLY
20 UNDERSTAND YOUR RULING, BUT WE WOULD AT THIS TIME
21 REQUEST THAT YOU ALLOW US TO JUST PRESENT HIS
22 TESTIMONY OUTSIDE THE PRESENCE OF THE JURY AS A
23 PROFFER SUBJECT TO CROSS EXAMINATION, JUST LET US GET
24 THROUGH THIS AND PRESERVE THE RECORD.

25 THE COURT: ALL RIGHT.

1 MR. BAITY: THANK YOU, YOUR HONOR. MAY I
2 PROCEED?

3 THE COURT: CERTAINLY.

4 MR. BAITY: THANK YOU. I CAN'T REMEMBER
5 EXACTLY WHERE WE WERE. I BELIEVE --

6 THE COURT: WE'RE IN CENTRAL PARK.

7 IN CAMERA DIRECT EXAMINATION BY MR. BAITY:

8 Q YES, SIR. WE WERE ON COERCED COMPLIANT FALSE
9 CONFESSIONS?

10 A YES. AND I DON'T, I HOPE NOT TO BE
11 SENSATIONALISTIC, BUT SIMPLY TO POINT OUT THAT THERE
12 WAS A CASE WHERE THOSE NOW KNOWN TO BE FALSE
13 CONFESSIONS WERE NOT EVER BELIEVED BY THE DEFENDANTS,
14 THEY CONTESTED THEM THE MOMENT THEY WERE DONE, THE
15 ARGUMENT THAT THEY SAID IS EVERYONE OF THEM AND THEIR
16 FAMILIES BELIEVED THEY WERE GOING TO GET A CHANCE TO
17 GO HOME AFTERWARDS AND THAT'S AN EXAMPLE OF
18 COMPLIANCE. PUBLICLY THEY WENT ALONG, PRIVATELY THEY
19 MAINTAINED THEIR INNOCENCE AND THAT'S REALLY ALL I
20 WANTED TO SAY ABOUT THAT CENTRAL PARK CASE.

21 Q AND ARE THERE OTHER DOCUMENTED INSTANCES OF HAVE
22 TYPE OF COERCED COMPLIANT FALSE CONFESSION?

23 A YES. WHEN WE SORTED THOSE CASES WE LOOK AT INTO
24 PILES THERE WERE A NUMBER OF THEM THAT FIT JUST RIGHT
25 THERE, AND IT GETS AT AN IMPORTANT QUALITY OF

1 DECISION-MAKING IN THE INTERROGATION ROOM. WHAT A
2 SUSPECT DOES DECIDING TO CONFESS OR TO CONTINUE
3 DENIAL IS A DECISION-MAKING PROCESS AND IT'S A
4 DECISION-MAKING PROCESS LIKE THE ONE THAT
5 PSYCHOLOGISTS HAVE STUDIED FOR YEARS, AND WHAT WE
6 KNOW ABOUT THAT IS THAT PEOPLE IN MAKING DECISIONS
7 ARE PARTICULARLY INFLUENCED BY SHORT-TERM COSTS AND
8 BENEFITS, SHORT TERM CONSEQUENCES, MUCH MORE SO THAN
9 DELAYED CONSEQUENCES, SO CONSEQUENTLY, AND THERE ARE
10 A NUMBER EXPERIMENTS, LABORATORY EXPERIMENTS THAT
11 SHOW PEOPLE PREFER SHORT-TERM BENEFITS AND REWARDS TO
12 LONG TERM BENEFITS AND REWARDS, SO WHAT THAT TELLS US
13 IN THE DECISION-MAKING CONTEXT IN THE INTERROGATION
14 ROOM IS THAT VERY OFTEN PEOPLE WILL CONFESS TO
15 SOMETHING THEY DIDN'T DO AS AN ACT OF EXPEDIENCE IN
16 ORDER TO TERMINATE IN THE SHORT RUN A BAD SITUATION
17 AND WORRY LATER ABOUT THE CONSEQUENCES AND THAT'S
18 WHAT THESE COERCED COMPLIANT FALSE CONFESSIONS ARE
19 LIKE.

20 Q WHEN YOU TALK ABOUT COERCION USED IN THIS
21 PROCESS, CAN THIS BE, IS THIS ALWAYS OVERT COERCION
22 OR CAN IT MORE BE SO SUBTLE?

23 A IT CAN BE SUBTLE AND I DON'T MEAN TO USE THE
24 TERM COERCION IN A LEGAL SENSE. I SIMPLY MEAN THIS
25 IS AN INDUCED, A SITUATION IN WHICH THE PERSON IS

1 UNDER SOME DEGREE OF PRESSURE TO GIVE A CONFESSION
2 AND HAS TO MAKE A DECISION ABOUT HOW TO RESPOND TO
3 THAT PRESSURE SO AGAIN I DON'T MEAN IT IN A LEGAL
4 SENSE, BUT THIS IS NOT VOLUNTARY IN THE SENSE I DON'T
5 WALK IN AND VOLUNTEER THIS CONFESSION. IT COMES AS A
6 PROCESS, AS A FUNCTION OF INTERROGATION.

7 Q COULD YOU TELL US ABOUT THE OTHER TYPE OF FALSE
8 CONFESSION?

9 A THE THIRD TYPE WHERE THE COERCED INTERNALIZED
10 FALSE CONFESSIONS, THESE WERE AT THE TIME IN 1985 A,
11 FOR US, DIFFICULT TO UNDERSTAND AND IN PART THAT THE
12 PSYCHOLOGY OF MEMORY HADN'T YET CAUGHT UP TO WHAT
13 THESE CONFESSIONS ILLUSTRATE. THESE WERE CASES WHERE
14 INDIVIDUALS WOULD NOT ONLY CONFESS TO A CRIME UNDER
15 THESE INTERROGATION CIRCUMSTANCES, BUT COME TO DOUBT
16 THEIR OWN INNOCENCE AND THEN ULTIMATELY CONFESS TO
17 SOMETHING THEY DIDN'T DO AND BELIEVE THAT CONFESSION.
18 AND THESE ARE CASES AND THEY FOLLOW A VERY
19 PREDICTABLE SCRIPT AND WITHOUT GETTING INTO SPECIFIC
20 CASE STUDIES WHAT THEY DEMONSTRATE IS THAT, IF YOU
21 HAVE AN INDIVIDUAL WHO IS VULNERABLE TO MANIPULATION,
22 WHOSE MEMORY IS VULNERABLE TO MANIPULATION, AND IT
23 MIGHT BE THAT WAY BECAUSE THEY ARE SLEEP DEPRIVED OR
24 UNDER GREAT STRESS OR THEY MAY HAVE BEEN FATIGUED AND
25 EXHAUSTED OR THEY HAVE BEEN UNDER THE INFLUENCE OF

1 DRUGS, WHATEVER IT IS THEY ARE NOW VULNERABLE TO
2 MANIPULATION AND WHEN PRESENTED WITH FALSE EVIDENCE,
3 AND I MENTION THIS SCRIPT BECAUSE EVERY SINGLE
4 COERCED INTERNALIZED FALSE CONFESSION FOLLOWS EXACTLY
5 THE SAME PATTERN OF EVENTS AND THEY RESEMBLE THE
6 KINDS OF MEMORY IMPAIRMENTS AND MEMORY
7 RECONSTRUCTIONS THAT WE SEE IN OTHER CONTEXTS. SO
8 YOU HAVE A PERSON WHO IS VULNERABLE TO MANIPULATION,
9 PRESENTS THEM WITH APPARENTLY UNIMPEACHABLE OBJECTIVE
10 EVIDENCE, THAT PERSON NOW HAS TO TRY TO RECONCILE ON
11 THE ONE HAND, I HAVE NO MEMORY, WITH ON THE OTHER
12 HAND BUT THEY TELL ME AND I BELIEVE IT THAT THERE IS
13 OBJECTIVE EVIDENCE THAT I DID THIS. SO THEY NOW HAVE
14 TO RECONCILE THIS EVIDENCE WITH THEIR LACK OF MEMORY.
15 AT WHICH POINT THEY ENTERTAIN THE IDEA THAT THEY
16 COMITTED THIS ACT AND NOT HAD A CONSCIOUSNESS, THAT
17 THEY HAD DISASSOCIATED OR AMNESIC FOR IT, HAD
18 REPRESSED IT FROM MEMORY, AND DID THIS ACT. OFTEN IN
19 THESE CASES THEY THEN GO THROUGH A PROCESS OF
20 IMAGINATION WHETHER THEY TRY TO IMAGINE HOW THEY
21 WOULD HAVE COMMITTED THIS ACT FOR WHICH THEY HAVE NO
22 DIRECT MEMORY. THAT IMAGINATIONAL PROCESS ULTIMATELY
23 RESULTS IN THEIR MAKING A FALSE CONFESSION WHICH
24 ALWAYS SOUNDS EXACTLY THE SAME, I GUESS I DID. I
25 MUST HAVE DONE IT. I MUST HAVE DONE IT AND BLOCKED

1 IT OUT. YOU GET THOSE KINDS OF STATEMENTS IN VERY
2 TENTATIVELY FRAGMENTARY LANGUAGE. IN THESE CASES
3 THAT PERSON IS LATER EXONERATED, WE KNOW THAT IN FACT
4 THEY WERE INNOCENT, YET THEY ALWAYS FOLLOW THAT
5 PATTERN AND THEY FOLLOW THAT PATTERN, WHAT IS THE
6 COMMON INGREDIENT IN THEM IS THE PRESENTATION OF
7 FALSE EVIDENCE THAT PUTS THEM OVER THE EDGE. IT
8 DISORIENTS THEIR VIEW OF REALITY AND THEY BEGAN TO
9 QUESTION THEIR OWN MEMORY.

10 Q DOCTOR, ARE THERE DOCUMENTED CASES WHERE THIS
11 INTERNALIZED OR COERCED INTERNALIZED FALSE CONFESSION
12 HAS OCCURRED THAT YOU HAVE ACTUALLY STUDIED AND
13 WORKED WITH?

14 A YES. THESE IN FACT WERE THE CASES THAT I
15 INITIALLY HAD TO LOOK AT WHEN DR. WRIGHTSMAN AND I
16 CAME UP WITH THIS CLASSIFICATION SCHEME AND SO WE
17 KNOW THEY EXIST, THEY CONTINUE TO EXIST AND AGAIN
18 THEY ALL KIND OF RESEMBLE EACH OTHER IN A WAY. WE
19 THEN TAKE IN THAT PHENOMENA AND BROUGHT INTO A
20 LABORATORY SITUATION TO SEE IF WE CAN ALTER PEOPLE'S
21 MEMORY FOR EVENTS OR ACTS THAT THEY DID OR DID NOT
22 COMMIT AND WE FOUND THAT UNDER CERTAIN, AGAIN CERTAIN
23 CIRCUMSCRIBED SET OF CIRCUMSTANCES WE CAN DO THAT.
24 THE REST OF MEMORY RESEARCH HAS ALSO CAUGHT UP
25 SHOWING THAT WHETHER WE'RE TALKING ABOUT PEOPLE'S

1 MEMORY OR SOMETHING THEY HEARD, A CONVERSATION, A
2 WORD LIST, SOMETHING THEY SAW, AN EXPERIENCE THEY
3 HAD, AN ACT THEY COMMITTED, IT IS POSSIBLE TO GET
4 PEOPLE TO THINK THEY SAW OR HEARD OR DID SOMETHING
5 THAT THEY DIDN'T DO, THAT THE EXPERIMENTER KNOWS THEY
6 DIDN'T DO THROUGH THE SAME KIND OF TECHNICS.

7 Q IS THERE AN EXAMPLE THAT YOU COULD POINT OUT
8 THAT BARE A RESEMBLANCE TO THIS CASE ON THAT?

9 A WELL, IT'S A FAIR RESEMBLANCE IN THE SENSE THAT
10 IT TALKS ABOUT THE CREATION OF A FALSE MEMORY. THERE
11 ARE STUDIES, FOR EXAMPLE, BY A COGNITIVE PSYCHOLOGIST
12 BY THE NAME OF ELIZABETH LOFTIS WHERE SHE HAS A,
13 SUBJECT'S COME INTO THE LABORATORY AND SHE ARRANGES
14 SO THAT SOMEBODY IN THEIR LIFE REMINDS OF AN EVENT IN
15 THEIR LIFE THAT NEVER HAPPENED, LIKE BEING LOST IN A
16 SHOPPING MALL OR SPENDING TIME IN A HOSPITAL, AND SHE
17 FINDS THAT AFTER REPEATED INTERVIEWS, AFTER REPEATED
18 EFFORTS TO REMEMBER SOMETHING THAT WAS PRESENTED TO
19 THEM THROUGH FALSE EVIDENCE BY SOMEONE IN THEIR LIVES
20 MANY OF THEM COME TO FORM A MEMORY AND MANY OF THEM
21 NOT ONLY START TO REMEMBER THAT THAT HAPPENED TO THEM
22 BUT THEY ACTUALLY EMBELLISH THE DETAILS AND FABULATE
23 DETAILS CONSISTENT WITH THAT NEW BELIEF. AND SO
24 THAT'S AN EXAMPLE IN A NON-FORENSIC CONTEXT OF THE
25 SAME PHENOMENA. YOU GET SOMEONE WHO IS VULNERABLE TO

1 WHETHER THAT FALSE EVIDENCE IS IN THE FORM OF FAMILY
2 MEMBER OR FRIEND OR SOMETHING ELSE IN A LABORATORY
3 AND LO AND BEHOLD THEY BEGIN TO THINK THAT THEY
4 SIMPLY HAD LACKED A MEMORY FOR AN EVENT THAT THEY ARE
5 NOW TOLD THAT HAD OCCURRED.

6 Q SO IT'S POSSIBLE TO MAKE A PERSON THINK THAT HE
7 WAS INVOLVED IN SOMETHING THAT HE WASN'T ACTUALLY
8 INVOLVED IN?

9 A YES.

10 Q HOW DO YOU KNOW THAT CAN, THAT THAT OCCURS? HOW
11 CAN YOU KNOW THAT? IS THERE A PSYCHOLOGY RESEARCH ON
12 THAT PARTICULAR?

13 A THERE IS AN AWFUL LOT OF RESEARCH IN A NUMBER OF
14 DIFFERENT CONTEXTS. AS I SAID IN 1985 IT WAS A
15 PUZZLING PHENOMENA. WE LOOKED AT THESE AND SAID
16 THERE IS NOTHING THAT WE KNOW OF IN THE SCIENCE OF
17 MEMORY TO EXPLAIN HOW THIS CAN HAPPEN. AT THAT TIME
18 WE THOUGHT THAT MEMORY OPERATED MORE LIKE A VIDEO
19 TAPE RECORDER AND THAT YOU PROCESSED INFORMATION, IT
20 LAY DORMANT SOMEWHERE IN THE BRAIN TO BE RETRIEVED AT
21 A LATER TIME. WE NOW KNOW THAT IN FACT MEMORY CAN BE
22 CHANGED. IT CAN CONSTRUCTED AND IT CAN BE
23 RECONSTRUCTED. WHEN WE DEVELOP THAT CLASSIFICATION
24 SCHEME WE WERE LOOKING AT A WHOLE BUNCH OF CASES LIKE
25 ONE CASE FOR EXAMPLE AND I GUESS AT THIS POINT.

1 Q AT THIS POINT IT'S FINE.

2 A A CASE BY THE NAME OF, A MAN BY THE NAME OF
3 PETER RILEY WHO CAME HOME ONE DAY AND HIS MOTHER WAS
4 DEAD AND HE CALLED THE POLICE AND THEY ARRIVED AND
5 BROUGHT HIM IN FOR QUESTIONING AND AFTER SEVERAL
6 HOURS OF QUESTIONING THEY OFFERED TO ADMINISTER A
7 POLYGRAPH. HE SAID, FINE, I'LL TAKE THE POLYGRAPH.
8 HE FAILED THE POLYGRAPH AND BEGAN TO DOUBT HIS OWN
9 MEMORY. ASKED THE QUESTION IS IT POSSIBLE SOMEBODY
10 COULD COMMIT AN ACT LIKE THIS AND NOT BE AWARE OF IT
11 AND THE DETECTIVE WHO IS INTERVIEWING HIM SAID, YES,
12 THAT SORT OF THING CAN HAPPEN. AT WHICH POINT HE
13 STARTED TO IMAGINE WHAT HE MUST HAVE DONE, TALKED
14 ABOUT BEING ANGRY AT HIS MOTHER FOR DISCIPLINING HIM
15 AND OTHER DETAILS, AND ULTIMATELY GAVE A CONFESSION.
16 IT TURNED OUT THAT THERE WAS EXCULPATORY INFORMATION
17 AND AFTER TWO OR THREE YEARS IN JAIL HE WAS RELEASED
18 AND DA'S OFFICE DIDN'T GO BACK TO RETRY CASE.

19 THERE WAS ANOTHER AND I'LL JUST GIVE ONE
20 MORE CASE BECAUSE IT WAS A VERY CLOSE RESEMBLANCE TO
21 THIS ONE, OF A 41-YEAR-OLD MAN BY THE NAME OF GARY
22 GEIGER OF ILLINOIS WHO COMES HOME TO FIND HIS PARENTS
23 HAD BEEN SLAUGHTERED AND HE CALLS 911. HE IS THEN
24 BROUGHT IN FOR INTERROGATION. HE IS ADMINISTERED A
25 POLYGRAPH. AFTER EXTENSIVE INTERROGATION HE'S TOLD

1 POLYGRAPH. AFTER EXTENSIVE INTERROGATION HE'S TOLD
2 THAT HE FAILED THE POLYGRAPH. AT WHICH POINT HE
3 STARTS TO CONCLUDE THAT I MUST HAVE DONE IT AND I
4 BLACKED OUT. ULTIMATELY HE CONFESSES TO BRINGING, TO
5 COMING UP FROM BEHIND HIS PARENTS, YANKING THEIR
6 HEADS BACK BY THE HAIR, AND SLITTING THEIR THROAT.
7 IT TURNS OUT THAT THE SURVEILLANCE TAPE LATER PICKED
8 UP A MOTORCYCLE GANG IN WHICH ONE OF THE MEMBERS WAS
9 BRAGGING ABOUT THIS PARTICULAR MURDER IN DETAIL AND
10 KNEW ALL ABOUT IT AND SO HE WAS AGAIN EXONERATED BUT
11 THERE WAS A CASE WHERE HE QUESTIONED HIS OWN MEMORY.
12 AND WHEN, WHAT'S PUZZLING ABOUT THESE CASES IS WHEN
13 HE EVEN LEAVING THE SITUATION OF THE INTERROGATION
14 ROOM AND SPEAKS FOR EXAMPLE TO A LAWYER, THE LAWYER
15 SAYS, WHAT HAPPENED. HE SAYS, WELL, I DON'T KNOW. I
16 THINK I MAY HAVE DONE THIS. THEY ARE JUST NOT SURE.
17 THEIR MEMORY HAS BEEN IMPAIRED IN THIS WAY. YES.

18 Q WHAT MAKES PEOPLE VULNERABLE TO THIS TYPE OF
19 MEMORY ALTERATION?

20 A THE VULNERABILITY CAN BE SOMETHING ABOUT THE
21 PERSON, IT CAN BE THAT THEY ARE MENTALLY RETARDED AND
22 HIGHLY SUGGESTIBLE. IT CAN BE THAT THEY ARE YOUNG
23 AND NAIVE, FOR EXAMPLE, ABOUT CERTAIN TYPES OF
24 QUESTIONING SITUATIONS. OR IT COULD BE THAT THEY ARE
25 SIMPLY STRESSED, THEY ARE GRIEF STRICKEN, THEY ARE

1 FATIGUED, SLEEP DEPRAVATION PLAYS A ROLE, PEOPLE HAVE
2 DIFFICULTY THINKING CLEARLY, AND OFTEN MAKE SHORT
3 CITED DECISIONS WHEN SLEEP DEPRIVED. SO THERE ARE
4 ANY NUMBER OF VULNERABILITY FACTORS. IN SOME CASES
5 DRUGS ARE INVOLVED, SO THEY VARY. THEY CAN BE ISSUES
6 PERTAINING TO THE INDIVIDUAL OR THEY CAN BE ISSUES TO
7 THE SITUATION HE'S IN.

8 Q ARE THERE CERTAIN TECHNIQUES THAT ARE COMMONLY
9 USED TO OBTAIN CONFESSIONS?

10 A YES, THERE ARE. I MEAN THERE ARE PRESCRIBED
11 METHODS OF INTERROGATIONS, NOT ALL TECHNIQUES ARE
12 IDENTICAL, BUT THEY ALL FIT PRETTY MUCH THE SAME
13 PATTERN AND AGAIN I WOULD APPEAL TO THE INBAU AND
14 REID TECHNIQUE WHICH IS THE MOST, I APPEAL TO THAT
15 BECAUSE IT'S IN SOME WAYS THE MOST ARTICULATE AND THE
16 MOST ELABORATE PRESENTATION OF WHAT COMMONLY IS USED,
17 AND BASICALLY IT REQUIRES ISOLATING A SUSPECT AND
18 THEN CONFRONTING THAT, THIS ALL COMES ONCE A DECISION
19 IS MADE ABOUT THE SUSPECT'S GUILT AND THAT'S A WHOLE
20 OTHER PROCESS OF INTERVIEWING. THE TERMS
21 INTERVIEWING INTERROGATION ARE NOT SYNONYMOUS. AN
22 INTERVIEW IS A NON-CONFRONTATIONAL, NON-ACCUSATORY
23 QUESTION AND ANSWER SESSION IN WHICH THE GOAL IS FOR
24 AN INVESTIGATOR TO DETERMINE WHETHER OR NOT THE
25 SUSPECT WAS LYING OR TELLING THE TRUTH. IT'S NOT

1 CONFRONTATIONAL. YOU DON'T PRESSURE THE SUSPECT TO
2 GET A CONFESSIONS. THE GOAL IS TO ASK QUESTIONS AND
3 TO OBSERVE THE SUSPECT CLOSELY TO SEE HOW THAT
4 SUSPECT REACTS TO THOSE QUESTIONS IN ORDER TO MAKE
5 THAT JUDGMENT. IF THE JUDGMENT, IN THE EYE OF
6 INTERROGATOR IS THAT THIS SUSPECT IS TELLING THE
7 TRUTH AND IS PROBABLY INNOCENT, THEY SEND THEM HOME.
8 IF THE JUDGMENT IS THAT THE SUSPECT IS LYING THEY
9 LEAD THEM ON TO INTERROGATION AT WHICH POINT
10 INTERROGATION BECOMES A MULTI-STEP PROCESS AND TO
11 MAKE A LONG STORY SHORT, IT INVOLVES FIRST OF ALL
12 ISOLATING THE SUBJECT. THESE INTERROGATIONS
13 TYPICALLY TAKE PLACE IN POLICE STATIONS, NOT OUT IN
14 THE STREET OR IN THE LIVING ROOM. THIS IS, SO THE
15 SUSPECT IS ISOLATED FROM ALL THAT IS FAMILIAR. THE
16 SECOND STEP IS CONFRONTATION, SOMETIMES REFERRED TO
17 AS THE POSITIVE CONFRONTATION. THE ACCUSATION IS
18 MADE. WE KNOW YOU ARE GUILTY, WE KNOW YOU DID IT,
19 AND WE DON'T WANT TO HEAR ANYMORE LIES BECAUSE AT
20 THIS POINT THE JUDGMENT IS MADE THAT THE PERSON IS
21 GUILTY. THE PERSON IS LIKELY TO CONTINUE TO MAINTAIN
22 SOME DENIALS AND THEN THERE ARE TECHNIQUES INVOLVED
23 FOR RESTRICTING THOSE DENIALS AND NOT ALLOWING THE
24 PERSON TO MOUNT A DEFENSE. ESSENTIALLY BREAKING THAT
25 SUSPECT DOWN INTO A STATE OF DISPAIR. THE SUSPECT IS

1 IN A BAD SITUATION, IT'S UNPLEASANT, HE'S ISOLATED
2 AND HE'S COMING TO FIND OUT THAT DENIAL IS NOT AN
3 ADEQUATE ESCAPE HATCH. YOU CONTINUE TO DENY THE
4 CHARGES THAT IS NOT A MEANS OF ESCAPE. THAT IS
5 SOMETIMES BUT NOT ALWAYS ACCOMPANIED, THAT TECHNIQUE
6 OF CONFRONTATION, BY THE PRESENTATION OR INSINUATION
7 THAT WE HAVE EVIDENCE. THE REID TECHNIQUE, FOR
8 EXAMPLE, ADVISES TO SOMETIMES IMPLY THAT THERE IS
9 EVIDENCE EVEN THOUGH YOU MAY NOT HAVE IT. WHAT WOULD
10 YOU SAY, FOR EXAMPLE, IF YOU KNEW WE HAD DNA MATERIAL
11 TO BE TESTED, THAT BLUFF IS DESIGNED TO SCARE THE
12 GUILTY PERSON INTO CONFESSION. IT SHOULDN'T HAVE
13 THAT AFFECT ON THE INNOCENT PERSON. SOMETIMES THAT
14 PRESENTATION GOES SO FAR AS TO LITERALLY LIE ABOUT
15 THE EVIDENCE AND TO PRESENT FALSE EVIDENCE. ALL OF
16 THAT IS DESIGNED TO BREAK THE SUSPECT DOWN INTO A
17 STATE OF DESPAIR AND HOPELESSNESS, TO BELIEVE THAT
18 DENIAL IS, I WANT TO GET OUT OF HERE AND DENIAL IS
19 NOT MY WAY OUT.

20 THE THIRD PROCESS THAT WEAVES ITS WAY IN
21 AND OUT OF INTERROGATION IS TO PROVIDE A PALATABLE
22 ALTERNATIVE. LET'S PROVIDE AN ESCAPE HATCH AND SO IN
23 THE REID TECHNIQUE, FOR EXAMPLE, A FORM OF
24 MINIMIZATION IS USED. THEY PRESENT WHAT THEY OFTEN
25 REFER TO AS AN ALTERNATIVE SCENARIO. YOU KNOW WHAT,

1 IT IS POSSIBLE THAT YOU ARE A GOOD PERSON, WHAT YOU
2 DID CAME ACCIDENTALLY OR YOU WERE PROVOKED OR YOU
3 WERE PRESSURED BY YOUR FRIENDS. IN THIS WAY IT
4 PROVIDES A MORE FACE SAVING ALTERNATIVE, A FORM OF
5 MORAL JUSTIFICATION, A BETTER EXPLANATION THAT MAKES
6 FOR A MORE PALATABLE CONFESSION. THAT IS DESIGNED TO
7 ENABLE THAT SUSPECT AT THAT POINT TO CONFESS TO
8 SOMETHING THAT DOESN'T SEEM SO BAD AND THOSE ARE THE
9 PRIMARY STEPS OF INTERROGATION.

10 Q ARE THESE TECHNIQUES COMMONLY USED IN POLICE
11 INTERROGATION?

12 A YES.

13 Q IF SO, HOW DO YOU KNOW THAT?

14 A WE KNOW IT AGAIN FROM THE MANY CASE STUDIES,
15 BOTH CASE STUDIES OF PEOPLE WHO CONFESS TO CRIMES
16 THEY DID COMMIT AND CASE STUDIES WHO CONFESSED TO
17 CRIMES THEY DID NOT COMMIT. RICHARD LEO IN THE LATE
18 1990'S PUBLISHED A STUDY BASED ON LIVE AND VIDEO
19 TAPED OBSERVATIONS OF POLICE INTERROGATIONS AND HE
20 CODED FOUR KINDS OF TECHNIQUES THAT WERE USED. OTHER
21 RESEARCHERS IN ENGLAND HAVE DONE THE SAME THING IN
22 BRITISH INTERROGATION ROOMS. THE U.S. SUPREME COURT,
23 IN FACT, IN MIRANDA IN 1967 CITED AN OLD
24 OBSERVATIONAL STUDY SHOWING THAT THESE TECHNIQUES
25 THAT I JUST DESCRIBED ARE COMMON PLACE IN THE

1 INTERROGATION ROOM. SO WE KNOW FROM OBSERVATIONAL
2 STUDIES AND ACTUAL CASE STUDIES.

3 Q DOCTOR, ARE THERE BEHAVIORS IN AN INTERVIEW OR
4 FOR THAT MATTER IN AN INTERROGATION THAT INDICATE A
5 PERSON'S GUILT?

6 A DEPENDING ON HOW YOU PHRASE THE QUESTION. IT
7 TURNS OUT IT'S VERY, VERY DIFFICULT TO MAKE THAT
8 INITIAL DETERMINATION. SOCIAL PSYCHOLOGISTS FOR 40
9 YEARS NOW HAVE BEEN STUDYING PEOPLE'S ABILITY TO KNOW
10 WHEN SOMEBODY IS TELLING THE TRUTH OR LYING AND IT
11 TURNS OUT WE'RE NOT VERY GOOD LIE DETECTORS AS HUMAN
12 BEINGS, EXCLUDING OF COURSE POLYGRAPHS. ADDITIONAL
13 RESEARCH SHOWED THAT PEOPLE WHO ARE EXPERTS,
14 PROFESSIONALS, AT LIE DETECTION, WHO DO IT FOR A
15 LIVING, CUSTOMS INSPECTORS, INVESTIGATORS,
16 PSYCHIATRISTS, ARE NOT MUCH BETTER THAN THE AVERAGE
17 PERSON. THEIR PERFORMANCE IS SLIGHTLY BETTER BUT
18 WHAT WE'RE TALKING ABOUT HERE IS A SITUATION WHERE
19 THOSE JUDGMENTS ARE MADE AT MOST AT ABOUT A 60 TO 65
20 PERCENT LEVEL OF ACCURACY AND MORE TYPICALLY AT 55
21 PERCENT LEVEL OF ACCURACY. IS IT POSSIBLE TO TRAIN
22 PEOPLE TO BE BETTER JUDGES? SO FAR THE RESEARCH
23 SHOWS NO. IN FACT THE RESEARCH SHOWS THAT PEOPLE WHO
24 ARE SPECIALLY TRAINED ARE NOT MORE ACCURATE BUT THEY
25 ARE MORE CONFIDENT IN THEIR JUDGMENT ABILITIES. AND

1 THAT RESEARCH IS NOW FOUND IN THE UNITED STATES, IN
2 CANADA, IN ENGLAND, IN SWEDEN, IN SPAIN, JUST A
3 NUMBER OF RESEARCH LABS ACROSS THE WORLD HAVE FOUND
4 THAT PEOPLE ARE NOT GOOD LIE DETECTORS. THE
5 PROFESSIONALS ARE NOT ON AVERAGE BETTER THAN THE
6 AVERAGE PERSON AND PART OF THE PROBLEM IS THAT THE
7 CUES THEY OFTEN RELY ON ARE NOT DIAGNOSTIC OF TRUTH
8 AND DECEPTION.

9 NOW SOMEWHAT DIFFERENT QUESTION PERTAINS
10 TO WHAT DOES THE LAW ENFORCEMENT COMMUNITY OF TRAINED
11 INTERROGATORS BELIEVE ABOUT CAN I DETERMINE TRUTH AND
12 DECEPTION AND THERE ARE CERTAIN BELIEFS THAT IN FACT
13 ARE COMMON PLACE AND THERE MAY BE, HAVING BEEN
14 TESTED, MAYBE SOME TRUTH TO THEM. FOR EXAMPLE, IF
15 YOU LOOK AGAIN AT THE REID TECHNIQUE, IN THE INBAU
16 MANUAL THEY SAY IF YOU OFFER A POLYGRAPH AND IF THE
17 SUSPECT IS RETICENT TO TAKE THE POLYGRAPH OR
18 RELUCTANT OR SIMPLY REFUSES TO TAKE THE POLYGRAPH,
19 THAT'S AN INDICATION THAT HE HAS SOMETHING TO HIDE.
20 IF HE IS WILLING TO TAKE THE POLYGRAPH, THAT'S AN
21 INDICATION OF INNOCENCE. IS IT A GUARANTEE? OF
22 COURSE NOT. BUT THEY INDICATE THAT AS ONE OF A
23 NUMBER OF CUES THAT CAN BE USED TO DETERMINE IF A
24 PERSON IS TRUTHFUL OR LYING, BEING EVASIVE OR
25 COOPERATIVE. SO THERE ARE THOSE KINDS OF CUES.

1 THERE ARE CUES THAT ARE SUPPOSED TO INDICATE TRUTH,
2 CUES THAT ARE SUPPOSED TO INDICATE DECEPTION.

3 Q AND THOSE CUES YOU ARE TALKING ABOUT WOULD THAT
4 NORMALLY COME OUT IN AN INTERVIEW PROCESS AND PERHAPS
5 LEAD TO INTERROGATION OR PERHAPS LEAD TO A RELEASE OF
6 THAT INDIVIDUAL?

7 A YES --

8 Q IS THAT THE THEORY?

9 A IN THIS PREINTERROGATION INTERVIEW.

10 Q WELL, JUST CONCENTRATING ON INTERROGATION, ARE
11 CERTAIN TECHNIQUES COMMONLY TAUGHT AND USED BY
12 POLICE?

13 A YES.

14 Q IN INTERROGATION PRACTICE?

15 A YES.

16 Q HEAR ABOUT THAT A LITTLE BIT?

17 A AGAIN THIS INVOLVES ISOLATING THE SUSPECT,
18 MAKING A POSITIVE CONFRONTATION OF THE SUSPECT'S
19 GUILT, SOMETIMES TRYING TO BLUFF THE SUSPECT WITH THE
20 INSINUATION THAT WE HAVE EVIDENCE THAT COULD BE
21 TESTED, MAKING IT DIFFICULT IF NOT IMPOSSIBLE FOR A
22 SUSPECT TO DENY THE CHARGES, AND TO MOUNT A DEFENSE,
23 AND THEN PROVIDING A PALATABLE FACE SAVING
24 ALTERNATIVE USING MINIMIZATION TECHNIQUES TO MAKE
25 CONFESSION REASONABLE DECISION AT THAT POINT IN TIME.

1 Q WHAT'S THE THEORY BEHIND THESE TECHNIQUES?

2 A THE THEORY VERY CLEARLY AND IN FACT THE REID
3 PEOPLE AND OTHER INTERROGATION MANUALS OFTEN CONTAIN
4 CHAPTERS IN THEIR BOOKS ON THE PSYCHOLOGY UNDERLYING
5 THIS INTERROGATION AND THE THEORY IS TO MAKE
6 CONFESSION APPEAR THE MORE DESIRABLE OUTCOME, THE
7 MORE DESIRABLE ROUTE TO ESCAPE, AND THE GOAL IS TO
8 ALTER THE SUSPECT'S CONTINGENCIES, SENSE OF
9 CONTINGENCIES ABOUT WHAT WILL HAPPEN TO ME IF I DENY
10 THE CHARGES, WHAT WOULD HAPPEN TO ME IF I CONFESS,
11 AND THE GOAL HERE AND THE NOTION IS, AND IT'S A GOOD
12 NOTION, IS THAT WITH THIS KIND OF PRESSURE A GUILTY
13 PERSON WILL CAPITULATE AND CONFESS AND AN INNOCENT
14 PERSON WILL STEADFASTLY MAINTAIN HIS INNOCENCE.

15 Q WHAT HAPPENED IF THESE TECHNIQUES THAT WE HAVE
16 BEEN TALKING ABOUT ARE TAKEN TO AN EXTREME?

17 A IF TAKEN TO AN EXTREME, AND THERE IS NO BRIGHT
18 LINE THAT TELLS US HOW EXTREME IS TOO EXTREME. THERE
19 IS NO SURGICAL MECHANISM THAT SAYS THIS IS THE RIGHT
20 AMOUNT OF PRESSURE, BUT WHAT WE DO KNOW IS WHEN
21 PRESSURE BECOMES EXTREME IN ONE WAY OR ANOTHER NOT
22 ONLY ARE THE GUILTY PEOPLE CONFESSING BECAUSE IT
23 TURNS OUT ON AVERAGE GUILTY PEOPLE WHO CONFESS
24 CONFESS WITHIN THE FIRST TWO HOURS. BUT IF YOU LOOK
25 AT DRIZZON AND LEO 2004 STUDY OF 125 FALSE CONFESSION

1 CASES THE VAST MAJORITY OF THOSE PEOPLE WERE
2 INTERROGATED FOR MORE THAN SIX HOURS. AT THE POINT
3 AT WHICH YOU START TO BREAK A PERSON DOWN THROUGH
4 FATIGUE OVER TIME YOU ARE NOT ONLY GETTING GUILTY
5 CONFESSIONS, YOU ARE NOW INCREASING THE LIKELIHOOD
6 THAT YOU ARE GETTING SOME INNOCENT CONFESSIONS AS
7 WELL. DO WE KNOW EXACTLY THE MOMENT THAT HAPPENS?
8 NO. BUT WE KNOW THAT THERE ARE MARKERS AND THAT TIME
9 IS ONE OF THOSE MARKERS.

10 Q ARE THERE CERTAIN APPROACHES IN PARTICULAR THAT
11 ARE PROBLEMATIC IN THIS SUBJECT?

12 A THE TWO APPROACHES THAT APPEAR PROBLEMATIC IN
13 PART BECAUSE THEY JUST APPEAR CONSISTENTLY IN ALMOST
14 EVERY FALSE CONFESSION CASE IS EXCESSIVE AMOUNTS OF
15 TIMES. AGAIN AN INTERROGATION THAT RUNS FOR, YOU
16 KNOW, AND THE REID PEOPLE FOR RECOMMEND THAT AN
17 INTERROGATION SHOULD RUN AN HOUR OR TWO OR FOUR AT
18 THE MOST, SO EXCESSIVE AMOUNTS OF TIME IS IMPLICATED
19 IN FALSE CONFESSION CASES AS IS THE PRESENTATION OF
20 FALSE EVIDENCE. WITH A PERSON, AGAIN SOMEONE WHO IS
21 VULNERABLE TO MANIPULATION THAT PRESENTATION OF FALSE
22 EVIDENCE CAN DISORIENT THEM ABOUT REALITY AND FORCE
23 THEM SOMETIMES NOT ONLY TO CONFESS BUT TO BELIEVE THE
24 CONFESSION. SO THE PRESENTATION OF THE FALSE
25 EVIDENCE IS IMPLICATED AS IS EXCESSIVE ELEMENTS OF

1 TIME.

2 NOW OTHERS WOULD ARGUE THERE ARE OTHER
3 TECHNIQUES LIKE MINIMIZATION THAT PUT PEOPLE AT RISK
4 AND THERE ARE ARGUMENTS TO BE MADE BUT I THINK
5 MINIMIZATION IN AND OF ITSELF ISN'T GOING TO PUT AN
6 INNOCENT PERSON OVER THE EDGE.

7 Q HOW DO YOU KNOW IN A PARTICULAR CASE STUDY IF,
8 WHAT INTERROGATION TECHNIQUES WERE USED? HOW WOULD
9 YOU KNOW?

10 A WELL, AGAIN IN AN IDEAL SITUATION AND YOU HAVE
11 THIS IDEAL SITUATION VERY OFTEN, YOU HAVE A FULL
12 AUDIO TAPE OR A FULL VIDEO TAPE OF ALL SESSIONS, FROM
13 INTERVIEWING ON THROUGH INTERROGATION. THERE ARE A
14 COUPLE OF STATES, THREE STATES NOW THAT ACTUALLY
15 MANDATE IT, IT'S MANDATORY. IN MANY, MANY OTHER
16 JURISDICTIONS IT'S NOT MANDATORY BUT TAKEN ON A
17 VOLUNTARY BASIS. IN FACT, THERE IS A RECENT STUDY OF
18 MORE THAN A 100 JURISDICTIONS THAT FULLY VIDEO TAPE
19 INTERVIEWS AND INTERROGATIONS. SO IN AN IDEAL WORLD
20 THAT'S THE MATERIAL YOU HAVE. SHORT OF THAT, YOU
21 HAVE TESTIMONY FROM THOSE WHO DID THE INVESTIGATION,
22 THOSE WHO DID THE INTERROGATION, SOMETIMES YOU HAVE
23 TESTIMONY FROM THE DEFENDANT, AND IN CASES WHERE THEY
24 DISAGREE ABOUT WHAT TRANSPIRED, ESSENTIALLY YOU KIND
25 OF HAVE TO SAY, OKAY, WE DON'T REALLY KNOW WHAT

1 HAPPENED IN THOSE CASES. OFTEN POLICE REPORTS
2 CONTAIN INFORMATION ABOUT WHAT WAS SAID AND DONE,
3 WHAT TECHNIQUES WERE USED, BUT OF COURSE THOSE ARE
4 NOT, THAT'S NOT GOOD INFORMATION BECAUSE IT RELIED ON
5 MEMORY AND MEMORY IS FALLIBLE. SO IN AN IDEAL WORLD
6 WE HAVE AUDIO TAPES AND VIDEO TAPES.

7 Q IS THERE ANY REASON, ANY PARTICULAR REASON THAT
8 YOU KNOW OF AN INTERROGATION SHOULD NOT BE TAPED IN
9 ANY PARTICULAR --

10 A NO. IN FACT, THE SULLIVAN STUDY THAT WAS
11 RECENTLY RELEASED SHOWED THAT IN ALL OF THE
12 JURISDICTIONS STUDIED THAT HAVE GONE VOLUNTARILY TO
13 VIDEO TAPING SESSIONS THEY ARE UNIFORMLY HAPPY WITH
14 IT. IN FACT, IN FACT, THEY FIND THAT IT IS MUCH MORE
15 BENEFICIAL TO THE PROSECUTION THAN TO THE DEFENSE
16 BECAUSE THEY GET TO CLEAR AWAY A NUMBER OF FRIVOLOUS
17 CLAIMS OF COERCION WHERE THERE WAS NO COERCION AND
18 THE POLICE OFFICERS IN THOSE JURISDICTIONS ARGUE THAT
19 THEY SPEND A LOT LESS TIME DEFENDING THEIR TACTICS
20 AND THEY ALSO SAY THAT THEY OFTEN GET INFORMATION
21 FROM A SUSPECT WHO DOESN'T TECHNICALLY CONFESS BUT
22 MAKES AN INCRIMINATING PRESENTATION NEVERTHELESS AND
23 THAT APPEARS ON THAT TAPE. SO THERE ARE A NUMBER OF
24 REASONS THAT IT SEEMS UNIFORMLY A POSITIVE
25 DEVELOPMENT.

1 Q WHAT ARE THE WAYS THERE ARE TO RECORD A
2 CONFESSION?

3 A THE PRIMARY WAY IS TO AUDIO TAPE OR TO VIDEO
4 TAPE. NOTE-TAKING AGAIN RELIES ON THE FALLIBILITY OF
5 THE HUMAN MEMORY SO NOTE-TAKING IS NOT NEARLY AS
6 EFFECTIVE A TECHNIQUE.

7 Q SPECIFICALLY IN YOUR CASE STUDIES HOW DO YOU GO
8 ABOUT EVALUATING A PARTICULAR CONFESSION?

9 A AGAIN USING WHATEVER INFORMATION IS AVAILABLE
10 AND ACKNOWLEDGING UP FRONT THAT THERE ARE GAPPING
11 HOLES SOMETIMES IN THAT INFORMATION. THERE ARE SOME
12 CASES THAT I HAVE LOOKED AT WHERE THERE IS A FULL SET
13 OF TAPES AVAILABLE SO THAT ANYBODY CAN LOOK AT
14 EXACTLY WHAT WAS DONE SO THAT THAT FINAL STATEMENT,
15 THAT FINAL CONFESSION, WHICH IS VERY MUCH LIKE A
16 HOLLYWOOD PRODUCTION, THAT FINAL AUDIO TAPE OR THAT
17 FINAL VIDEO TAPE IS THE END PRODUCT OF A PROCESS OF
18 INFLUENCE. AND YET TYPICALLY WE DON'T HAVE ACCESS TO
19 SEE THAT PROCESS OF INFLUENCE UNFOLD. NOW WHY IS IT
20 IMPORTANT? IT'S IMPORTANT TO KNOW WHAT PRECIPITATED
21 THAT DEFENDANT, THAT SUSPECT, FROM MOVING FROM DENIAL
22 TO CONFESSION. WHAT WAS THAT TRANSITION POINT? WHAT
23 PROMPTED THAT TO HAPPEN? AND SECOND AND THIS IS A
24 PARTICULARLY IMPORTANT DETAIL IS AGAIN BECAUSE SO
25 MANY FALSE CONFESSIONS CONTAIN VIVID SENSORY DETAILS,

1 THEY SOUND SO GOOD, THEY SOUND SO REAL, BUT WHAT WE
2 KNOW IS THAT WHILE OFTEN THEY CONTAIN TRUE
3 INFORMATION, ACCURATE INFORMATION, A SECOND QUESTION
4 THAT ONE HAS TO DETERMINE IS WHERE THAT INFORMATION
5 COME FROM, AND SOMETIMES IT TURNS OUT THE INFORMATION
6 IS DERIVED FROM SECOND HAND SOURCES. YOU CAN HEAR
7 SOMETIMES IN THESE TAPES THAT AN ITEM OF INFORMATION
8 ACTUALLY COMES FROM THE QUESTION NOT THE ANSWER AND
9 THE ONLY WAY TO GO BACK AND KNOW THAT AND TO TRACK
10 THE SOURCE OF A DETAIL IS TO HEAR THE PROCESS OF
11 INFLUENCE THAT GAVE RISE TO THAT DETAIL.

12 Q IN THE TYPICAL CASE STUDY THAT YOU PARTICIPATE
13 IN HOW WOULD YOU NORMALLY KNOW WHAT WEIGHED IN ON IN
14 A CONFESSION OR IN A STATEMENT AND WHAT TECHNIQUES
15 WERE USED? I MEAN IF YOU SAY, FOR EXAMPLE, IF YOU
16 DON'T HAVE A VIDEO TAPE OR A AUDIO TAPE?

17 A WELL, THEN YOU DO THE BEST YOU CAN ON THE BASIS
18 OF TESTIMONY AND IN POINTS OF AGREEMENT VERY OFTEN,
19 FOR EXAMPLE, THE POLICE WHO ARE PRESENT AND THE
20 DEFENDANT WHO IS PRESENT WILL TESTIFY TO THE SAME SET
21 OF EVENTS, THE SAME SERIES OF EVENTS. IN CASES WHERE
22 THEY AGREE I ASSUME THERE IS A REALITY BASE TO THAT
23 AGREEMENT. IN CASES OF DISAGREEMENT PERSONALLY I SET
24 IT ASIDE AND ACKNOWLEDGE THAT I SIMPLY DON'T KNOW
25 WHAT HAPPENED ON THAT FRONT. A DEFENDANT MIGHT OFTEN

1 CLAIM THAT HE WAS THREATENED WITH THE ELECTRIC CHAIR.
2 WELL, IF THERE IS NO OTHER EVIDENCE FOR THAT THREAT,
3 THEN TO ME THAT DIDN'T HAPPEN. SO VERY
4 CONSERVATIVELY POINTS OF AGREEMENT COME THROUGH
5 POLICE REPORTS AND OTHER INDIRECT FORMS OF TESTIMONY,
6 POINTS OF AGREEMENT BECOME THE BASIS FOR KNOWING WHAT
7 HAPPENED.

8 Q DOCTOR, LET ME ASK YOU TO COMMENT ON ONE OTHER
9 SUBJECT BEFORE WE TURN SPECIFICALLY TO THE COPE CASE.
10 WHAT ABOUT A CONFESSION THAT IS FILLED WITH VIVID
11 DETAIL, SPECIFIC DETAIL, ISN'T A VERY PERSUASIVE
12 CONFESSION?

13 A IT IS VERY PERSUASIVE AND THIS IS THE PROBLEM
14 WITH IN FACT MAKING A DISTINCTION BETWEEN TRUE AND
15 FALSE CONFESSIONS JUST BY LOOKING AT THEM. SEVERAL
16 YEARS AGO THERE WAS A PSYCHOLOGIST EXPERT WITNESS
17 CLAIMING THAT HE COULD TELL THE DIFFERENCE BETWEEN
18 THE TRUE AND THE FALSE CONFESSION. THE SCIENCE
19 DOESN'T GIVE US THAT. WE CAN'T TELL THE DIFFERENCE
20 BETWEEN TRUE AND FALSE CONFESSION BY LOOKING AT THE
21 CONFESSION.

22 NOW PEOPLE CAN MAKE JUDGMENTS BY COMPARING
23 THE STATEMENT AND COMPARING IT TO THE FACTS OF THE
24 CASE. DOES IT, IS THIS A STORY ABOUT WHAT ACTUALLY
25 HAPPENED OR IS THERE SOME GLARING DISPARITY BETWEEN

1 THE STORY AND THIS CONFESSION AND THE OTHER EVIDENCE.
2 DOES THE STORY CONTRADICT ITSELF. THOSE ARE WAYS IN
3 WHICH YOU CAN MAKE THAT DETERMINATION, BUT SIMPLY
4 LOOKING AT A CONFESSION JUST LIKE LOOKING AT A DENIAL
5 WE CAN'T DO IT AND IN FACT I HAVE GOT A STUDY AGAIN
6 THAT IS BEING PUBLISHED IN LAW AND HUMAN BEHAVIOR
7 SHOWING THAT THE AVERAGE PEOPLE INCLUDING LAW
8 ENFORCEMENT PEOPLE CANNOT TELL TRUE CONFESSIONS FROM
9 FALSE CONFESSIONS JUST BY LOOKING AT THEM. SO WHAT
10 WE NEED TO DO IS GET OUTSIDE OF THAT LOCAL PRODUCTION
11 AND COMPARE THAT CONFESSION TO WHAT ELSE WE KNOW
12 ABOUT A PARTICULAR CASE AND THAT'S WHY I WOULD NEVER
13 TESTIFY ABOUT A PARTICULAR CONFESSION BEING TRUE OR
14 FALSE BECAUSE IT WOULD REQUIRE ME TO DO WHAT A JURY
15 SHOULD DO WHICH IS TO TAKE THAT CONFESSION AND
16 COMPARE IT TO OTHER THINGS THAT ARE PRESENTED IN THIS
17 CASE. SO, FOR EXAMPLE, YOU MIGHT LOOK AT A
18 CONFESSION AND ASK, OR A SERIES OF CONFESSIONS AND
19 ASK THE QUESTION, DO THEY CONTRADICT EACH OTHER? ARE
20 THERE MULTIPLE STATEMENTS THAT CONTRADICT EACH OTHER?
21 AND MORE IMPORTANTLY YOU LOOK AT THAT SERIES OF
22 STATEMENTS AND ASK WHETHER THOSE STATEMENTS MATCH THE
23 ACTUAL FACTS OF THE CRIME. AND VERY OFTEN IN FALSE
24 CONFESSION CASES THE ANSWER IS YES. IN FACT, WHAT
25 YOU HAVE IN THESE CASES IS ACCURATE VIVID DETAILS TO

1 THE CRIME, APPARENTLY THAT ONLY THE PERSON, THE
2 CULPRIT SHOULD KNOW. BUT THERE IS A SECOND LEVEL OF
3 ANALYSIS HERE AND THIS AGAIN IS OFTEN DIFFICULT FOR
4 PEOPLE, PARTICULARLY WITHOUT VIDEO TAPE, IS YOU HAVE
5 TO QUESTION THE SOURCE OF THAT INFORMATION. IT'S ONE
6 THING TO DEMONSTRATE THAT A SUSPECT GAVE FACTS ABOUT
7 A CRIME THAT ARE ACCURATE, THE SECOND QUESTION IS
8 WHERE DID THOSE FACTS COME FROM. FROM A PERSONAL
9 EXPERIENCE OR FROM SOME OTHER SECONDHAND INDIRECT
10 SOURCE.

11 THERE ARE CASES, FOR EXAMPLE, THAT TO
12 EVERYBODY'S PUZZLEMENT CONTAINS DETAILS THEN IT TURNS
13 OUT THAT THE SUSPECT IN THAT CASE WAS SHOWN
14 PHOTOGRAPHS OR TAKEN TO THE CRIME SCENE OR OVERHEARD
15 CONVERSATIONS IN THE POLICE DEPARTMENT THAT CONTAIN
16 DETAILS THAT HE OTHERWISE DIDN'T KNOW, AND SO THERE
17 ARE SECONDHAND SOURCES OF INFORMATION. SOMETIMES A
18 NEWSPAPER ARTICLE, PARTICULARLY A HIGH PROFILE CASE
19 THAT'S IN THE NEWS. IT'S IMPORTANT TO BE ABLE AND
20 THAT'S WHY VIDEO TAPING IT I THINK IS SO IMPORTANT TO
21 BE ABLE TO TRACK THE SOURCE OF THAT INFORMATION.

22 Q AND YOU'VE BEEN INVOLVED IN CASE STUDIES OF
23 CASES WHERE THERE WERE VIVID, DETAILED CONFESSIONS
24 THAT TURNED OUT ULTIMATELY TO BE PROVABLE AND
25 DOCUMENTABLY FALSE?

1 A YES.

2 Q NOW LOOKING AT THIS CASE, DR. KASSIN, HOW DO YOU
3 KNOW WHAT WENT ON DURING THE INTERROGATION THAT
4 RESULTED IN THESE CONFESSIONS?

5 A I HAVE TWO POLICE REPORTS FROM NOVEMBER 29 AND
6 THEY SIMPLY IN NARRATIVE FORM DESCRIBE THAT HE WAS
7 QUESTIONED AND THIS IS WHAT HE SAID AND THIS IS WHAT
8 HE DENIED. AND THEN I HAVE THAT AUDIO TAPE AND A
9 TRANSCRIPT OF THAT TAPE FROM NOVEMBER 29 THAT
10 EXTENDED OVER INTO NOVEMBER 30, THAT THREE AND A HALF
11 HOUR TAPE, IN WHICH HE IS INTERROGATED AND CONTINUES
12 TO MAINTAIN HIS DENIALS. THAT'S THE TAPE IN WHICH HE
13 ASKS FOR A POLYGRAPH. THE NEXT STEP, I HAVE THE
14 WRITTEN REPORT FROM DETECTIVE BAKER WHO ACTUALLY
15 CONDUCTED THE POLYGRAPH, FOLLOWED BY A STATEMENT FROM
16 THE DEFENDANT, AND THEN I UNDERSTAND THE DEFENDANT
17 WAS IN CUSTODY OVER THE WEEKEND, WAS HELD OVER THE
18 WEEKEND, AND CAME BACK MONDAY DECEMBER THIRD TO
19 PROVIDE A WRITTEN STATEMENT IN THE MORNING, A VIDEO
20 TAPED RE-ENACTMENT SHORTLY AFTER THAT, THEN A SECOND
21 STATEMENT THAT WAS TYPED UP BY DETECTIVE BLACKWELDER
22 IN THE AFTERNOON; THAT BEING THE FINAL FIFTH, IN SOME
23 WAYS, FIFTH AND FINAL CONFESSION. THAT'S THE
24 INFORMATION I HAVE.

25 Q WERE THE TECHNIQUES THAT YOU DESCRIBED EARLIER

1 IN YOUR TESTIMONY HERE TODAY WERE ANY OF THOSE
2 TECHNIQUES USED ON MR. COPE?

3 A YES.

4 Q HOW DO YOU KNOW THAT THOSE TECHNIQUES WERE USED?

5 A I HEARD THEM ON THE TAPE. NOW THAT INITIAL
6 TAPE, THAT INITIAL TAPE OF INTERROGATION ON THE NIGHT
7 OF THE 29, SLIPPING OVER INTO THE EARLY MORNING OF
8 THE 30, YOU CAN HEAR THE SEEDS PLANTED OF
9 INTERROGATION TECHNIQUES. THIS WAS AN INTERROGATION.
10 HE WAS CONFRONTED WITH ACCUSATIONS OF HIS GUILT. HE
11 WAS NOT BELIEVED WHEN HE DENIED. THERE WAS A
12 PERSISTENCE TO THOSE CHARGES. THE IMPLICATION WAS
13 MADE, IT WAS INSINUATED THAT WAS OTHER EVIDENCE,
14 BLUFFING, BAITING TECHNIQUES WERE USED; YOU KNOW,
15 WHAT, FOR EXAMPLE, DO YOU THINK WOULD HAPPEN IF WE
16 WERE TO TEST THE DNA. HE WAS ASKED THOSE KINDS OF
17 BAITING QUESTIONS. AND THERE WAS AN IMPLICATION OF
18 MINIMIZATION BEING USED AS WELL. MINIMIZATION AT ONE
19 POINT THE SUGGESTION WAS THAT THERE WAS POSSIBLY THAT
20 THIS WAS AN ACCIDENT, SOMETHING THAT ESCALATED OUT OF
21 CONTROL. AND IN ADDITION TO THAT THERE WAS AT LEAST
22 THE SEED PLANTED OF A BLACK OUT, THE NOTION THAT
23 SOMEBODY MIGHT BLACK IT OUT. IN FACT AT ONE POINT HE
24 RESPONDS VERY QUICKLY BACK TO SAY, I'M AWARE OF WHAT
25 I DO. IN OTHER WORDS, AT THAT POINT IN TIME HE

1 WASN'T GOING TO HAVE THAT BLACK OUT IDEA. THE NEXT
2 MORNING EVERYTHING HAD CHANGED. SO I DO KNOW FROM
3 THAT EVENING AND THEN OF COURSE I HAVE THE VIDEO TAPE
4 WHICH ARE BOTH, YOU KNOW, IN A SENSE RECORDINGS, LIVE
5 CONTEMPORANEOUS RECORDINGS OF STATEMENTS THAT HE WAS
6 GIVING.

7 Q IS THERE ANYTHING ABOUT THESE TECHNIQUES THAT
8 YOU KNOW OCCURRED IN THIS CASE THAT CAUSE YOU ANY
9 CONCERN?

10 A THE PRESENTATION OF FALSE EVIDENCE AND THE
11 EXCESSIVE LENGTH AND THIS IS SOMETHING THAT, BY
12 OBJECTIVE MEASURES, THE EXCESSIVE LENGTH BECAUSE WE
13 KNOW THAT IT IS A MARKER OF FALSE CONFESSIONS, THE
14 EXCESSIVE LENGTH OF CUSTODY AND INTERROGATION. THE
15 FACT, FOR EXAMPLE, THAT THE VIDEO TAPE REENACTMENT
16 CAME AFTER HE WAS IN CUSTODY FOR THREE AND A HALF
17 DAYS. SO CERTAINLY THERE ARE TECHNIQUES THAT ARE
18 USED. THERE IS A PSYCHOLOGICAL IMPLAUSIBILITY, I
19 MIGHT EVEN GO SO FAR TO SAY IT'S AN IMPOSSIBILITY IN
20 WHICH THE STATEMENT HE GAVE ON VIDEO TAPE INTERNALLY
21 CONTRADICTS ITSELF TO A POINT OF ABSOLUTELY
22 IMPLAUSIBLE. AND ALL OF THAT IS IN EVIDENCE. AS FAR
23 AS I'M CONCERNED THAT'S WHAT I CAN ACTUALLY SEE. NOW
24 THE STATEMENTS DO CHANGE, THEY CHANGE FROM TIME TO
25 TIME, BUT I CAN ONLY, THE TWO TAPES ARE AGAIN THE

1 MATERIALS I CAN RELY ON BECAUSE I'M SEEING IT COME
2 OUT OF HIS MOUTH.

3 Q WHAT YOU SAY THE PRESENTATION OF FALSE EVIDENCE,
4 SPECIFICALLY WHAT ARE YOU REFERRING TO IN THIS CASE?

5 A WELL, THERE WAS AN IMPLICATION, AN INSINUATION,
6 DURING THAT THERE MAY BE DNA, BUT THERE WAS NO
7 PRESENTATION OF FALSE EVIDENCE. THE PRESENTATION OF
8 FALSE EVIDENCE COMES WITH THE POLYGRAPH. HE VERY
9 CLEARLY AND ADAMANTLY AND REPEATEDLY ON THE NIGHT OF
10 THE 29 AND 30 REQUEST THE POLYGRAPH. HE SEEMS IN A
11 NUMBER OF WAYS TO HAVE NO CONSCIOUSNESS OF GUILT. HE
12 SEEMS IN A NUMBER OF WAYS TO BE CONFIDENT IN HIS OWN
13 EXONERATION, SO HE ASKED TO TAKE A POLYGRAPH. IN
14 FACT I THINK HE ASKS FOUR OR FIVE TIMES. FINALLY AT
15 THE LAST TIME HE ASKED THE QUESTION WAS RAISED TO
16 HIM, YOU HAVE A LOT OF FAITH IN THE POLYGRAPH, DON'T
17 YOU AND HE SAID YES. WELL, THAT MADE HIM VULNERABLE
18 TO MANIPULATION. ESSENTIALLY WHAT HE IS SAYING IS I
19 TRUST THE RESULT OF THE POLYGRAPH. YOU GIVE ME THE
20 RESULTS OF THE POLYGRAPH AND THAT WILL TELL YOU THE
21 TRUTH. THE NEXT MORNING HE WAS ADMINISTERED THE
22 POLYGRAPH AND TOLD THAT HE FAILED. THAT FEEDBACK,
23 NOT THE ADMINISTRATION ITSELF, BUT THE FEEDBACK
24 SHORTLY THEREAFTER THAT YOU FAILED AND NOW THE BURDEN
25 IS ON HIM TO SOMEHOW RECONCILE HIS LACK OF MEMORY,

1 HIS BELIEF IN HIS OWN INNOCENCE, WITH THIS APPARENTLY
2 UNIMPEACHABLE EVIDENCE THAT HE PLACED SO MUCH, BY HIS
3 OWN ADMISSION, PLACED SO MUCH FAITH IN. HE NOW HAD
4 TO RECONCILE THOSE TWO AND AT THAT POINT STARTED TO
5 ASK QUESTION ABOUT IS IT POSSIBLE TO BLACK OUT. VERY
6 CLASSIC QUESTION THAT A PERSON OFTEN ASKS AFTER THE
7 PRESENTATION OF FALSE EVIDENCE.

8 Q WHAT ABOUT THE FACT THAT MR. COPE ACTUALLY
9 REENACTED THE CRIME THAT HE WAS ACCUSED OF?

10 A IT'S ANOTHER, AGAIN THIS IS NOW FOUR - FOUR AND
11 A HALF DAYS OF HIS BEING IN CUSTODY AND HE'S UNDER
12 ARREST AT THIS POINT, HE GAVE A STATEMENT EARLIER,
13 APPARENTLY THAT STATEMENT WASN'T SUFFICIENT, SO THEY
14 WENT IN AND REENACTED. IT'S AN INTERESTING
15 REENACTMENT. IT DOESN'T MATCH THE FACTS OF THE CRIME
16 AS THEY ARE NOW KNOWN, BUT MORE IMPORTANTLY IT IS IN
17 MANY WAYS CONTRADICTORY AND IN FACT AS I MENTION
18 EARLIER, HE DESCRIBES TRANSITIONS IN HIS OWN MENTAL
19 STATE THAT ARE SIMPLY NOT POSSIBLE. WHICH IS TO SAY,
20 THERE ISN'T A PSYCHOLOGY, STUDY, CASE STUDY,
21 EXPERIMENT, FIELD STUDY, EXAMPLE, OR OTHERWISE TO
22 DEMONSTRATE THE MEMORY PHENOMENA HE SEEMS TO BE
23 DESCRIBING. IT'S JUST NOT POSSIBLE.

24 Q WHICH OF THE CATEGORIES OF FALSE CONFESSION
25 WOULD HAVE CHARACTERISTICS THAT ARE COMMON WITH THIS

1 PARTICULAR CASE THAT YOU DISCUSSED EARLIER?

2 A THE COERCED INTERNALIZED FALSE CONFESSION HAVE
3 THE INGREDIENTS WHERE SOMEBODY WHO IS VULNERABLE,
4 PERHAPS BEING FATIGUED OR SLEEP DEPRIVED IS
5 CONFRONTED WITH EVIDENCE, FALSE EVIDENCE, THAT PUTS
6 THEM OVER THE EDGE; THAT THERE IS THEN TALK ABOUT A
7 BLACK OUT. SOME DISCUSSION ABOUT, WELL, LET'S TRY TO
8 CONSTRUCT HOW YOU WOULD HAVE DONE IT. IN FACT, HE
9 WAS ASKED A QUESTION HOW WOULD YOU HAVE DONE IT IN
10 THE HYPOTHETICAL AND THAT WAS ON TAPE. IT HAS THOSE
11 INGREDIENTS ULTIMATELY RESULTING IN THAT STATEMENT
12 THEN I MUST HAVE DONE IT. I MUST HAVE DONE IT IS THE
13 HALLMARK FIRST TRANSITION MOMENT IN THESE COERCED
14 INTERNALIZED FALSE CONFESSIONS. IT'S NOT A STATEMENT
15 BASED IN MEMORY. IT'S NOT I DID IT. OH, YEAH, NOW I
16 REMEMBER I DID IT. IT'S I GUESS I MUST HAVE DONE IT.
17 THAT IS TO SAY, I DON'T KNOW FOR SURE BUT I INFER IT
18 MUST HAVE HAPPENED.

19 Q AND DOCTOR, I'D LIKE YOU TO COMMENT ON THE FACT
20 THAT AFTER THIS INITIAL CONFRONTATION WITH, AS YOU
21 SAY, FALSE EVIDENCE FROM A POLYGRAPH AND AFTER THAT
22 LEAD TO HIS PERHAPS INTERNALIZING, WHAT ABOUT WHEN
23 TWO OR THREE DAYS LATER HE INITIATED CONTACT WITH THE
24 POLICE AND SAID I HAVE SOMETHING ELSE TO SAY, I HAVE
25 MORE TO GO INTO, WHAT, WOULD YOU COMMENT ON THAT?

1 A WELL, MY UNDERSTANDING AT THAT POINT IS THAT HE
2 WAS IN CUSTODY AND UNDER ARREST, HAD SPENT THE
3 WEEKEND ISOLATED IN THE HOLDING CELL, AND KNEW THAT,
4 IN FACT, HE WAS ARRESTED SUBSEQUENT TO ISSUING THE
5 DENIALS SO MY GUESS IS HE KNEW AND FELT TRAPPED AND
6 WAS LIKE MOST SUSPECTS DO AT SOME POINT IN THE
7 PROCESS LOOKING FOR A WAY OUT, AND CLEARLY WHAT HE
8 HAD, THE STATE HE WAS IN WAS NOT SATISFACTORY SO HE
9 WAS LOOKING FOR A WAY OUT. NOW THAT DOESN'T MAKE THE
10 STATEMENT HE SUBSEQUENTLY GAVE TRUE OR FALSE. IT
11 SIMPLY MEANS HE FELT THE NEED TO CHANGE THE SITUATION
12 HE WAS IN AND DO SOMETHING DIFFERENT.

13 Q DOCTOR, HOW OFTEN HAVE YOU BEEN ASKED TO TESTIFY
14 AS AN EXPERT ON FALSE CONFESSIONS?

15 A BETWEEN 800 AND A THOUSAND.

16 Q AND WHY DO YOU SUPPOSE THAT YOU RECEIVE SO MANY
17 REQUESTS?

18 A WELL, I HAVE PUBLISHED A LOT OF PAPERS IN THE
19 AREA AND I'VE DONE SO FOR A LONG PERIOD OF TIME SO.
20 MY WORK IS CITED. I HAVE WRITTEN SOME OF THE REVIEWS
21 LIKE THAT 1997 CHAPTER.

22 Q AND HOW OFTEN HAVE YOU ACTUALLY AGREED TO
23 TESTIFY IN A CASE LIKE THIS?

24 A ABOUT 20 OR 25, 30 MAYBE.

25 Q AND THOSE CASES WHERE YOU DID NOT AGREE TO

1 TESTIFY, WHY DID YOU CHOOSE NOT TO TESTIFY?

2 A WELL, MORE OFTEN THAN NOT THE PHONE CALL I WOULD
3 RECEIVE WOULD BE FROM A LAWYER WHERE A GUILTY CLIENT
4 WHERE THERE IS OTHER EVIDENCE TO CORROBORATE THE
5 CONFESSION, WHERE THE CONFESSION IS TAKEN UNDER
6 RELATIVELY NON-COERCISIVE CIRCUMSTANCES, AND THE
7 CONFESSION IN MANY WAYS CORROBORATES ITSELF, SO THEY
8 SEEM LIKE RELIABLE STATEMENTS SO IN THOSE CASES, MANY
9 OF THOSE CASES, I SIMPLY SAY NO. IN OTHER CASES
10 WHERE IT LOOKS LIKE THERE MAY BE SOMETHING WORTH
11 INVESTIGATING BECAUSE I TYPICALLY, I JUST DON'T LIKE
12 TO SPEND MY TIME IN COURTROOMS. I'D RATHER BE IN THE
13 RESEARCH LAB, I WILL OFTEN THEN REFER THOSE CASES OUT
14 AS WELL. SO IN THE VAST MAJORITY OF CASES I SIMPLY
15 DON'T SEE THE GENERAL PRINCIPLES AND THE SCIENCE
16 APPLICABLE TO THAT PARTICULAR CASE.

17 Q AND I THINK I ALREADY ASKED YOU THIS BUT WOULD
18 YOU OR HAVE YOU EVER TESTIFIED FOR THE STATE IN A
19 CASE WITH A DISPUTED CONFESSION?

20 A I WAS PREPARED TO ONCE AND WASN'T NEEDED.

21 Q ANSWER ANY QUESTIONS --

22 THE COURT: WELL, I DON'T NEED TO HEAR
23 ANYTHING FROM THE STATE BECAUSE THE QUESTION IS
24 WHETHER OR NOT WHAT YOU WERE GOING TO ASK IS
25 ADMISSIBLE SO I'M READY TO RULE. I'M GOING TO ALLOW

1 THE TESTIMONY IF YOU'LL CONFINE IT TO WHAT HE
2 TESTIFIED TO AT THIS POINT. I'M GOING TO ALLOW HIM
3 TO TESTIFY TO WHAT HE TESTIFIED TO, AS LONG AS HE
4 DOESN'T GO OFF ON A TANGENT, UP TO WHERE YOU ASKED
5 HIM ANYTHING IN THIS CASE GIVE YOU CAUSE FOR CONCERN.
6 HE HAD ALREADY GIVEN TECHNIQUES HE HAD SOME CONCERN
7 ABOUT, BUT I'M NOT GOING TO LET YOU ASK HIM HIS
8 CAUSES FOR CONCERN. FIRST, IT'S SORT OF A VEILED WAY
9 OF SAYING THIS IS A FALSE CONFESSION AND HE SAID HE
10 COULDN'T DO THAT. SECOND, IT'S NOT NECESSARY FOR THE
11 JURY TO HEAR HIS CONCERNS, THAT'S WHAT THEY CAN DO.
12 THEY CAN ANALYZE, THEY CAN USE THESE TECHNIQUES HE
13 SAID: BLUFFING, BAITING, MINIMIZING, BLACK OUT, THEY
14 CAN USE THESE TECHNIQUES WITHOUT HAVING EXPERT
15 TESTIMONY TO AID THEM. AND IN ESSENCE WHAT HE STATED
16 IN HIS CAUSES FOR CONCERN ARE SIMPLY A JURY ARGUMENT
17 THAT'S BETTER LEFT TO COUNSEL. SO I'M GOING TO LET
18 HIM TESTIFY UP TO THE POINT WHERE YOU ASKED HIM WHAT
19 GIVES YOU CAUSE FOR CONCERN AND THAT'S IT.

20 MR. BAITY: YOUR HONOR, COULD I NOT ASK
21 HIM, AND I BELIEVE IT'S VERY IMPORTANT THAT HE BE
22 ALLOWED TO TESTIFY TO THE TECHNIQUES THAT HE HAS
23 IDENTIFIED THAT HE CAN ALSO IDENTIFY IN THIS CASE. I
24 MEAN --

25 THE COURT: I SAID THAT. YOU ASKED HIM

1 YOU FIND? HE SAID BLUFFING, BAITING, MINIMIZING,
2 BLACK OUT. I SAID YOU COULD ASK THOSE.

3 MR. BAITY: ALL RIGHT, SIR. I UNDERSTAND.

4 THE COURT: BUT THEN YOU ASKED HIM HIS
5 CAUSE OF CONCERN AND THAT'S WHY, THAT GIVES ME CAUSE
6 FOR CONCERN. ALL RIGHT.

7 MR. BRACKETT: PLEASE THE COURT.

8 THE COURT: YES, SIR.

9 MR. BRACKETT: I HAVE NO PROBLEM WITH
10 THAT. HE MENTIONED TWO CASES SPECIFIC, THE RILEY
11 CASE AND THE, IT BEGAN WITH AN R.

12 A GARY GEIGER.

13 MR. BRACKETT: GEIGER, AND I SUBMIT HE CAN
14 MAKE THE POINT THAT HE MADE WITHOUT REFERENCING THE
15 FACTS AND CIRCUMSTANCES.

16 THE COURT: I'LL HAVE HIM LEAVE THOSE
17 CASES OUT TOO.

18 MR. BRACKETT: THAT IS THE ONLY TWO HE
19 MENTIONED AS FAR AS I COULD TELL.

20 THE COURT: LET'S TAKE A SHORT BREAK AND
21 THEN WHEN WE COME BACK WE WILL GET THE JURY IN AND
22 MOVE ON. DOCTOR, YOU CAN TAKE A BREAK.

23 A THANK YOU.

24 (COURT'S IN RECESS AT 03:34 PM.)

25 (COURT RESUMES AT 03:40 PM AND ALL PARTIES

1 (COURT RESUMES AT 03:40 PM AND ALL PARTIES
2 ARE PRESENT)

3 THE COURT: BRING IN THE JURY.

4 (THE JURY RETURNS TO THE COURTROOM AT
5 03:41 PM.)

6 THE COURT: MR. BAITY.

7 MR. BAITY: PLEASE THE COURT, YOUR HONOR.

8 DIRECT EXAMINATION CONTINUED BY MR. BAITY:

9 Q DR. KASSIN, BEFORE WE TOOK A BREAK I BELIEVE WE
10 WERE TALKING ABOUT VOLUNTARY FALSE CONFESSIONS. GIVE
11 US AN EXAMPLE AND MY NEXT QUESTION WOULD BE, WOULD
12 THE POLICE BE ABLE TO TELL IF THE STATEMENT GIVEN WAS
13 A VOLUNTARY FALSE CONFESSION IS, ARE THERE ANY
14 TECHNIQUES POLICE OFFICERS CAN USE TO FERRET THOSE
15 OUT?

16 A TYPICALLY WHAT POLICE DO WHEN HANDLING A
17 VOLUNTARY CONFESSION IS THEY LOOK FOR CORROBORATION.
18 THEY ASK THEMSELVES THE QUESTION WHETHER OR NOT THE
19 STATEMENT IS CLEAR AND CONSISTENT AND NOT
20 SELF-CONTRADICTORY, IT DOESN'T JUMP FROM ONE POINT TO
21 ANOTHER AND CHANGE FACTS WITHIN THE STATEMENT, BUT
22 THEN MOST IMPORTANTLY THEY DEMAND CORROBORATION.
23 THEY WANT TO KNOW CAN THIS SUSPECT TELL ME SOMETHING
24 ABOUT THIS CRIME, THAT IF HE ACTUALLY DID IT HE MUST
25 KNOW, AND SO ONE LITMUS TEST IS CAN THE SUSPECT TELL

1 ME SOMETHING I DON'T ALREADY KNOW OR CAN THE SUSPECT
2 LEAD ME TO SOME EVIDENCE THAT I DON'T ALREADY HAVE
3 AND THAT IS A FORM OF CORROBORATION. YOU HAVE TO
4 ESSENTIALLY GET OUTSIDE OF THE STATEMENT ITSELF TO
5 SEE WHETHER THAT PERSON CAN PROVE THE GUILT
6 UNDERLYING THAT STATEMENT.

7 Q DOCTOR, YOU HAD BEGUN TO TALK ABOUT VARIOUS
8 TYPES OF FALSE CONFESSIONS THAT YOU HAVE STUDIED. I
9 BELIEVE THE FIRST ONE WAS THE VOLUNTARY FALSE
10 CONFESSION. NOW LET'S GET BACK INTO GOING THROUGH
11 THAT LIST. I BELIEVE THE NEXT ONE WOULD BE COERCED
12 COMPLIANT FALSE CONFESSION?

13 A CORRECT.

14 Q PLEASE TELL THE JURY ABOUT THAT.

15 A THE COERCED COMPLIANT FALSE CONFESSION ARE THE
16 CASES, AND THESE ARE PROBABLY THE MOST COMMON, IN
17 WHICH SOMEBODY CONFESSES NOT BECAUSE THEY, NOT
18 BECAUSE THEY, THIS IS AN INNOCENT PERSON CONFESSING
19 NOT BECAUSE THEY KNOW THEY COMMITTED THE CRIME BUT
20 BECAUSE THEY ARE TRYING TO PUT AN END TO A BAD
21 SITUATION EITHER BECAUSE OF THE DEGREE OF STRESS THEY
22 ARE UNDER OR FATIGUE OR SLEEP DEPRAVATION OR WHATEVER
23 THEIR STATE MIGHT BE AND AS WELL THE KINDS OF
24 PRESSURES THAT THEY ARE UNDER. IF YOU ARE UNDER A
25 CERTAIN DEGREE OF PRESSURE WHAT PSYCHOLOGISTS HAVE

1 FOUND FOR YEARS WHO STUDY DECISION MAKING IS THAT
2 PEOPLE OFTEN BECOME VERY SHORT-SIGHTED. WE DO
3 WHATEVER IT TAKES TO GET OUT OF A BAD SITUATION
4 WHETHER IT'S BECAUSE I NEED SLEEP, I WANT TO CALL MY
5 WIFE, I'VE GOT TO GET SOME FOOD IN MY BODY, WHATEVER
6 IT IS I WILL OFTEN DO WHATEVER IT TAKES TO GET OUT OF
7 A BAD SITUATION. ARE THERE POSSIBLE NEGATIVE
8 CONSEQUENCES LATER? I'LL DEAL WITH THAT WHEN THE
9 TIME COMES. AND SO DECISION-MAKING RESEARCH IN ALL
10 SORTS OF CONTEXTS FOR YEARS HAS SHOWN THAT PEOPLE
11 MAKE DECISIONS BASED MORE ON SHORT-TERM CONSEQUENCES
12 THAN LONG-TERM CONSEQUENCES AND IN THE INTERROGATION
13 SETTING THAT'S WHAT THESE FALSE CONFESSORS HAVE DONE
14 AND THERE ARE CASE AFTER CASE AFTER CASE WHERE THEY
15 SAY THINGS LIKE I JUST WANTED TO GO HOME. WHY DID
16 YOU CONFESS IF WE NOW KNOW THAT YOU ARE INNOCENT?
17 WELL, I JUST WANTED TO GET HOME. ESSENTIALLY GET TO
18 A POINT WHERE THEY HAVE HAD ENOUGH AND THEY
19 SURRENDER, THEY KNOW THEY ARE INNOCENT, BUT THEY
20 SURRENDER. WE KNOW THAT THEY KNOW BECAUSE THE SECOND
21 THEY GET OUT OF THE PRESSURE OF THE SITUATION AND A
22 LAWYER ENTERS THE PICTURE THEY SAY TO THE LAWYER I
23 CONFESSED BUT I DIDN'T DO IT. SO THERE ARE A LOT OF
24 CASES OF PEOPLE WHO WE FIND OUT LATER THEY ARE
25 INNOCENT BUT THEY CONFESS JUST TO GET OUT OF A BAD

1 SITUATION.

2 Q NOW DOCTOR, YOU ARE TALKING ABOUT COERCED
3 COMPLAINT FALSE CONFESSION, IS THE COERCION IN THAT
4 TYPE OF CONFESSION, DOES IT HAVE TO BE OVERT AND
5 PHYSICAL OR CAN IT BE MORE SUBTLE?

6 A NO, IT CAN BE SUBTLE. IT HAS TO DO WITH TIME,
7 IT HAS TO DO WITH CIRCUMSTANCE, IT HAS TO DO WITH
8 WHAT THIS PERSON IS BEING DEPRIVED OF, OR THE FACT
9 THAT THIS PERSON MAY SIMPLY HAVE BEEN IN A ROOM FOR
10 ENOUGH TIME, DENIAL DOESN'T WORK, NOTHING I SAY SEEMS
11 TO BE WORKING, THERE IS PERSISTENCE, IT SEEMS THAT
12 THERE IS NOTHING I CAN DO TO EXTRICATE MYSELF FROM
13 THIS BAD SITUATION. IT BECOMES MORE AND MORE
14 FATIGUED AS I GET MORE AND MORE WORN DOWN, YOU START
15 TO DO WHATEVER IT TAKES TO END IT. THEY KNOW THEY
16 ARE INNOCENT PRIVATELY BUT THEY DO WHAT IT TAKES
17 OVERTLY TO CONFESS.

18 Q ALL RIGHT. NOW IN ADDITION TO VOLUNTARY FALSE
19 CONFESSIONS AND THESE COERCED COMPLIANT CONFESSIONS
20 YOU JUST DESCRIBED IS THERE ANOTHER CATEGORY THAT
21 YOU'VE PUT FALSE CONFESSIONS INTO?

22 A YES. THERE IS A THIRD AND WHEN WE FIRST
23 DISCOVERED THIS WAS THE MOST PUZZLING OF THEM ALL.
24 WE CALLED THEM COERCED INTERNALIZED FALSE CONFESSION
25 AND OTHERS NOW HAVE USED THE TERM BECAUSE IT'S CLEAR

1 THERE ARE A NUMBER OF CASES AND THESE, AT THE TIME IN
2 1985 WHEN WE DISCOVERED THIS, IT IS VERY CONFUSING
3 BECAUSE WE DIDN'T HAVE THE MEMORY SCIENCE THEN THAT
4 WE HAVE NOW, AND WHAT WE WERE SEEING WERE CASES WHERE
5 PEOPLE WHO WERE INNOCENT NOT ONLY DID THEY CONFESS
6 BUT THEN THEY STARTED TO BELIEVE THAT THEY ACTUALLY
7 COMMITTED THE CRIME. NOW WE FIND OUT LATER THAT IN
8 FACT THEY DIDN'T. NOW THESE ARE INTERESTING CASES
9 BECAUSE WHAT HAPPENS IS PRIVATELY THEY ARE CONVERTED,
10 THEY ARE PERSUADED ALMOST AS A FORM OF BRAIN WASHING
11 BUT THAT'S NOT A SCIENTIFIC TERM, BUT ESSENTIALLY
12 WHAT HAPPENS IS PEOPLE WHO ARE IN SOME WAYS
13 VULNERABLE TO MANIPULATION AND THE WAY THIS HAPPENS
14 IS VERY PREDICTABLE, THERE ARE A LOT OF CASES JUST
15 LIKE THIS, YOU GET SOMEBODY WHO IS VULNERABLE TO
16 MANIPULATION. NOW WHY WOULD THEY BE VULNERABLE? ON
17 THE ONE HAND IT MIGHT BE SOMETHING ABOUT THEM.
18 PEOPLE WHO ARE MENTALLY RETARDED, CHILDREN ARE
19 VULNERABLE, HIGHLY SUGGESTABLE, BUT IT MIGHT ALSO NOT
20 HAVE ANYTHING TO DO WITH THE PERSON. IT MIGHT BE
21 THAT THEY ARE IN A BAD SITUATION THAT DOESN'T STOP.
22 THEY MAY BE SLEEP DEPRIVED. THEY MAY HAVE BEEN THERE
23 FOR A LONG TIME AND NOT HAVE ANY CONTACT WITH FAMILY.
24 SO THERE ARE A NUMBER, THEY MAY BE PARTICULARLY
25 STRESSED, BUT THEY ARE VULNERABLE TO MANIPULATION AND

1 THEN WHAT HAPPENS, AND AGAIN THESE THINGS FOLLOW A
2 PREDICTABLE SEQUENCE, BUT IN THESE CASES IF SOMEONE
3 WHO IS VULNERABLE AND THEN AT SOME POINT IN THEIR
4 INTERROGATION THEY ARE PRESENTED WITH FALSE EVIDENCE,
5 THEY ARE TOLD THAT THERE IS OBJECTIVE EVIDENCE OF
6 THEIR GUILT, SOMETIMES SCIENTIFIC EVIDENCE, OF THEIR
7 GUILT. AT WHICH POINT THEY HAVE THIS PUZZLE TO
8 RESOLVE IN THEIR HEADS -- I DON'T REMEMBER DOING
9 ANYTHING, I'M INNOCENT, BUT THERE IS THIS OBJECTIVE
10 EVIDENCE THAT TELLS, THAT SEEMS TO SUGGEST THAT I WAS
11 INVOLVED, HOW CAN I RECONCILE THIS EVIDENCE WITH MY
12 LACK OF MEMORY. NOW FOR PEOPLE WHO ARE VULNERABLE TO
13 MANIPULATION THAT'S THE POINT AT WHICH AND AGAIN IT'S
14 ALMOST LIKE A SCRIPT BECAUSE THERE ARE LOTS OF CASES
15 THAT FOLLOW EXACTLY THE SAME PATTERN, ONCE THEY ARE
16 CONFRONTED WITH THE DEVASTATING EVIDENCE THAT SAYS,
17 GUESS WHAT, WE HAVE INDEPENDENT KNOWLEDGE THAT YOU
18 DID IT, THEY OFTEN THEN START TO ENTERTAIN THE IDEA
19 AND OFTEN ASK THE QUESTION OF THEIR QUESTIONER, IS IT
20 POSSIBLE THAT I DID THIS AND DIDN'T REALIZE IT; COULD
21 I DO IT AND NOT KNOW IT; COULD I HAVE BLACKED IT OUT,
22 AND IN ALL OF THESE CASES THEY START TO ENTERTAIN THE
23 IDEA THAT THEY MUST HAVE DONE IT EVEN THOUGH THEY
24 CAN'T REMEMBER. AT WHICH POINT YOU GET, AGAIN VERY
25 PREDICTABLY, THIS TENTATIVE, FRAGMENTARY LANGUAGE,

1 THEY SAY THINGS, THEY DON'T IN THESE CASES, AND AGAIN
2 THESE ARE PEOPLE WE KNOW LATER ARE INNOCENT, THEY
3 DON'T SAY I DID IT; I REMEMBER DOING IT. THEY SAY I
4 MUST HAVE DONE IT, I GUESS I DID IT, BECAUSE THEY ARE
5 NOT REPORTING FROM MEMORY. THEY ARE REPORTING A
6 GUESS, THEY ARE REPORTING, THEY ARE REPORTING, WELL,
7 IF YOU HAVE THIS EVIDENCE AND I DON'T HAVE A MEMORY I
8 MUST HAVE DONE IT AND NOT HAVE THE MEMORY AND THEY
9 ALL HAVE THAT IN COMMON. WHAT THEY OFTEN THEN GO
10 THROUGH IS, WELL THEN TELL US HOW YOU WOULD HAVE DONE
11 IT. THERE IS AN IMAGINATION LIKE EXERCISE WHERE THEY
12 ARE ASKED HYPOTHETICAL QUESTIONS, OKAY, YOU DON'T
13 HAVE A MEMORY NOW, BUT HOW WOULD YOU HAVE DONE IT.
14 OFTEN WHAT THIS RESULTS IN IS YOU GET A COERCED
15 INTERNALIZED FALSE CONFESSION WHERE NOT ONLY DO THEY
16 SAY THEY COMMITTED THE CRIME BUT THEY COME TO BELIEVE
17 IT AND THEY GIVE A VERY DETAILED CONFESSION. THEY
18 SAY WHAT THEY DID, HOW THEY DID IT, WHO THEY WERE
19 WITH, WHERE THEY WERE, WHAT TIME IT WAS; IN FACT, IN
20 ALMOST ALL OF THESE STATEMENTS THEY EVEN GIVE YOU A
21 STATEMENT ABOUT THEIR MOTIVE. THEY TELL YOU WHY THEY
22 DID IT. WHY THEY DID IT IS OFTEN PART OF THIS
23 CONSTRUCTION THAT TURNS OUT TO BE FALSE. AGAIN IN A
24 NUMBER OF CASES JUST LIKE THIS, THE WAY WE KNOW LATER
25 THAT IT'S FALSE IS BECAUSE INDEPENDENT EVIDENCE SHOWS

1 IT WAS IMPOSSIBLE, THEY DIDN'T DO IT, THEY COULDN'T
2 HAVE DONE IT, BUT, YES, THERE ARE A NUMBER OF CASES
3 THAT RESULT IN THAT KIND OF MEMORY IMPAIRMENT. AND
4 PSYCHOLOGISTS, AS I MENTIONED EARLIER IN 1985, WE
5 COULDN'T QUITE EXPLAIN THIS BUT WE NOW KNOW THAT
6 THERE ARE A LOT OF STUDIES SHOWING THAT FALSE
7 MEMORIES ARE IMPLANTED THROUGH VARIOUS TYPES OF
8 STRATEGIES ALL HAVING TO DO WITH THE PRESENTATION OF
9 FALSE EVIDENCE.

10 Q WOULD THIS BE SIMILAR TO A SITUATION WHERE
11 SOMEONE SAID COULD I HAVE BEEN DOING IT IN MY SLEEP
12 OR COULD I HAVE BEEN DOING IT AND DREAMING SOMETHING
13 ELSE?

14 A YES. IN FACT A NUMBER OF THESE COERCED
15 INTERNALIZED FALSE CONFESSIONS INCLUDE STATEMENTS
16 ABOUT HAVING DONE THIS IN A DREAM STATE. AND SO
17 WHATEVER THE MENTAL STATE IS, I'M DISSOCIATED, I'M
18 AMNESIC, I'M SLEEPING, I'M SLEEP WALKING, WHAT'S
19 CLEAR IS THEY DON'T REALLY HAVE A DIRECT MEMORY.
20 THEY ARE TRYING TO SORT THIS THING OUT AND SO THEY
21 CAN'T EVEN FULLY SAY I'M INNOCENT. THEY SAY I'M NOT
22 SURE. SO WHEN A LAWYER THEN ENTERS THE PICTURE THE
23 FIRST THING THEY SAY IS, WELL, I CONFESSED. WELL,
24 DID YOU DO IT? I'M NOT REALLY SURE. THEY BECOME
25 DISORIENTED BY REALITY. WHY? BECAUSE THEY TRUST

1 THAT THIS INFORMATION THAT IS GIVEN TO THEM IS
2 RELIABLE AND IN FACT IT'S NOT.

3 Q DOCTOR, HOW DO YOU KNOW THAT THIS CAN OCCUR?
4 HOW DO YOU KNOW THAT THIS HAS OCCURRED IN THE PAST?

5 A ANY NUMBER OF WAYS. THERE ARE, FIRST OF ALL
6 THERE ARE ACTUAL CASES, INNUMERABLE ACTUAL CASES
7 WHERE THIS HAS HAPPENED, WHERE WE HAVE VERY TEXTURED,
8 DETAILED CONFESSIONS INCLUDING A SUSPECT WHO SAID I
9 THINK I MAY HAVE DONE IT, I'M NOT SURE, BUT IT LOOKS
10 LIKE I DID IT, WHO TURNS OUT TO BE INNOCENT. SO WE
11 HAVE THOSE CASE STUDIES. BASED ON THOSE CASE
12 STUDIES, BECAUSE PSYCHOLOGISTS BECAME VERY INTERESTED
13 IN WHAT ARE THE CONDITIONS UNDER WHICH YOU COULD
14 ACTUALLY DO THIS TO A PERSON, AND SO BRING IT INTO
15 THE LABORATORY AND WE NOW FIND THAT THERE ARE
16 LABORATORY EXPERIMENTS WHICH FOR EXAMPLE WE CAN GET
17 PEOPLE TO BELIEVE THAT THEY BROKE A COMPUTER THEY
18 DIDN'T BREAK, THAT THEY, WE GET PEOPLE TO CONFESS TO
19 SOME KIND OF CHEATING CRIME THAT THEY DIDN'T COMMIT,
20 AND IN SOME CASES PEOPLE ARE LEAD TO BELIEVE AND THEY
21 COME TO BELIEVE THAT THEY WERE STUCK IN A HOSPITAL
22 ONE NIGHT, THAT THEY GOT LOST IN A SHOPPING MALL AS A
23 CHILD. THAT IN FACT PSYCHOLOGISTS HAVE FOUND IF YOU
24 PRESENT PEOPLE WITH FALSE EVIDENCE OF SOMETHING THEY
25 DON'T REMEMBER AND IT'S FALSE, OVER TIME THEIR MEMORY

1 STARTS HAVING A WAY OF FILLING IN THE PIECES AND OVER
2 TIME MANY PEOPLE, NOT ALWAYS, BUT MANY PEOPLE THEN
3 CONSTRUCT A MEMORY AROUND THIS NEW BELIEF.

4 Q DOCTOR, WHAT MAKES PEOPLE VULNERABLE TO THIS
5 TYPE OF MEMORY ALTERATION? WHAT SPECIFICALLY MAKES
6 PEOPLE VULNERABLE TO THAT?

7 A CERTAIN TYPES OF PEOPLE ARE MORE VULNERABLE THAN
8 OTHERS. YOU CAN IMAGINE, AND THERE ARE A NUMBER OF
9 CASES LIKE THIS, YOU CAN IMAGINE THAT A SIX, SEVEN,
10 OR EIGHT YEAR OLD CHILD BEING ASKED A SERIES OF VERY
11 SUGGESTIVE QUESTIONS MIGHT BE VULNERABLE TO THIS TYPE
12 OF MANIPULATION. SOMEONE WHO LACKS INTELLIGENCE, WHO
13 IS MENTAL RETARDED, MIGHT BE HIGHLY SUGGESTABLE IN
14 RESPONSE TO VERY SUGGESTIVE, LEADING QUESTIONS, SO
15 YOU MIGHT GET IT WITH PEOPLE AS A FUNCTION OF THE
16 FACT THAT THEY ARE NAIVE. ON THE OTHER HAND, THERE
17 ARE OTHER PEOPLE WHO ARE NOT DISPOSITIONALLY, IT'S
18 NOT SOMETHING ABOUT THEM, THEY ARE NOT SOMEONE WHO ON
19 A NORMAL BASIS YOU WALK UP TO AND SEE THAT THEY ARE
20 VULNERABLE TO MANIPULATION. BUT YOU KNOW, IF YOU'VE
21 BEEN THROUGH TRAUMA, IF YOU ARE UNDER A GREAT STRESS,
22 IF YOU'RE TIRED, FATIGUED, EXHAUSTED, SLEEP DEPRIVED,
23 WHATEVER, OR IF THE CRIME THAT YOU ARE BEING ASKED
24 ABOUT OCCURRED AT A TIME WHEN YOU WERE UNDER THE
25 INFLUENCE OF DRUGS AND THE FIRST THING YOU WOULD

1 ADMIT IS I REALLY DON'T HAVE A FULL MEMORY, I WAS
2 DRINKING WITH MY BUDDY, UNDER THOSE CASES AS WELL
3 THEY ARE VULNERABLE TO MANIPULATION, THEIR MEMORY
4 BECOMES VULNERABLE TO MANIPULATION, SO THOSE ARE SOME
5 OF THE CIRCUMSTANCES THAT MAKE INDIVIDUALS
6 VULNERABLE, SOMETHING ABOUT A PERSON BUT IT CAN ALSO
7 BE ABOUT SOMETHING WITH THE SITUATION.

8 Q LET'S TURN TO YOUR STUDY OF INTERROGATION
9 INTERVIEW TECHNIQUES. ARE THERE TECHNIQUES THAT ARE
10 COMMONLY USED, PARTICULARLY IN A POLICE SETTING, TO
11 OBTAIN CONFESSIONS?

12 A YES, AND WE'VE KNOWN THIS FOR MANY, MANY YEARS
13 AND IN 1967 THE U.S. SUPREME COURT WANTED TO
14 INVESTIGATE HOW INTERROGATION TAKE PLACE BECAUSE IT
15 OFTEN TAKES PLACE BEHIND CLOSED DOORS AND A VERY
16 SECRETIVE PROCESS SO THEY TURNED TO SOME
17 OBSERVATIONAL STUDIES THAT WERE DONE, STUDIES THAT
18 ACTUALLY WENT INTO THE INTERROGATION ROOM AND
19 OBSERVED WHAT WAS HAPPENING. MORE RECENTLY THERE ARE
20 OBSERVATIONAL STUDIES HERE AND IN GREAT BRITAIN AGAIN
21 CORROBORATING WHAT IS DONE IN INTERROGATION.

22 WE KNOW WHAT INTERROGATION LOOKS LIKE IN
23 MOST CASES BECAUSE WE KNOW HOW PEOPLE ARE BEING
24 TRAINED TO DO IT. WE KNOW WHAT THE TRAINING MANUALS
25 ARE, SO PSYCHOLOGISTS IN THIS AREA STUDY THE TRAINING

1 MANUAL.

2 Q AND DO THESE TRAINING MANUALS TALK ABOUT
3 INTERVIEWS AND INTERROGATION AND THE DIFFERENCES
4 BETWEEN THOSE?

5 A YES, AND THEY ARE NOT SYNONYMOUS. AN INTERVIEW
6 AND INTERROGATION IS NOT THE SAME THING. NOW
7 SOMETIMES IT SOUNDS LIKE THE WORDS ARE BEING USED
8 INTERCHANGEABLY BUT IT WOULDN'T BE CORRECT.
9 ESSENTIALLY, AND LET ME QUOTE THAT THERE IS A SINGLE
10 BOOK CALLED THE INBAU AND REID MANUAL THAT WAS FIRST
11 PUBLISHED IN 1962, IT'S WHAT THE U.S. SUPREME COURT
12 CITED IN 1967 AND IT'S NOW IN ITS FOURTH EDITION AND
13 THEY HAVE TRAINING SCHOOLS AND SEMINARS AND WORKSHOPS
14 AND THEY ARE RESPONSIBLE FOR TRAINING MORE
15 PROFESSIONAL INTERROGATORS THAN ANY OTHER
16 ORGANIZATION, NOW THEY HAVE A VERY SPECIFIC SET OF
17 STEPS THAT THEY TAKE. THE FIRST THING THEY DO IS TO
18 DISTINGUISH BETWEEN INTERVIEW AND INTERROGATION. AN
19 INTERVIEW IS NON-CONFRONTATIONAL. YOU DON'T MAKE THE
20 ACCUSATION; YOU DON'T TELL THE PERSON YOU THINK THEY
21 ARE LYING; YOU SIMPLY ASK QUESTIONS TO SEE WHAT THE
22 SUSPECT KNOWS, AND THEN YOU LET THEM ANSWER AND YOU
23 OBSERVE THEIR BEHAVIOR. AND THE REASON YOU ARE
24 OBSERVING THEIR BEHAVIOR IS YOU ARE OBSERVING BOTH
25 THEIR NON-VERBAL BEHAVIOR AND THEIR VERBAL BEHAVIOR.

1 WHAT THEY SAY AND HOW THEY SAY IT. AND THE REASON
2 YOU DO THAT IS YOU ARE TRYING TO DETERMINE IN THIS
3 PREINTERROGATION INTERVIEW WHETHER YOU THINK THE
4 PERSON IS TELLING THE TRUTH OR LYING. IS THIS PERSON
5 TELLING THE TRUTH AND PROBABLY INNOCENT OR LYING AND
6 PROBABLY GUILTY. THIS INTERVIEW STEP BECOMES A
7 PIVOTAL CHOICE POINT IN THE LIFE OF A CASE AND I SAY
8 THAT BECAUSE BASED ON THAT JUDGMENT THAT IS MADE
9 RIGHT THEN AND THERE, THE DECISION IS EITHER TO SEND
10 THAT SUSPECT HOME OR TO MOVE ONTO INTERROGATION AND
11 SO THAT BECOMES AN IMPORTANT PROCESS AND THAT'S WHY
12 IT'S AN IMPORTANT QUESTION TO ASK TO WHAT EXTENT CAN
13 THEY MAKE THOSE JUDGMENTS ACCURATELY, SO THAT'S THE
14 INTERVIEW. THE INTERVIEW IS THIS NON-CONFRONTATIONAL
15 PROCESS. IN FACT THE SUSPECT, FOR ALL PRACTICAL
16 PURPOSES, FEELS MORE LIKE A WITNESS THAN A SUSPECT.
17 Q SO THE PURPOSE OF AN INTERVIEW IN THESE COMMON
18 TECHNIQUES WOULD BE TO DETERMINE WHETHER OR NOT YOU
19 ARE GOING TO HAVE AN INTERROGATION?

20 A CORRECT.

21 Q DO YOU NEED SOME WATER?

22 A I'M GOOD.

23 Q OKAY.

24 A THANK YOU.

25 Q SO HOW IS IT DONE? I MEAN, HOW DOES THIS

1 DECISION REACH GOING FROM THE INTERVIEW TO THE
2 INTERROGATION?

3 A WELL, THE TECHNIQUES VARY BUT IN LOOKING AT THE
4 INBAU AND REID BOOK WHICH IS THE MOST COMMON AND
5 ALWAYS THE MOST INFLUENTIAL OF THEM ALL THEY
6 RECOMMEND THAT INTERROGATORS ASK CERTAIN TYPES OF
7 PROVOKING, PROVOCATIVE BAITING QUESTIONS, AND THEY
8 ALSO RECOMMEND THAT INTERROGATORS PAY CLOSE ATTENTION
9 TO CERTAIN NON-VERBAL AND VERBAL CLUES, LIKE A
10 PERSON'S POSTURE OR EYE CONTACT, WHETHER THEY ARE
11 FIDGETING OR NOT, SO THERE IS A LOT TO IT. BUT ONLY
12 RECENTLY HAVE WE STUDIED THOSE TRAINING SESSIONS AND
13 WHETHER THEY ACTUALLY CAN MAKE PEOPLE GOOD LIE
14 DETECTORS.

15 Q LET ME ASK YOU THIS, ARE THERE THINGS THAT
16 HAPPEN IN AN INTERVIEW THAT THE SUBJECT OF THE
17 INTERVIEW MAY SHOW OR EXHIBIT, ARE THERE BEHAVIORS
18 THERE THAT ARE BELIEVED TO INDICATE A PERSON'S GUILT;
19 FOR EXAMPLE, IF A PERSON ACTS IN A CERTAIN WAY?

20 A YES.

21 Q WHAT WOULD THOSE BE?

22 A WELL IMAGINE FOR EXAMPLE, AND THIS IS COMING
23 AGAIN SORT OF RIGHT OUT OF THE MANUAL, IMAGINE FOR
24 EXAMPLE THAT AN INVESTIGATOR SUGGESTS TO THE PERSON
25 THAT THEY TAKE A POLYGRAPH. IF THAT INDIVIDUAL SAYS,

1 SURE, I'LL TAKE A POLYGRAPH, THE REID AND INBAU
2 PEOPLE SAY THAT'S AN INDICATION OF INNOCENCE. IT
3 DOESN'T GUARANTEE INNOCENCE BUT IT SUGGESTS TO THEM
4 THAT THE SUSPECT HAS NOTHING TO HIDE. OR THEY SAY IF
5 THE SUSPECT STARTS TO BECOME RETICENT AND RELUCTANT
6 AND SAY, WAIT A MINUTE, I'M NOT SURE I WANT TO DO
7 THAT. I'M NOT SURE I TRUST POLYGRAPHS. WELL, THAT'S
8 A PERSON WHO IS AT LEAST SHOWING SOME SIGNS OF BEING
9 MORE GUILTY AND MORE EVASIVE. AGAIN, IT'S NOT A
10 GUARANTEE AND THEY'RE VERY CAREFUL TO SAY THERE IS NO
11 ONE INDICATOR THAT TELLS US EVERYTHING. BUT THAT'S
12 ONE OF THOSE ISSUES.

13 OR FOR EXAMPLE THEY TALK ABOUT THESE
14 BEHAVIOR PROVOKING QUESTIONS. IMAGINE THEY SAY YOU
15 HAVE GOT A PERSON BEFORE YOU AND YOU ASK THAT PERSON,
16 YOU KNOW, WE'VE GOT DNA SAMPLES THAT WE'RE GOING TO
17 SEND OFF TO THE LAB FOR TESTING, WHAT ARE THEY GOING
18 TO TELL US? AND THEY SAY PAY CLOSE ATTENTION TO WHAT
19 THE PERSON, HOW THE PERSON RESPONDS. BECAUSE IF THE
20 SUSPECT SAYS, NO PROBLEM, I'LL BE FINE, I'LL BE
21 EXONERATED, YOU'LL SEE I'M INNOCENT, THAT IS AN
22 INDICATION AGAIN THE SUSPECT HAS NOTHING TO HIDE. IF
23 THE SUSPECT IS MORE RETICENT, MORE RELUCTANT, STARTS
24 TO ASK SOME QUESTIONS ABOUT THE TESTS AND THEY WANT
25 TO KNOW HOW THE TEST IS GOING TO BE DONE AND WHEN

1 WILL YOU GET THE RESULTS, THAT SUGGESTS A DIFFERENT
2 MORE EVASIVE MORE GUILTY PATTERN.

3 Q IN YOUR STUDIES OF THESE SPECIFIC CASES
4 GENERALLY SPEAKING IF SOMEONE IS WILLING TO TAKE A
5 POLYGRAPH OR APPEARS TO BE UNCONCERNED ABOUT THE TEST
6 RESULTS OF DNA, IS THAT INDICATIVE THAT THAT PERSON
7 IS GUILTY OR IS THAT INDICATIVE THAT HE'S MORE
8 INCLINED TO BE INNOCENT?

9 A IT'S NOT CLEAR FROM RESEARCH ON THE POLYGRAPH
10 PER SE. IT'S CLEAR THAT INVESTIGATORS ARE TRAINED TO
11 USE THAT AS A DIAGNOSTIC TOOL, LOOK AND SEE HOW THE
12 PERSON REACTS, AND SO IT'S INTERESTING.

13 INVESTIGATORS WILL USUALLY USE THE RESPONSE AS A WAY
14 OF GAUGING THE PERSON'S ABILITY TO BE TRUTHFUL OR
15 DECEPTIVE, BUT THERE IS OTHER JUST LIKE IT, OTHER
16 BEHAVIOR PROVOKING QUESTIONS THAT DO SHOW, THAT
17 RESEARCH DOES SHOW IS DIAGNOSTIC. FOR EXAMPLE, A
18 PERSON'S WILLINGNESS TO WAIVE THEIR RIGHTS TO SILENCE
19 AND TO COUNSEL AND TO TALK TO INTERROGATORS. IT'S
20 INTERESTING WHEN YOU GO BACK AND LOOK AGAIN AT ALL
21 FALSE CONFESSION CASES, IN THE END WHEN THOSE PEOPLE
22 ARE INTERVIEWED, INNOCENT PEOPLE WHO GAVE CONFESSIONS
23 AND THEY ARE INTERVIEWED THEY ARE ASKED, WELL, WHY
24 DID YOU PUT YOURSELF THROUGH THIS INTERROGATION? WHY
25 DIDN'T YOU JUST SAY I WANTED A LAWYER? THEY ALL SAY

1 THE SAME THING: BECAUSE I HAD NOTHING TO HIDE,
2 I KNEW I WAS INNOCENT, I FIGURED THE MORE I TALKED TO
3 THEM THEY'D SEE I WAS INNOCENT, SO THAT AIR OF
4 COOPERATIVENESS IS TYPICALLY TAKEN AS A SIGN OF
5 INNOCENCE OR AT LEAST ONE SIGNAL OF INNOCENCE AND
6 I'VE ACTUALLY DONE LABORATORY STUDIES SHOWING THE
7 SAME THING. AND IT TURNS OUT NOW THAT THERE IS A
8 SUBSTANTIAL BODY OF RESEARCH SUGGESTING THAT INNOCENT
9 PEOPLE ARE MORE LIKELY TO WAIVE THEIR RIGHTS THAN
10 GUILTY PEOPLE ARE. AGAIN THINKING THEY HAVE NOTHING
11 TO HIDE OR FEAR.

12 Q IN THIS INTERVIEW PROCESS THAT MAY TURN INTO
13 INTERROGATION OR MAY TURN INTO A RELEASE OF THE
14 SUSPECT, ARE POLICE OFFICERS OR TRAINED
15 INTERROGATORS, TRAINED INTERVIEWERS, MORE ABLE TO
16 DETECT TRUTH OR GUILT OR INNOCENCE THAN ANYONE ELSE,
17 JUST THE AVERAGE PERSON ON THE STREET OR A
18 PSYCHOLOGIST FOR EXAMPLE?

19 A YEAH, THAT'S A VERY INTERESTING QUESTION.
20 PSYCHOLOGISTS HAVE TESTED THEMSELVES AS WELL. FOR
21 MANY YEARS NOW SOCIAL PSYCHOLOGISTS HAVE TESTED
22 WHETHER PEOPLE ARE GOOD LIE DETECTORS AND THE WAY
23 THAT RESEARCH WAS DONE IN THE PAST IS YOU BRING
24 PEOPLE INTO YOUR LAB AND YOU'D INSTRUCT THEM TO TELL
25 A TRUTHFUL STORY OR LIE ABOUT THEMSELVES AND THEN YOU

1 SHOW THOSE TAPES TO OTHER PEOPLE WHO DON'T KNOW THEM
2 AND AFTER EACH TAPE THE OBSERVERS MAKE A JUDGMENT IS
3 THIS TRUE OR FALSE AND THE EXPERIMENTER OF COURSE
4 KNOWS WHAT'S TRUE AND WHAT'S FALSE. THOSE KINDS OF
5 STUDIES FOR YEARS HAVE SHOWN PEOPLE ARE TERRIBLE LIE
6 DETECTORS. WE'RE AWFUL. NOW I SHOULD, THE
7 DISCLAIMER IS THAT WE'RE NOT BAD WHEN IT COMES TO
8 JUDGING LIES WITH PEOPLE WE KNOW VERY WELL, CLOSE
9 FRIEND, A CHILD, A SPOUSE, BUT IN TERMS OF STRANGERS
10 WHO WE'VE NEVER SEEN BEFORE WE DON'T KNOW WHAT THEIR
11 UNUSUAL BASE LINE OF BEHAVIOR IS, WE'RE TERRIBLE AT
12 IT AND TYPICALLY THE ACCURACY RATES ARE AROUND 50 OR
13 55 PERCENT. NOW KEEP IN MIND 50 PERCENT IS WHAT YOU
14 GET JUST BY FLIPPING A COIN, SO A 55 PERCENT LEVEL OF
15 ACCURACY IS NOT A VERY HIGH LEVEL OF ACCURACY. WELL,
16 AT ONE POINT RESEARCHERS STARTED ASKING THE QUESTION
17 WHAT ABOUT PROFESSIONALS WHO ARE TRAINED TO MAKE
18 THESE JUDGMENTS FOR A LIVING AND A PSYCHOLOGIST BY
19 THE NAME OF PAUL EICHMAN DID A STUDY WHICH HE AND
20 MARINO SULLIVAN PUBLISHED IN 1991 SHOWING THAT WHEN
21 THEY TESTED ROBBERY INVESTIGATORS, PSYCHOLOGISTS,
22 PSYCHIATRISTS, CUSTOMS INSPECTORS, THERE WERE OTHER
23 GROUPS, SECRET SERVICE AGENTS, THE ACCURACY RATES
24 WERE ALSO IN THE MID 50'S. THE SECRET SERVICE AGENTS
25 ACTUALLY TOPPED OUT AT 64 PERCENT, THAT'S THE TOP

1 GROUP, AND 64 PERCENT IS ABOUT AS HIGH AS YOU EVER
2 SEE COMING OUT OF THE LABS. IN LABS ALL OVER THE
3 WORLD PEOPLE SEEM TO BE PRETTY MEDIOCRE LIE DETECTORS
4 BASED ON WATCHING A PERSON IN AN ISOLATED SITUATION,
5 SO 50 TO 60 PERCENT LEVEL OF ACCURACY.

6 NOW IF YOU'VE ASKED ME THIS QUESTION I
7 DON'T KNOW, WHAT ABOUT IN THIS SITUATION, WHAT ABOUT
8 SOMEBODY WHO INTERVIEWED ABOUT A CRIME HOW GOOD ARE
9 WE? THERE IS NOW A WEALTH OF RESEARCH, SOME OF IT
10 THAT I'VE PUBLISHED, OTHERS HAVE PUBLISHED IT IN
11 SWEDEN AND ENGLAND, IN CANADA, IN SPAIN, AND
12 ESSENTIALLY WHAT IT SHOWS IS THAT PEOPLE HAVE A LOT
13 OF DIFFICULTY DISTINGUISHING A TRUE DENIAL FROM A
14 FALSE DENIAL. WE CAN'T TELL IF SOMEBODY IS GUILTY OR
15 INNOCENT AND TRAINED PROFESSIONALS ARE NOT ANY BETTER
16 THAN THE REST OF US. THEY ARE MORE CONFIDENT IN THE
17 JUDGMENTS THEY MAKE BUT THEY DON'T MAKE THOSE
18 JUDGMENTS AT ANY HIGHER LEVELS OF ACCURACY.

19 NOW YOU COULD ARGUE, WELL, THESE STUDIES
20 DON'T TAKE ACCOUNT OF THE FACT THAT THEY ARE NOT
21 DOING THE QUESTIONING IN THOSE SESSIONS. BUT IN
22 STUDIES THAT ACTUALLY DO THAT IN WHICH THE
23 PROFESSIONALS ACTUALLY DO THE QUESTIONING, THEY ARE
24 STILL NO MORE ACCURATE THAN THE AVERAGE PERSON, SO IT
25 TELLS SOMETHING WE KIND OF HAVE KNOWN ALL ALONG, IT'S

1 NOT IMPOSSIBLE THAT TRAINING CAN MAKE YOU A GOOD
2 JUDGE OF TRUTH AND DECEPTION BUT THERE IS JUST NO
3 EVIDENCE TO SUGGEST, AT LEAST RIGHT NOW, THAT THAT'S
4 THE CASE. AND IT DOESN'T MEAN THAT EVERYBODY IS BAD
5 AT IT BUT THERE IS NO SCIENCE TO SUGGEST THAT WE ARE
6 IN SOME WAYS HUMAN LIE DETECTORS.

7 Q GETTING PAST THE INTERVIEW AND GOING TO THE
8 INTERROGATION, ONCE THAT DECISION HAS BEEN MADE
9 WHETHER IT'S BASED ON A FALSE OF SENSE OF ABILITY TO
10 TELL THE TRUTH OR NOT, ARE THERE CERTAIN COMMON
11 INTERROGATION TECHNIQUES THAT ARE TAUGHT TO POLICE
12 AND OTHER INTERROGATORS?

13 A YES.

14 Q PLEASE TELL US WHAT THOSE ARE?

15 A AND AGAIN THERE ARE VARIATIONS AND THERE ARE A
16 NUMBER OF MANUALS ALL OF WHICH I'VE STUDIED BUT THE
17 MOST INFLUENTIAL OF THEM IS THE INBAU MANUAL AND
18 ESSENTIALLY WHAT THEY DO IS THEY TALK ABOUT A
19 MULTI-STEP PROCESS AND WITHOUT GETTING INTO EVERY
20 STEP BY STEP ESSENTIALLY IT'S A THREE STEP PROCESS.
21 THE FIRST THING THEY DO IS ISOLATE THE SUSPECT. IT'S
22 IMPORTANT, ACCORDING TO THE MANUALS, THAT THE SUSPECT
23 NOT BE SITTING IN HIS LIVING ROOM, IN A DINING ROOM,
24 IN A PLACE THAT IS COMFORTABLE, IN THE PRESENCE OF
25 LOVED ONES, IN THE PRESENCE OF THINGS THAT ARE

1 FAMILIAR, AND SO THE GOAL IS PUT THE PERSON IN A
2 PRIVATE SPACE SOMEWHERE IN THE POLICE STATION SO THAT
3 THEY DON'T HAVE ACCESS TO LOVED ONES AND IT'S A VERY
4 UNFAMILIAR SETTING. THE GOAL IS CREATE ESSENTIALLY
5 AN UNPLEASANT, SOMEWHAT STRESSFUL ENVIRONMENT SO THE
6 GOAL IN ISOLATION, AND THEY ARE VERY CLEAR ABOUT
7 THIS, WE NEED TO RAISE AND INCREASE THE PERSON'S
8 INCENTIVE TO ESCAPE. IF YOU CREATE A VERY RELAXED
9 ENVIRONMENT THEN THE PERSON DOESN'T CARE IF THEY ARE
10 THERE ALL DAY OR ALL NIGHT. BUT IF IT'S A SITUATION
11 THEY WANT TO GET OUT OF AND THEY CAN'T MAKE A PHONE
12 CALL TO THEIR WIVES AND THEY CAN'T SEE THEIR CHILDREN
13 AND THEY ARE TIRED AND THEY WANT TO GET SOME SLEEP OR
14 WHATEVER THE ISSUES MAY BE, IN THAT KIND OF SITUATION
15 THEY NOW ARE ISOLATED AND NEED TO DO SOMETHING TO
16 CHANGE THEIR STATE AND THAT'S WHERE THE SECOND
17 SITUATION COMES IN. THE SECOND PROCESS IS A PROCESS
18 OF CONFRONTATION. THE INBAU AND REID PEOPLE CALL
19 FIRST STEP THE POSITIVE CONFRONTATION. THE POSITIVE
20 CONFRONTATION IS THE STATEMENT, WE KNOW YOU ARE
21 GUILTY, WE KNOW YOU ARE GUILTY AND WE DON'T WANT TO
22 HEAR ANYMORE LIES. KEEP IN MIND AT THE POINT AT
23 WHICH YOU ARE INTERROGATING A PERSON AND MAKING THAT
24 CONFRONTATION THE INVESTIGATOR HAS ALREADY
25 DETERMINED, SOMETIMES BASED ON A HUNCH, THAT THIS

1 PERSON IS GUILTY AND SO NOW THEY INTERROGATE
2 ACCORDINGLY. THEY PUT ON THAT, THEY PUT ON THE LENS
3 THAT TELLS THEM WHATEVER I'M SEEING HERE THIS PERSON
4 BEFORE ME IS GUILTY BECAUSE THAT'S WHAT THEY BELIEVE
5 IS THE JUDGMENT THEY MADE.

6 NOW THEY MAKE A POSITIVE CONFRONTATION,
7 PART OF THE TECHNIQUE IS TO NOT ALLOW THE PERSON TO
8 MOUNT A DEFENSE. IF THE PERSON STARTS TO MOUNT A
9 DENIAL, THEY OFTEN WILL INTERRUPT THEM IN
10 MID-SENTENCE AND NOT ALLOW TO MAKE A FULL DENIAL.
11 THERE IS A PERSISTENCE TO THE QUESTIONING NO MATTER
12 WHAT THE PERSON SAYS OR DOES THE RESPONSE IS: I
13 DON'T BELIEVE YOU, YOU ARE NOT BEING COOPERATIVE, YOU
14 ARE NOT BEING FORTHCOMING, SOMETIMES THAT, THAT
15 CONFRONTATION IS BOLSTERED, AND YOU CAN TO IMAGINE IF
16 A PERSON IS BEING PARTICULARLY ADAMANT AND VEHEMENT
17 IN THEIR DENIALS, I DIDN'T DO IT, THEN HOW DO YOU
18 EXPLAIN X OR Y. SOMETIMES THERE IS THE INSINUATION
19 THAT WE HAVE INDEPENDENT EVIDENCE AS A WAY OF HELPING
20 TO BREAK THAT PERSON DOWN. SO THAT CONFRONTATION IS
21 DESIGNED ESSENTIALLY TO PUT THAT PERSON IN A STATE OF
22 DESPAIR. THEY ARE NOW IN A BAD SITUATION, THEY WANT
23 TO GET OUT OF IT, AND DENIAL IS NOT A WAY OUT. NOW
24 THEY ARE IN AND THE DENIAL DOESN'T WORK. SO THE
25 THIRD STEP AND THESE STEPS INTERWEAVE THROUGHOUT THE

1 INTERACTION, THE THIRD STEP IS WHAT YOU CAN THINK OF
2 AS MINIMIZATION. MINIMIZATION IS A WAY OF SUGGESTING
3 AND AGAIN THE GOAL OF INTERROGATION IS TO MAKE
4 CONFESSION LOOK LIKE THE MORE DESIRABLE THING TO DO,
5 SELF-SERVING THING TO DO. MINIMIZATION IS, I
6 UNDERSTAND YOU'RE A GOOD PERSON AND IT LOOKS TO ME
7 LIKE THIS MIGHT HAVE BEEN AN ACCIDENT OR MAYBE YOU
8 WERE PROVOKED, OR MAYBE YOUR FRIENDS PUSHED YOU INTO
9 IT. THERE IS A WAY OF PROVIDING THE SUSPECT AND
10 THERE ARE A NUMBER SPECIFIC WAYS OF DOING THIS THAT
11 ARE OFFERED TO SUGGEST TO THE SUSPECT THAT WE KNOW
12 YOU ARE A GOOD PERSON AND WHAT YOU DID WAS NOT THAT
13 BAD AND MAYBE IT WAS JUST AN ACCIDENT, MAYBE YOU WERE
14 JUST PROVOKED AS A WAY OF PROVIDING A KIND OF FACE
15 SAVING EXCUSES, SOME MORAL JUSTIFICATION. IT MAY
16 MAKE IT EASIER FOR THE SUSPECT WHO NOW IS LOOKING FOR
17 A WAY OUT TO CONFESS TO THIS. THIS ISN'T A
18 COLD-BLOODED CRIME. THIS IS SOMETHING ELSE. THIS IS
19 SOMETHING MORE MINIMAL THAN THAT. AND SO THE FINAL
20 STEP IS TO MAKE CONFESSION MORE PALATABLE BY OFFERING
21 THE SUBJECT A CHOICE AND THE SUSPECT IS THEN LEAD TO
22 BELIEVE THAT THIS FACE SAVING ALTERNATIVE IS A WAY TO
23 GET A CONFESSION AND THE TRANSITION FROM DENIAL TO
24 CONFESSION TYPICALLY PROCEEDED BY THAT MINIMIZATION.
25 Q NOW ARE THESE TECHNIQUES YOU JUST TALKED ABOUT,

1 ARE THEY JUST A MATTER OF COMMON SENSE OR IS THERE
2 SOMETHING BEHIND THEM?

3 A WELL, THEY MAY SOUND INTUITIVE AFTER YOU'VE
4 HEARD THEM, BUT AGAIN THE REID SCHOOL HAS TRAINED
5 OVER 150,000 LAW ENFORCEMENT PROFESSIONALS AND
6 CERTAINLY IT'S THE CASE AND I KNOW THIS FROM LECTURES
7 THAT I'VE GIVEN TO DIFFERENT PROFESSIONAL GROUPS THAT
8 THOSE WHO ARE NOT SPECIALLY TRAINED IN HOW TO DO
9 INTERROGATION DON'T KNOW THIS.

10 Q WHAT IF THESE TECHNIQUES YOU ARE TALKING ABOUT
11 ARE TAKEN TO EXTREME MEASURE?

12 A WELL, IT'S NOT CLEAR. I MEAN, THAT'S THE
13 IMPORTANT BOTTOM LINE QUESTION BECAUSE THE GOAL OF AN
14 INTERROGATION AND THE REID PEOPLE SAY THIS, THE GOAL
15 OF AN INTERROGATION IS CREATE ENOUGH PRESSURE TO GET
16 THE GUILTY PERSON TO FEEL TRAPPED AND CONFESS, BUT
17 NOT SO MUCH PRESSURE THAT THE INNOCENT PEOPLE COME
18 ALONG WITH THEM. SO THE GOAL OF COURSE IS TO HAVE
19 SOME, TO MAKE IT SURGICALLY PRECISE, CONFESSIONS FROM
20 THE GUILTY BUT LEAVING THE INNOCENCE UNTOUCHED. THE
21 PROBLEM IS WHAT HAPPENS WHEN YOU DO STEP OVER THAT
22 LINE OR WHEN THESE PRESSURE FILLED TECHNIQUES BECOME
23 EXTREME PRESSURE FILLED AND I CAN'T EVEN BEGIN TO
24 PRETEND THAT I KNOW WHAT THE LINE IS WHERE THAT
25 HAPPENS, BUT IN ALL CASES INVOLVING POLICE INDUCED

1 FALSE CONFESSIONS THEY HAPPEN UNDER EXTREME
2 CIRCUMSTANCES. THE PERSON HAS BEEN THERE FOR TOO
3 LONG. IF YOU LOOK AT THE DATA ON TRUE CONFESSIONS,
4 PEOPLE WHO ACTUALLY CONFESSED WHO ARE GUILTY TO
5 CRIMES THEY COMMITTED, THEY HAPPEN WITHIN THE FIRST
6 TWO HOURS OF INTERROGATION, MOST OF THEM HAPPEN
7 WITHIN TWO HOURS. IF YOU LOOK AT FALSE CONFESSION
8 ALMOST ALL OF THEM, SOME 80 PERCENT OR SO, OCCUR
9 AFTER SIX HOURS OF INTERROGATION. AT THE POINT IN
10 WHICH YOU BREAK A PERSON DOWN AND THEY BECOME
11 FATIGUED AND TIRED, THEY ARE NO LONGER THINKING
12 CLEARLY. THEY ARE THINKING IN VERY SHORT-TERM TERMS
13 ABOUT THEIR OWN SITUATION. SO DO WE KNOW WHAT THE
14 LINE IS? WELL, WE KNOW THAT LYING TO A SUSPECT,
15 PRESENTING FALSE EVIDENCE MAKES A NUMBER OF PEOPLE
16 TEETER ON THE EDGE AND HAS PRODUCED NOT ONLY FALSE
17 CONFESSIONS BUT FALSE BELIEFS ABOUT THINGS THAT NEVER
18 HAPPENED. AND WE KNOW THAT TIME IS A FACTOR, BUT IN
19 TERMS OF IS THERE A MAGIC LINE THAT SAYS I CAN
20 IDENTIFY A PRECISE MOMENT? NO, THERE IS NO WAY TO DO
21 THAT.

22 Q DOCTOR, WHEN YOU ARE LOOKING AT A SPECIFIC CASE
23 THAT YOU ARE STUDYING AND YOU'VE DONE A GOOD BIT OF
24 THIS, HOW DO YOU KNOW EXACTLY WHAT INTERROGATION
25 TECHNIQUES WERE USED IN ANY PARTICULAR CASE?

1 A IT VARIES. IDEALLY I WOULD HAVE A FULL VIDEO
2 TAPE THAT BEGINS WHEN THE SUSPECT IS BROUGHT IN FOR
3 AN INTERVIEW AND RIGHT ON THROUGH INTERROGATION ON A
4 CONFESSION. SO IN AN IDEAL SITUATION, AND I'VE OFTEN
5 ENCOUNTERED AN IDEAL SITUATION BECAUSE IN MANY
6 JURISDICTIONS AND IN SOME STATES THIS IS JUST A
7 COMMON PRACTICE, SO THE GOAL HERE WOULD BE TO SIMPLY
8 LOOK AT THE FULL TAPE WHETHER IT IS AN AUDIO TAPE OR
9 A VIDEO TAPE AND THEN YOU KNOW EVERY ASPECT OF THE
10 PROCESS THAT WAS USED TO TAPE THE CONFESSION. WHAT'S
11 IMPORTANT TO REALIZE ABOUT A CONFESSION AND THIS IS
12 WHAT WE NOW KNOW FROM THE STUDY OF FALSE CONFESSIONS,
13 SOME OF THEM LOOK SO REAL AND SO PERSUASIVE AND THEN
14 TURN OUT TO HAVE BEEN FALSE THAT WHAT WE NOW REALIZE
15 IS THAT FINAL STATEMENT THAT COMES AFTER HOURS OF
16 INTERVIEWING AND HOURS OF INTERROGATION IS A LITTLE
17 BIT LIKE A HOLLYWOOD PRODUCTION. IT'S SCRIPTED BY
18 WHAT IS NOW KNOWN ABOUT THE CASE, IT IS REHEARSED
19 OVER HOURS OF UNRECORDED INTERROGATION, AND THEN
20 THERE WE HAVE IT, THE FINAL PRODUCT WHICH LOOKS VERY
21 COMPELLING. THE PROBLEM IS UNLESS YOU SEE THE
22 PROCESS THAT IS USED TO TAPE THAT CONFESSION, YOU
23 DON'T REALLY KNOW HOW IT GOT THERE AND WHEN I SAY YOU
24 DON'T KNOW HOW IT GOT THERE I MEAN TWO THINGS: ONE,
25 YOU DON'T KNOW WHAT HAPPEN, WHAT WAS SAID, AND WHAT

1 WAS DONE, TO MOVE THAT SUSPECT FROM ADAMANT DENIAL TO
2 CONFESSION. AND SECOND, IF IN FACT THE SUSPECT IS
3 CONFESSING, YOU DON'T KNOW, WHERE DO THE DETAILS COME
4 FROM? ONE OF THE PUZZLES OF FALSE CONFESSION IS THAT
5 OFTEN A CONFESSION THAT IS FALSE CONTAINS A LOT OF
6 ACCURATE INFORMATION THAT ONLY THE PERPETRATOR SHOULD
7 HAVE KNOWN AND UNLESS A JURY CAN SEE WHERE THAT
8 INFORMATION CAME FROM, AND THE ONLY WAY TO KNOW THAT
9 IS TO WATCH THE WHOLE PROCESS, IT'S CONFUSING TO BE
10 ABLE TO DISTINGUISH THE TRUE FROM THE FALSE
11 STATEMENT.

12 Q WHAT IS THE ADVANTAGE OF RECORDING AN INTERVIEW
13 WITH THE SUSPECT, INTERVIEWS OR INTERROGATION?

14 A LOTS OF ADVANTAGES. IT TURNS OUT, BECAUSE THIS
15 IS A VERY IMPORTANT TOPIC RIGHT NOW, IN THE WAKE OF
16 ALL THE DNA EXONERATIONS, IN THE WAKE OF SO MANY OF
17 THOSE EXONERATIONS CONTAINING FALSE CONFESSIONS WHICH
18 HAS ASTONISHED A NUMBER OF RESEARCHERS, EVEN PEOPLE
19 LIKE MYSELF DIDN'T THINK THE NUMBER WOULD BE THAT
20 HIGH, IN THE WAKE OF THAT, ONE OF THE REFORMS THAT
21 HAS BEEN SUGGESTED IS THE VIDEO TAPING OF THE FULL
22 INTERVIEW AND INTERROGATION SO JUDGES, JURIES, AND
23 THE REST OF US CAN KNOW EXACTLY HOW THAT STATEMENT
24 WAS TAKEN. A RECENT STUDY BY THOMAS SULLIVAN IN
25 WHICH HE INTERVIEWED PEOPLE FROM ABOUT A HUNDRED

1 JURISDICTIONS IN WHICH THEY VIDEO TAPED HE ASKED AND
2 THE PEOPLE HE SURVEYED WERE LAW ENFORCEMENT PEOPLE
3 WHO HAVE GONE TO THIS PROCEDURE, AND THEY WERE ASKED,
4 WHAT DO YOU THINK ABOUT THIS? IS IT BENEFICIAL? DO
5 YOU LIKE IT? ARE YOU SATISFIED WITH THE PROCESS?
6 THEY WERE ALMOST UNIFORMLY SATISFIED WITH THE
7 PROCESS. THEY SAID IT WAS BENEFICIAL TO THEM BECAUSE
8 OFTEN THE DEFENSE WOULD MAKE FRIVOLOUS CLAIMS THAT
9 THE STATEMENT WAS COERCED WHEN IN FACT IT WASN'T AND
10 NOW THE JURY AND THE JUDGE GET TO SEE THAT IT WASN'T.
11 OFTEN A DEFENDANT WHO DOESN'T CONFESS BUT GIVES A
12 DENIAL THAT JUST DOESN'T HANG TOGETHER IS
13 INCRIMINATING IN THAT WAY OFTEN THAT COMES ACROSS AS
14 USEFUL. SO THEY HAVE FOUND IT TO BE A USEFUL
15 PROCEDURE. THERE IS NO GOOD REASON AS FAR AS I COULD
16 TELL FOR NOT VIDEO TAPING AN INTERVIEW, PARTICULARLY
17 WHEN YOU KNOW THE RECORDING IS AVAILABLE. IF YOU ARE
18 GOING TO VIDEO TAPE PORTIONS, AUDIO TAPE AND VIDEO
19 TAPE PORTIONS OF AN INTERVIEW, SOME INTERVIEWS BUT
20 NOT OTHERS, WHY WOULD YOU SELECTIVELY RECORD SOME AND
21 NO OTHERS AND THAT'S THE PROBLEM. A FULL RECORD IS
22 WHAT WE NEED.

23 Q DOCTOR, HOW DO YOU PERSONALLY GO ABOUT
24 EVALUATING A PARTICULAR CONFESSION IN YOUR MAKING A
25 CASE STUDY?

1 A IN RESEARCH, FOR RESEARCH PURPOSES?

2 Q YES.

3 A THE WAY WE KNOW THAT A CONFESSION IS FALSE WHICH
4 IS WHAT MAKES THIS A CASE STUDY OF A FALSE CONFESSION
5 IS SOMETIMES YOU HAVE A CONFESSION, AGAIN ALL OF
6 THESE, IT'S REMARKABLE HOW SIMILAR THEY LOOK TO TRUE
7 CONFESSIONS IN THE SENSE THEY ARE DETAILED WHEN THEY
8 TALK ABOUT MOTIVES AND WHY I DID THESE THINGS, WHEN
9 YOU LOOK AT THEM, THEY LOOK REAL, BUT SOMETIMES THEY
10 TURN OUT TO BE FALSE. HOW DO WE KNOW? BECAUSE IT
11 TURNS OUT THAT THE CRIME THAT IS BEING CONFESSED TO
12 NEVER HAPPENED AND THERE ARE NUMBERS OF INSTANCES OF
13 PEOPLE THAT CONFESS TO CRIMES AND THEN IT TURNS OUT
14 THE CRIME NEVER HAPPENED. SO THE VICTIM MAY HAVE
15 TURNED UP ALIVE SOMEWHERE AS A REAL LIFE EXAMPLE.
16 THEN THERE ARE CASES WHERE THE CRIME OCCURRED BUT IN
17 FACT AFTER THE CONFESSION IS TAKEN THE REAL
18 PERPETRATOR IS FOUND, SO THERE MAY BE ANOTHER CRIME
19 AND BALLISTICS EVIDENCE FROM THAT CRIME MAY SHOW A
20 MATCH TO THE ORIGINAL CRIME AT WHICH POINT THEY GO
21 AND APPREHEND THIS NEW SUSPECT WHO SEEMS TO KNOW
22 EVERYTHING THERE IS TO KNOW ABOUT THAT CASE. SO WE
23 HAVE SITUATIONS WHERE THE ACTUAL CULPRIT IS
24 DISCOVERED AND OFTEN THAT CULPRIT CAN LEAD THE POLICE
25 TO EVIDENCE THAT THEY NEVER HAD LIKE A MURDER WEAPON.

1 COMMONLY DNA IS USED TO EXONERATE A PERSON, SO AN
2 INDIVIDUAL GIVES A CONFESSION FILLED WITH DETAILS AND
3 THEN LO AND BEHOLD IT TURNS OUT THAT THE DNA THAT WAS
4 AT THE CRIME SCENE THAT EVERYBODY THOUGHT WAS THEIRS
5 BELONGS TO SOMEBODY ELSE AND THERE ARE A NUMBER OF
6 POST CONVICTION DNA CASES JUST LIKE THAT AND WHAT
7 THOSE CASES SHOW US IS THAT THE CONFESSION WHICH WAS
8 TO A STORY ABOUT ONE KIND OF CRIME ISN'T MATCHING UP
9 WITH THE PHYSICAL EVIDENCE OF WHAT ACTUALLY HAPPENED
10 AND SO THAT BECOMES WORTHY OF CASE STUDY BECAUSE YOU
11 HAVE TO LOOK AT WHERE THAT STATEMENT CAME FROM NOW
12 THAT WE KNOW IT'S A STATEMENT TO SOMETHING THAT
13 DIDN'T HAPPEN THAT WAY.

14 Q SO DOCTOR, IN YOUR TESTIMONY WHEN YOU REFERRED
15 TO DOCUMENTED CASES OR WHEN YOU REFER TO A PARTICULAR
16 CASE AS A FALSE CONFESSION, YOUR JUDGMENT THAT THE
17 FALSE CONFESSIONS YOU TALKED ABOUT ARE TRULY FALSE IS
18 THAT BASED ON JUST YOUR OPINION OF THE CASE OR IS
19 THAT BASED ON SCIENTIFICALLY PROVEN OR PROVEN IN
20 OTHER WAYS THAT YOU JUST DESCRIBED?

21 A THESE ARE PEOPLE WHO WERE EXONERATED, PRISON
22 DOORS RELEASED, AND THEY WERE SET FREE AND --

23 MR. BRACKETT: YOUR HONOR, I OBJECT.

24 THE COURT: YEAH, I SUSTAIN THE OBJECTION.
25 DISREGARD THAT QUESTION AND ANSWER. MOVE ON.

1 DISREGARD THAT QUESTION AND ANSWER. MOVE ON.

2 Q WHAT ABOUT A CONFESSION THAT IS FILLED WITH
3 VIVID DETAILS, IS THAT ONE THAT MAKES IT LESS LIKELY
4 TO BE A FALSE CONFESSION?

5 A WELL, AGAIN THE PROBLEM IS IF WE KNEW WHERE THE
6 DETAILS CAME FROM I COULD GIVE YOU A VERY AFFIRMATIVE
7 ANSWER. IF YOU WATCHED AN ENTIRE INTERVIEW AND YOU
8 SAW WITHIN THAT INTERVIEW THAT THE SUSPECT HAS
9 INDEPENDENT PERSONAL KNOWLEDGE OF THINGS HE COULDN'T
10 OTHERWISE HAVE KNOWN THAT'S A GOOD CORROBORATION FOR
11 THAT CONFESSION. HOWEVER, IF WE CAN'T BE CERTAIN
12 THAT THOSE DETAILS BECAUSE THE ANSWER IS YES, THEY
13 ARE OFTEN VERY FILLED WITH DETAILS, RIGHT DOWN TO
14 LIKE I SAID TO MOTIVE INFORMATION, BUT IF YOU CAN'T
15 BE CERTAIN, IF YOU HAVEN'T SEEN THE FULL PROCESS,
16 THEN IT'S NOT POSSIBLE TO KNOW WHERE THOSE DETAILS
17 CAME FROM. AND IN SOME CASES, FOR EXAMPLE,
18 DEFENDANTS GIVE VERY TEXTURED STORIES ABOUT CRIME
19 SCENE, THEY SEEM TO KNOW EVERYTHING ABOUT IT, AND
20 THEN WE FIND OUT AFTERWARD THEY WERE TAKEN THERE. OR
21 THEY SEEM TO KNOW ALL ABOUT THE VICTIM'S INJURIES AND
22 THEN WE FIND OUT THEY SAW PHOTOGRAPHS. OR THEY GIVE
23 A FULL DESCRIPTION OF WHAT HAPPENED DURING THAT CRIME
24 SCENE AND WE FIND OUT THEY WERE SITTING IN A POLICE
25 STATION FOR A LONG PERIOD OF TIME OVERHEARING ALL

1 THIS TALK AND CONVERSATION OR THEY READ NEWSPAPERS.

2 MR. BRACKETT: I OBJECT AGAIN. THIS IS
3 THE SAME SORT OF THING.

4 MR. BAITY: HE IS NOT GIVING A SPECIFIC
5 EXAMPLE, YOUR HONOR, BUT HE'S TALKING ABOUT CASE
6 STUDIES THAT HE HAS ---

7 THE COURT: I'LL LET HIM GO ON.
8 OVERRULED.

9 A ANYWAY, THE POINT IS IT IS POSSIBLE FOR PEOPLE
10 TO GET INFORMATION ABOUT A CRIME FROM SECONDHAND
11 SOURCES, NOT FROM HAVING BEEN THERE, BUT FROM SOME
12 OTHER MECHANISM.

13 Q INCLUDING THE POLICE THAT ARE INTERROGATING?

14 A IT'S AMAZING WHEN YOU ACTUALLY THINK ABOUT THE
15 WAY WE HAVE CONVERSATIONS WITH PEOPLE, OFTEN, WHEN WE
16 ASK PEOPLE QUESTIONS INHERENT IMPLICIT IN THOSE
17 QUESTIONS IS INFORMATION. IT'S HARD NOT TO ASK A
18 QUESTION WITHOUT CONVEYING SOME INFORMATION, AND SO
19 WE NATURALLY DO THAT. SO SOME OF THAT IS JUST A
20 NATURAL PRODUCT OF THE WAY PEOPLE HAVE CONVERSATION.
21 THE PROBLEM IS IF YOU HAVEN'T SEEN THAT CONVERSATION,
22 IF YOU DIDN'T KNOW EVERY EXPERIENCE THAT THE SUSPECT
23 HAD GONE THROUGH, YOU CAN'T NECESSARILY KNOW WHERE
24 THAT FACT CAME FROM. WHICH IS WHY A PARTICULARLY
25 GOOD RULE OF THUMB THAT THE POLICE USE IN VOLUNTARY

1 FALSE CONFESSIONS TO KNOW WHETHER A CONFESSION IS ANY
2 GOOD IS, IS THIS SUSPECT ABLE TO TELL THE POLICE
3 SOMETHING THEY DIDN'T ALREADY KNOW. TRUE CONFESSIONS
4 ALMOST ALWAYS DO. AND IS THE SUSPECT, MORE
5 IMPORTANTLY, IF IT'S AVAILABLE ABLE TO LEAD THE
6 POLICE TO A PURSE OR A MURDER WEAPON OR SOME OTHER
7 EVIDENCE THAT THE POLICE DIDN'T OTHERWISE KNOW ABOUT.
8 IN THAT CASE YOU'VE GOT A SLAM DUNK CORROBORATION OF
9 THAT STATEMENT. BUT IF YOU CAN'T TRACK THE SOURCE
10 THEN THOSE DETAILS ARE SIMPLY A SOURCE OF CONFUSION
11 BECAUSE WE NOW KNOW THERE ARE TOO MANY FALSE
12 CONFESSIONS THAT ARE FILLED WITH DETAILS THAT MAKE
13 THEM SOUND VERY, VERY CONVINCING.

14 Q NOW LOOKING AT THIS CASE IN PARTICULAR, THIS
15 CASE WE'RE INVOLVED TODAY, DOCTOR, HOW HAVE YOU COME
16 TO KNOW WHAT WENT ON DURING THE INTERROGATIONS,
17 INVESTIGATIONS OF MR. COPE?

18 A I READ POLICE REPORTS FROM NOVEMBER 29 THAT WERE
19 SENT TO ME. I READ THE TRANSCRIPT AND LISTENED TO
20 THE AUDIO TAPE OF THE EVENING, FIRST REAL
21 INTERROGATION THAT IS RECORDED, THE EVENING
22 INTERROGATION ON AUDIO TAPE AND THEN TRANSCRIPT OF
23 THE DEFENDANT THAT STARTS ON THE NIGHT OF 29 AND
24 EXTENDS INTO THE EARLY MORNING HOURS OF THE 30.
25 THEN I HAVE DETECTIVE BAKER'S POLYGRAPH REPORT IN

1 WHICH HE REPORTS ON AN ORAL CONFESSION THAT THE
2 DEFENDANT GAVE, AND THEN I HAVE THE DEFENDANT'S
3 STATEMENT FOLLOWING THAT WRITTEN REPORT. AND THEN I
4 GUESS THERE IS THE DEFENDANT, THAT ALL HAPPENS ON A
5 FRIDAY MORNING, THE DEFENDANT IS THEN LOCKED UP FOR
6 THE WEEKEND, COMES BACK ON MONDAY, DECEMBER THIRD,
7 AND GIVES ANOTHER HANDWRITTEN STATEMENT FOLLOWED BY A
8 VIDEO TAPE REENACTMENT FOLLOWED BY ANOTHER STATEMENT
9 TYPED UP BY DETECTIVE BLACKWELDER. THOSE ARE THE
10 STATEMENTS THAT I INVESTIGATED. IN ADDITION TO
11 LOOKING AT THE STATEMENTS THEMSELVES I READ PRIOR
12 TESTIMONY FROM DETECTIVES BAKER, WALDROP,
13 BLACKWELDER, AND CAPTAIN CABINESS.

14 Q IS THERE ANYTHING THAT WAS IN PARTICULAR MISSING
15 FROM THIS, FROM THE MATERIALS THAT WERE PROVIDED YOU
16 THAT YOU WOULD HAVE LIKED TO HAVE SEEN BUT YOU
17 COULDN'T SEE?

18 A AGAIN IDEALLY THIS COULD HAVE BEEN A LOT EASIER
19 FOR EVERYBODY HAD THERE BEEN A FULL RECORDING OF ALL
20 THAT TRANSPIRED FROM THE INTERVIEW/INTERROGATION.
21 INSTEAD WHAT WE HAVE ARE SELECTED RECORDINGS. WE
22 HAVE ONE PIECE THAT IS RECORDED THEN OFF TAPE
23 CONVERSATION. ANOTHER PIECE THAT'S RECORDED AT THE
24 HOUSE AND THEN MORE OFF TAPE CONVERSATION. SO IN
25 TRYING TO PIECE IT TOGETHER, IN CASES WHERE THERE IS

1 AGREEMENT, IF THE DEFENDANT TESTIFIED THAT CERTAIN
2 THINGS WERE SAID AND DONE AND INVESTIGATORS TESTIFY
3 CERTAIN THINGS WERE SAID AND DONE THEN THERE ARE
4 POINTS OF AGREEMENT I WOULD ACCEPT THOSE POINTS OF
5 AGREEMENT AS A WAY OF KNOWING WHAT HAPPENED. BUT
6 OFTEN THERE IS A CASE OF DISAGREEMENT AND WHO KNOWS
7 IN THOSE CASES. MEMORY IS FALLIBLE. PEOPLE DON'T
8 ALWAYS REMEMBER EVERY DETAIL OF AN EVENT CORRECT AND
9 SO IT'S DIFFICULT IN THAT WAY.

10 Q NOW YOU TESTIFIED EARLIER TODAY THAT THERE WERE
11 CERTAIN TECHNIQUES, INTERROGATION TECHNIQUES, THAT
12 ARE OFTEN USED AND PEOPLE ARE TRAINED AND SOMETIMES
13 THESE TECHNIQUES CAN BE TAKEN TO AN EXTREME, HAVE YOU
14 SEEN ANY OF THE TYPE TECHNIQUE YOU TALKED ABOUT THAT
15 HAVE BEEN, POLICE ARE TRAINED IN AND SO FORTH, THAT
16 WERE USED IN THIS PARTICULAR CASE?

17 A YES.

18 Q PLEASE TELL US WHAT YOU'VE SEEN?

19 A WELL, THERE IS THE ONE TECHNIQUE THAT CREATES
20 THE MOST PROBLEMS THAT IS IMPLICATED IN THE MOST
21 FALSE CONFESSIONS AND THAT IS THE PRESENTATION OF
22 FALSE EVIDENCE. THIS IS THAT TECHNIQUE THAT AFTER A
23 PERIOD OF TIME FOR SOME PEOPLE IT SOMETIMES, IT JOLTS
24 THEIR SENSE OF REALITY SO THEY BECOME UNCERTAIN EVEN
25 ABOUT THEIR OWN INNOCENCE. IN THAT CASE THE

1 PRESENTATION OF FALSE EVIDENCE, WHICH IS A WAY OF
2 MISCHARACTERIZING THE EVIDENCE AND PARTICULARLY IN
3 THIS CASE THERE IS A MISCHARACTERIZATION OF AN ITEM
4 OF EVIDENCE THAT THE DEFENDANT UP FRONT, THEY WERE
5 ASKED, HE WAS ASKED, SO IT LOOKS LIKE YOU HAVE A LOT
6 OF FAITH IN THIS POLYGRAPH AND HE SAID YES. HE
7 DIDN'T HEDGE, HE GAVE AN ANSWER THAT WAS PLAIN AND
8 SIMPLE: YES, I BELIEVE IN THE POLYGRAPH. HE SHOWED
9 NO FEAR OF ANYTHING TO HIDE AT A POLYGRAPH. THAT IN
10 SOME WAYS BECAME HIS ULTIMATE SOURCE OF
11 VULNERABILITY. AT THAT POINT ANY POLYGRAPH EVIDENCE
12 THAT CAME IN THAT SAID TO HIM YOU FAILED WAS GOING TO
13 SHAKE HIS WORLD. IT HAD TO. HE BELIEVED IN THE
14 POLYGRAPH AND HE'D BEEN THERE FOR AWHILE. HE'S BEEN
15 AT THIS TRYING TO DENY HIS INVOLVEMENT NOW FOR CLOSE
16 TO 24 HOURS.

17 Q WERE THERE ANY OTHER TECHNIQUES THAT YOU SAW
18 USED IN THE INTERROGATION IN ADDITION TO THIS
19 PRESENTATION OF THE RESULTS OF THE POLYGRAPH WHICH
20 MAY NOT HAVE BEEN CORRECT?

21 A THAT'S THE BIG ONE. THE OTHER TECHNIQUES THAT
22 ARE CLEAR FROM LISTENING TO, FOR EXAMPLE, THE FIRST
23 INTERROGATION AUDIO TAPE, IT'S CLEAR THEY USED THE
24 POSITIVE CONFRONTATION. IT IS CLEAR THAT HE WAS
25 ACCUSED OF GUILT; THAT IN FACT THESE WERE

1 INVESTIGATORS WHO HAD ALREADY DETERMINED, WITHOUT
2 HAVING TO GO THROUGH A FULL INVESTIGATION, THEY MADE
3 A JUDGMENT WITHIN 24 HOURS THAT HE WAS GUILTY AT
4 WHICH POINT THEY PUT BLINDERS ON, AND AT THAT POINT
5 ANYTHING HE SAID OR DID BECAME SIMPLY SUPPORT AND
6 CONFIRMATION FOR WHAT THEY ALREADY BELIEVED. IF HE
7 DENIED TOO ADAMANTLY, THIS WAS A SIGN OF BEING
8 EVASIVE. IF HE, WHEREAS THE INBAU PEOPLE WOULD SAY
9 YOU KNOW HE AGREES TO TAKE A POLYGRAPH, THAT SHOWS HE
10 HAS NOTHING TO HIDE, MAYBE YOU SHOULD STEP BACK A
11 BIT. IN THIS CASE IT LOOKS AGREED TO TAKE A
12 POLYGRAPH WAS NOT VIEWED IN THAT LIGHT. HE AGREED TO
13 WAIVE HIS RIGHTS TO A LAWYER, TO SILENCE, HE AGREED
14 TO PHYSICAL EXAMINATIONS, HE WAS FULLY COOPERATIVE,
15 ALL THE INDICIA THAT NORMALLY AN INVESTIGATOR IS
16 TRAINED TO LOOK FOR TO SUGGEST MAYBE I SHOULD BACK
17 UP, AND YET DESPITE HIS SHOWING ALL OF THAT, WE BEGAN
18 WITH A POSITIVE CONFRONTATION; THERE WAS PERSISTENCE,
19 NO MATTER WHAT HE SAID OR HOW HE SAID IT EVERY DENIAL
20 WAS DEEMED A LIE. SO FROM HIS STANDPOINT HOW DOES HE
21 EXTRICATE HIMSELF FROM THIS SITUATION. WHAT DOES HE
22 HAVE TO DO TO GET OUT OF THE SITUATION IF EVERY TIME
23 HE SAYS SOMETHING EVEN AS EXTREME AS, I SWEAR TO GOD
24 THAT DID NOT DO ANYTHING TO MY DAUGHTER, IT'S NOT
25 BELIEVED. SO THE POSITIVE CONFRONTATION, THE

1 REFUSALS TO ACCEPT DENIALS, THE PRESENTATION OF FALSE
2 EVIDENCE, THERE IS A HINT OF MINIMIZATION IN THAT
3 TAPE AS WELL, THERE IS A STATEMENT THAT SUGGESTS THAT
4 MAYBE WHAT YOU DID WAS ACCIDENTAL, AND THAT MAYBE IT
5 JUST ESCALATED, SO YOU CAN SEE THE SEEDS OF ALL THE
6 INTERROGATION TECHNIQUES BEING PLANTED RIGHT THEN AND
7 THERE. AND OF COURSE, THIS IS TAKING PLACE NOW
8 SHORTLY AFTER HE'S BEEN TRAUMATIZED BY WHAT HE HAS
9 SEEN AND AT NIGHT BETWEEN 10:45 AND 2:30 AM THE NEXT
10 MORNING. SO AGAIN WHEN YOU TAKE ALL OF THAT INTO
11 ACCOUNT THIS WAS AN EXTREME INTERROGATION.

12 Q HOW OFTEN HAVE YOU BEEN ASKED TO TESTIFY AS AN
13 EXPERT ON FALSE CONFESSIONS?

14 A ABOUT 7-800 TO A THOUSAND TIMES.

15 MR. BRACKETT: MAY IT PLEASE THE
16 COURT. I'M GOING TO OBJECT TO THE NEXT LINE OF
17 QUESTIONING AS IMPROPER SELF-BOLSTERING OF HIS
18 TESTIMONY IF HE'S GOING TO GO INTO WHY HE DOES OR
19 DOESN'T TAKE THE CASE. I DON'T THINK THAT'S
20 NECESSARILY RELEVANT.

21 THE COURT: I SUSTAIN THE OBJECTION.

22 MR. BAITY: COURT'S INDULGENCE. NOTHING
23 FURTHER, YOUR HONOR. THANK YOU. PLEASE ANSWER ANY
24 QUESTIONS THE PROSECUTION WILL HAVE.

25 CROSS EXAMINATION BY MR. BRACKETT:

1 Q AFTERNOON.

2 A HI.

3 Q TWO BIG THINGS: TIME?

4 A YES.

5 Q AND PRESENTATION OF FALSE EVIDENCE?

6 A YES.

7 Q THIS WASN'T A PARTICULARLY HEINOUS AMOUNT OF

8 TIME IN THIS CASE, WAS IT?

9 A UH.

10 Q FOUR HOURS THAT ONE NIGHT, FROM 10:40 UNTIL

11 ABOUT 2:45, THAT'S NOT TOO LONG?

12 A WELL, THIS TIME, THIS WASN'T CONTINUOUS. HE WAS

13 QUESTIONED EARLIER IN THE DAY AND SUBMITTED TO

14 EXAMINATION SO HE HAD BEEN WITH THE POLICE FOR MANY

15 HOURS AND IT'S NOT JUST TIME BUT OF COURSE TIME OF

16 DAY.

17 Q ARE YOU SURE ABOUT THAT? HE HAD BEEN THERE

18 TWICE BEFORE FOR ABOUT AN HOUR EACH TIME. ONE TIME

19 WITH AN ELDERLY GENTLEMAN, OLDER GENTLEMAN DETECTIVE

20 WHO IS MORE LIKE A GRANDFATHER WHO DID A VERY

21 INFORMAL, INFORMATIONAL INTERVIEW, DIDN'T EVEN GET A

22 WRITTEN STATEMENT, JUST GOT A SUMMARY?

23 A RIGHT.

24 Q YOU GOT THAT, RIGHT?

25 A BUT KEEP IN MIND THE INTERROGATION THAT YOU ARE

1 REFERRING TO DIDN'T PRODUCE A CONFESSION.

2 Q NO.

3 THE COURT: KEEP IN MIND ISN'T AN ANSWER
4 TO THAT QUESTION. HE ASKED YOU A QUESTION.

5 Q IS THAT A FACT --

6 A THE INITIAL THREE AND A HALF HOUR PERIOD OF
7 INTERROGATION THAT YOU ARE QUESTIONING ABOUT FROM
8 10:45 TO ROUGHLY 2:30.

9 Q NO, SIR. I'M TALKING ABOUT EARLIER ---

10 THE COURT: LET ME JUST KIND OF INTERVENE
11 SO WE CAN GET ON TRACK. HE ASKED YOU ABOUT I THINK
12 SOMETHING ABOUT AN INTERVIEW WITH AN ELDERLY-TYPE
13 GENTLEMAN AND WAS IT A STATEMENT OR NOT AND NOW HE
14 DESERVES AN ANSWER. DID THAT HAPPEN, DO YOU KNOW
15 ABOUT IT, ISN'T THAT THE QUESTION?

16 Q YES, SIR.

17 A I DON'T KNOW THE AGE OF THE PEOPLE WHO WROTE
18 REPORTS BUT I ASSUME YOU ARE REFERRING TO DETECTIVE
19 BURRIS?

20 Q YES, SIR.

21 A OKAY.

22 Q YES, SIR. YOU ARE FAMILIAR WITH THAT STATEMENT?

23 A YES.

24 Q IT'S NOT EVEN A STATEMENT. IT'S A SUMMARY OF
25 THE INTERVIEW?

1 A YES. RIGHT.

2 Q VERY, VERY GENERIC, INFORMATIONAL, GATHERING
3 SOME INFORMATION?

4 A RIGHT.

5 Q THEN HE GOES HOME?

6 A RIGHT.

7 Q AND THEN HE COMES BACK AT 12:40?

8 A RIGHT.

9 Q AND DOES A VERY SHORT INFORMATIONAL INTERVIEW
10 AGAIN; AGAIN, NO FORMAL STATEMENT?

11 A RIGHT.

12 Q CORRECT?

13 A RIGHT.

14 Q JUST A BRIEF SUMMARY. DETECTIVE BURRIS,
15 DETECTIVE HERRING, NON-ACCUSATORY, THEN HE GOES HOME?

16 A UH-HUH.

17 Q AND HE STAYS HOME FROM ABOUT ONE O'CLOCK THAT
18 AFTERNOON UNTIL ABOUT 10:45 THAT NIGHT?

19 A THAT'S RIGHT.

20 Q WITH HIS FAMILY.

21 A TO ABOUT TEN O'CLOCK.

22 Q HE COULD SLEEP, TAKE A NAP, RELAX. IF HE WAS
23 TIRED, DISTRAUGHT, GET CONSOLED, WHATEVER?

24 A UH-HUH.

25 Q EAT, RIGHT?

1 A RIGHT.

2 Q THEN FROM 10:45 TO ABOUT 2:45 THEY START REALLY
3 INTERROGATING HIM?

4 A YES.

5 Q AND THE FIRST HOUR OR SO OF THAT IS REALLY NOT
6 MUCH OF AN INTERROGATION, IT'S MORE OF AN INTERVIEW,
7 YOU'LL CONCEDE TO THAT SURELY?

8 A I'M NOT SURE I CAN CUT IT AT AN HOUR, BUT THERE
9 IS THE ELEMENTS OF INTERROGATION APPEAR EARLY ON.

10 Q WELL, HE TALKS FOR A LONG TIME ABOUT CHICKEN
11 RUNS TO LANCASTER AND CHRISTMAS ORNAMENTS AT
12 SALVATION ARMY?

13 A RIGHT.

14 Q AND HE RAMBLES ON FOR A LONG TIME?

15 A RIGHT.

16 Q AND THEY LET HIM GO. THEY ARE LISTENING,
17 HEARING HIM OUT, BEING PATIENT, RIGHT? AND THEN THEY
18 START TO GET A LITTLE FRUSTRATED, RIGHT?

19 A YES.

20 Q ISN'T THAT A FAIR CHARACTERIZATION --

21 A BECAUSE HE'S CONTINUING TO DENY INVOLVEMENT.

22 Q NOT DENY INVOLVEMENT. HE'S NOT EVEN TALKING
23 ABOUT THE CASE. ISN'T THAT WHAT THEY SAY ON THE
24 TAPE, YOU'RE NOT TALKING ABOUT THE CASE, LET'S --
25 DIDN'T YOU HEAR SEVERAL TIMES LET'S, LET'S TALK ABOUT

1 AMANDA. ISN'T THAT WHAT YOU HEARD JERRY WALDROP SAY?

2 A YES, I HEARD A LOT OF THAT FOLLOWING FROM HIS
3 TALKING ABOUT ALL THAT HE KNEW, THE LAST I REMEMBER,
4 HAPPENED THE NIGHT BEFORE. HE WASN'T BEING EVASIVE.
5 HE IS SIMPLY TALKING ABOUT THE ONLY TIMEFRAME HE SAYS
6 HE KNEW ANYTHING ABOUT AND THAT WAS DEFINED AS
7 EVASIVE.

8 Q WELL, SIR --

9 A I DON'T KNOW WHAT HE WAS SUPPOSED TO --- IF IN
10 FACT AN INNOCENT MAN WAS BEING INTERROGATED WHAT WAS
11 AN INNOCENT MAN SUPPOSED TO SAY ABOUT HIS INVOLVEMENT
12 WHEN HE HAD NONE.

13 Q WELL, SIR, COMING BACK TO MY MAIN THRUST OF THE
14 TIME ISSUE, THE REAL INTERROGATION WASN'T UNTIL 10:45
15 THAT NIGHT --

16 A THAT'S RIGHT.

17 Q THAT'S WHEN IT STARTED. THE OTHER STUFF IS JUST
18 SITTING AROUND, HE WENT HOME --

19 A CORRECT.

20 Q THAT'S NOT. SO I MEAN WHEN WE TALK ABOUT
21 INTERROGATION TIME, REALLY 10:45 TO 2:45, FOUR HOUR
22 PERIOD?

23 A CORRECT.

24 Q THAT'S WHAT WE'RE TALKING ABOUT.

25 A CORRECT.

1 Q AND THAT'S NOT EXCESSIVE?

2 A THAT'S NOT EXCESSIVE ALTHOUGH AT 10:45 TO 2:45
3 THE TIME OF DAY IS ANOTHER ISSUE.

4 Q YES, SIR. BUT HE NEVER COMPLAINED AND SAID, I'M
5 TIRED, CAN I GO TO BED; HE NEVER GAVE ANY INDICATION
6 ON THAT TAPE, CORRECT?

7 A NO. NO, BUT DOES A SUSPECT HAVE TO COMPLAIN IN
8 ORDER TO ---

9 THE COURT: LET'S GO BACK JUST A MINUTE.
10 WE'RE GOING TO MOVE A LOT QUICKER IF YOU QUIT ASKING
11 HIM QUESTIONS AND ANSWER THE QUESTIONS HE ASKS. HE'S
12 THE ATTORNEY. YOU'RE THE WITNESS.

13 A YEAH. IT WAS THREE AND A HALF, FOUR HOURS.

14 Q NOT EXCESSIVE?

15 A RIGHT.

16 Q OKAY. AND THEN HE'S PUT INTO A CELL AND HE GOES
17 TO BED, GOES TO SLEEP? YOU AWARE OF THAT?

18 A IT'S NOT CLEAR HOW MUCH SLEEP HE GOT BUT YES.

19 Q WELL ---

20 A AND HE WAS ARRAIGNED AT 4:21 SO THE BED DOESN'T
21 BEGIN AT 2:30.

22 Q NO, SIR. HE WAS SERVED HIS WARRANT. HE WASN'T
23 TAKEN IN FRONT OF A JUDGE. DOES THAT HELP YOU
24 CLARIFY THAT?

25 A THERE IS A THREE O'CLOCK WARRANT AND ARRAIGNED

1 AT 4:21.

2 Q NO, SIR. THERE WAS NO ARRAIGNMENT. THERE WAS
3 SERVICE OF A WARRANT. LES HERRING WENT IN AND HANDED
4 HIM A WARRANT AND SAID YOU ARE UNDER ARREST FOR
5 MURDER, HERE'S YOUR WARRANT, AND HE GOES BACK TO BED.
6 THAT WAS LES HERRING'S --

7 MR. BAITY: YOUR HONOR, I AM GOING TO
8 OBJECT. HE IS NOT ASKING HIM A QUESTION. HE'S
9 ARGUING WITH HIM I BELIEVE.

10 THE COURT: I THINK HE'S ASKING A
11 QUESTION. HE'S ASKING HIM WHETHER OR NOT HE KNOWS
12 CERTAIN INFORMATION.

13 Q ARE YOU AWARE OF THAT?

14 A I'M AWARE THAT HE WAS ARRESTED AT THAT POINT.

15 Q OKAY. THEN THAT MAKES A LITTLE BIT OF A
16 DIFFERENCE IF HE WASN'T TAKEN AND THERE WAS A BIG
17 LEGAL PROCEEDING AT FOUR O'CLOCK IN THE MORNING, HE
18 WAS JUST SERVED A WARRANT IN HIS CELL?

19 A YES.

20 Q THAT'S NOT AS BAD AS BEING HAULED INTO A
21 COURTROOM, BROUGHT BEFORE A JUDGE, AND THEN HE WENT
22 BACK TO BED, RIGHT?

23 A YES.

24 Q OKAY?

25 A WE DON'T KNOW HOW MUCH SLEEP HE GOT, BUT YES,

1 SIR.

2 Q WELL REGARDLESS OF THAT, FOUR HOURS. NOW ALL OF
3 A SUDDEN IT'S NOT HOURS AND HOURS OF INTERVIEWS SO IS
4 IT SAFE TO SAY TIME ISN'T REALLY THAT MUCH OF AN
5 ISSUE IN THIS CASE?

6 A NO, BECAUSE THERE IS NOT A CONFESSION THAT COMES
7 AFTER FOUR HOURS. THE CONFESSION COMES AFTER THAT
8 ADDITIONAL TIME THE NEXT MORNING WHEN HE NOW GOES
9 INTO A SECOND SESSION.

10 Q AND THAT'S WHERE WE GET THE PRESENTATION OF
11 FALSE EVIDENCE?

12 A YES.

13 Q IS THAT WHAT YOU ARE CONTENDING?

14 A YES.

15 Q THE POLYGRAPH?

16 A THE POLYGRAPH.

17 Q AND IN FACT YOU'VE BEEN WORKING ON THIS CASE FOR
18 AWHILE NOW, HAVEN'T YOU?

19 A YES.

20 Q HOW LONG HAVE YOU BEEN ON THIS CASE?

21 A I ESTIMATE SIX MONTHS.

22 Q SIX MONTHS. AND YOU HAD A CONVERSATION WITH MR.
23 BAITY SOMETIME IN AUGUST AND YOU TOLD HIM WE NEED TO
24 GET SOMEBODY WHO WILL SAY THAT POLYGRAPH WAS WRONG,
25 DIDN'T YOU?

1 A I DON'T KNOW IF THE POLYGRAPH IS WRONG OR NOT.

2 THE COURT: WELL, NO, THAT'S --

3 A ABSOLUTELY NOT. NO. THE ANSWER IS NO.

4 THE COURT: ALL RIGHT. JUST ANSWER IT.

5 Q YOU DID NOT TELL MR. BAITY TO FIND AN EXPERT TO
6 COME IN AND SAY THAT POLYGRAPH WAS WRONG?

7 A CORRECT.

8 Q MAY I HAVE THAT E-MAIL? THE E-MAIL THAT YOU
9 SENT TO YOUR EXPERT MR. HONTS?

10 THE COURT: HONTS.

11 MR. BAITY: I GAVE IT TO YOU.

12 MR. BRACKETT: I GAVE IT BACK TO YOU.

13 MR. BAITY: I DON'T RECALL RECEIVING IT.

14 I'LL BE GLAD TO LOOK FOR IT, YOUR HONOR.

15 MR. BRACKETT: I WOULD LIKE TO HAVE THAT
16 E-MAIL.

17 THE COURT: WE HAVE BEEN GOING ON FOR
18 AWHILE. WE'LL TAKE A SHORT BREAK WHILE WE FIND THIS.

19 (THE JURY EXITS THE COURTROOM AT 04:36 PM)

20 THE COURT: BEFORE WE TAKE A BREAK,
21 DOCTOR, I'M NOT CHIDING YOU, BUT YOU'VE TESTIFIED
22 BEFORE AND THE FORUM HERE, THIS ISN'T A SCIENTIFIC
23 DEBATE, THE FORUM IS HE ASKS A QUESTION AND YOU
24 ANSWER IT. IF YOU HAVE AN EXPLANATION AFTER YOU
25 ANSWER YES OR NO YOU CAN EXPLAIN IT.

1 A OKAY.

2 THE COURT: AGAIN I'M NOT TRYING TO CHIDE
3 YOU BUT IT APPEARS TO THE COURT THAT WHEN HE ASKS A
4 QUESTION YOU LAUNCH INTO A DEFENSE OF YOUR ANSWER
5 BEFORE YOU EVEN ANSWER THE QUESTION, SO ANSWER THE
6 QUESTION THEN YOU CAN EXPLAIN.

7 A OKAY.

8 THE COURT: ALL RIGHT. WE'LL TAKE A
9 BREAK.

10 (COURT'S IN RECESS AT 04:37 PM.)

11 (COURT RESUMES AT 04:51 PM)

12 THE COURT: READY FOR THE JURY.

13 MR. BRACKETT: YES, SIR.

14 THE COURT: BRING IN THE JURY.

15 (THE JURY RETURNS TO THE COURTROOM AT
16 04:51 PM.)

17 THE COURT: ALL RIGHT.

18 MR. BRACKETT: THANK YOU, YOUR HONOR.

19 CROSS EXAMINATION BY MR. BRACKETT:

20 Q SO, DR. KASSIN, DIDN'T YOU TELL MR. BAITY THAT
21 THE POLYGRAPH IS THE MOST IMPORTANT PIECE OF EVIDENCE
22 IN THIS CASE BESIDES THE DNA AND THAT HE NEEDED TO
23 GET AN EXPERT ON THAT ISSUE?

24 A YES.

25 Q YOU DID TELL HIM THAT. AND THIS WAS IN LATE

1 AUGUST OF THIS YEAR?

2 A THAT SOUNDS RIGHT, YES, SIR.

3 Q OKAY. NOW YOU DIDN'T COME DOWN HERE FOR FREE
4 EITHER, DID YOU?

5 A NO.

6 Q OKAY. YOU'RE NOT GETTING PAID BY THE WORD, ARE
7 YOU?

8 A EXCUSE ME?

9 Q YOU'RE NOT GETTING PAID BY THE WORD, ARE YOU?

10 A AM I WORDY?

11 Q NO, BY THE WORD?

12 A NO. NO, I'M NOT.

13 Q HOW MUCH DO YOU GET PAID?

14 A \$425 AN HOUR.

15 Q I'M SORRY?

16 A \$425 AN HOUR.

17 Q \$425 AN HOUR?

18 A YES.

19 Q HOW MANY HOURS HAVE YOU GOT IN THIS CASE, SIR?

20 A PROBABLY 30-35.

21 Q INCLUDING THE TESTIMONY TODAY?

22 A I HAVEN'T GONE BACK TO REDO IT BUT PROBABLY
23 ABOUT THAT AND I DON'T CHARGE EVERY MINUTE AND MY
24 TESTIMONY IS AT THE SAME RATE AS MY PREPARATION.

25 Q SO --

1 A IT'S MY TIME THAT I GET PAID FOR.

2 Q ---AM I GUESSING ABOUT 14 OR \$15,000?

3 A THAT'S PROBABLY HIGH IS MY GUESS.

4 Q WELL, 30 HOURS WOULD BE ABOUT \$13,000?

5 A OKAY.

6 Q ON THE LOW END --

7 A OKAY.

8 Q ---WOULD BE ABOUT 13?

9 A OKAY.

10 MR. BRACKETT: NOTHING FURTHER.

11 THE COURT: ALL RIGHT.

12 CROSS EXAMINATION BY MR. GREELEY:

13 Q PROFESSOR KASSIN, GOOD AFTERNOON.

14 A GOOD AFTERNOON.

15 Q I'M LELAND GREELEY. I REPRESENT MR. SANDERS IN
16 THIS CASE. JUST BRIEFLY, I WANT TO GO BACK TO THE
17 SECOND TYPE OF FALSE CONFESSION THAT YOU TALKED
18 ABOUT, THE COERCED COMPLIANT?

19 A CORRECT.

20 Q OKAY. SEE IF I UNDERSTAND THAT CORRECTLY.

21 WOULD THAT BE A SITUATION WHERE LET'S SAY A PERSON
22 WAS ACCUSED OF SOMETHING AND MAYBE THEY WENT AHEAD
23 AND ADMITTED IT SO THEY COULD GO BACK TO WORK TO FEED
24 THEIR CHILDREN?

25 A YES.

1 Q IF NOT ADMITTING IT WAS GOING TO KEEP THEM FROM
2 WORKING?

3 A YES. NOW AGAIN IT STRIKES PEOPLE AS ODD, BUT
4 MANY FALSE CONFESSORS SAY I CONFESSED IN ORDER TO GO
5 HOME IF THEY THINK THAT'S WHAT IS GOING TO HAPPEN,
6 BUT THAT STATEMENT SHOWS THAT MINIMIZATION WORKED,
7 THAT IN FACT THEY THINK THAT WHAT THEY DID WAS NOT SO
8 BAD AND WHAT THEY ARE CONFESSING TO IS NOT SO BAD.

9 Q RIGHT. AND THEY HAVE A HIGHER OBLIGATION THAT
10 THEY FEEL THEY NEED TO DO?

11 A YES.

12 Q SO THEY WILL MAKE THAT CONFESSION SO THAT THEY
13 CAN, THEY ARE ENABLED TO GO AND MEET THIS OTHER
14 OBLIGATION THEY THINK IS MORE IMPORTANT?

15 A CORRECT.

16 Q YOU MENTION THAT IN REGARDS TO THE THIRD TYPE
17 THAT YOU TESTIFIED ABOUT IT'S IMPORTANT TO KNOW AS
18 MUCH AS YOU CAN ABOUT THE PROCESS?

19 A YES.

20 Q OKAY. AND I BELIEVE THAT THAT'S WHEN YOU TALKED
21 ABOUT HOW IT WOULD BE NICE IF YOU WERE ABLE TO EITHER
22 HAVE AN AUDIO RECORDING OR EVEN A VIDEO TAPE
23 RECORDING OF EVERYTHING?

24 A CORRECT.

25 Q BECAUSE THE MORE INFORMATION YOU HAVE ABOUT THE

1 PROCESS THE MORE YOU ARE GOING TO BE ABLE TO ANALYZE
2 IT?

3 A CORRECT.

4 Q AND MORE ACCURATELY, IS THAT CORRECT?

5 A CORRECT.

6 Q AND YOU'VE BEEN ON THIS CASE SIX MONTHS AND
7 WOULD YOU TELL ME AGAIN WHAT YOU WERE PROVIDED IN
8 THIS CASE? I KNOW YOU'VE GONE THROUGH IT AT LEAST
9 THREE TIMES BUT.

10 A IT'S OKAY.

11 Q I WANT TO MAKE SURE THAT I'M NOT MISSING
12 SOMETHING.

13 A I WAS PROVIDED THE POLICE REPORTS OF THE FIRST
14 DAYS.

15 Q OKAY.

16 A I WAS PROVIDED THE AUDIO TAPE AND TRANSCRIPT OF
17 THAT FIRST INTERROGATION SESSION BEGINNING 10:45 P.M.
18 ON THE 29.

19 Q ALL RIGHT.

20 A I WAS PROVIDED WITH DETECTIVE BAKER'S POLYGRAPH
21 REPORT IN WHICH HE SUMMARIZES AN ORAL CONFESSION HE
22 RECEIVED. I WAS PROVIDED WITH MR. COPE'S STATEMENT
23 THAT HE PROVIDED SHORTLY AFTER THAT. I WAS PROVIDED
24 WITH A HANDWRITTEN STATEMENT SHORTLY AFTER THAT BY
25 DETECTIVE BLACKWELDER IN WHICH HE MADE SOME

1 ADDITIONAL INQUIRY ABOUT A BROOM.

2 Q OKAY.

3 A I RECEIVED THE 9:45 A.M. STATEMENT OF DECEMBER
4 THIRD, THE VIDEO TAPE THAT FOLLOWED ON DECEMBER
5 THIRD, THE VIDE TAPE RE-ENACTMENT.

6 Q ALL RIGHT.

7 A AND THE STATEMENT THAT FOLLOWED THE VIDEO TAPE
8 RE-ENACTMENT THAT CAPTAIN CABINESS AND DETECTIVE
9 BLACKWELDER HAD TYPED UP.

10 Q SHE TYPED UP.

11 A I ALSO RECEIVED PRIOR TESTIMONY FROM DETECTIVE
12 BLACKWELDER.

13 Q OKAY.

14 A DETECTIVE BAKER, CAPTAIN CABINESS, AND I KNOW I
15 AM MISSING SOMEONE.

16 Q OKAY. AND THAT WOULD HAVE BEEN TESTIMONY IN
17 ANOTHER COURT PROCEEDING?

18 A YES.

19 Q ANYTHING ELSE YOU RECEIVED?

20 A CAN I CHECK?

21 Q YES, PLEASE DO. ANY WRITTEN STATEMENTS, ANY
22 NOTES?

23 A I DON'T KNOW IF I MENTIONED POLICE REPORTS FROM
24 BURRIS AND HERRING.

25 Q YOU DID NOT.

1 A THAT I DID RECEIVE, YES.

2 Q YES.

3 A THAT'S IT. AND THEN WHATEVER INFORMATION, I
4 RECEIVED A LOT OF INFORMATION ORALLY.

5 Q FROM?

6 A FROM ATTORNEYS BAITY AND MORTON.

7 Q SO YOU RECEIVED INFORMATION FROM ATTORNEYS BAITY
8 AND MORTON?

9 A CORRECT.

10 Q ANY FROM ATTORNEY WOOD?

11 A I DON'T THINK ANY FROM ATTORNEY WOOD.

12 Q AND ANY FROM ATTORNEY SMITH?

13 A NO.

14 Q OKAY.

15 A NO.

16 Q IS THIS YOUR FIRST VISIT TO YORK COUNTY?

17 A I BELIEVE IT IS.

18 Q IT IS. IS THIS YOUR FIRST VISIT ON THIS
19 PARTICULAR CASE?

20 A YES.

21 Q OKAY. NOW WOULD YOU LOOK IN YOUR BRIEFCASE AND
22 TELL ME IF YOU HAVE NOTES FROM THE DATE AND TIME THAT
23 YOU SPOKE WITH MR. COPE?

24 A I DID NOT SPEAK TO MR. COPE.

25 Q SIR?

1 A I DID NOT SPEAK WITH MR. COPE.

2 Q NOW YOU JUST TESTIFIED IT'S IMPORTANT TO KNOW AS
3 MUCH AS YOU CAN ABOUT THIS PROCEEDING AND THIS
4 PROCESS AND THAT'S WHY YOU GOT THAT INFORMATION, IS
5 THAT CORRECT?

6 A CORRECT.

7 Q AND MR. COPE WAS THE CENTRAL ISSUE OF THIS
8 PROCESS, IS THAT CORRECT?

9 A CORRECT.

10 Q AND I BELIEVE THAT YOU SAID IT WAS IMPORTANT TO
11 DETERMINE THE, FIRST OF ALL, IF A PERSON WAS
12 VULNERABLE, AND SECOND OF ALL WHAT THAT VULNERABILITY
13 MIGHT HAVE BEEN DERIVED FROM, IS THAT CORRECT?

14 A CORRECT.

15 Q AND YOU MENTION WHETHER A PERSON IS MENTALLY
16 RETARDED, YOU DON'T HAVE ANY INFORMATION THAT
17 MR. COPE WAS MENTALLY RETARDED OR IS MENTALLY
18 RETARDED OR HAS BEEN IN THE PAST?

19 A NO.

20 Q YOU DON'T HAVE ANY INFORMATION MR. COPE WAS
21 DRUNK DURING THIS PERIOD OF TIME OR INCAPACITATED DUE
22 TO ILLEGAL NARCOTICS?

23 A CORRECT.

24 Q AND I BELIEVE YOU TESTIFIED ON DIRECT THAT MR.
25 COPE WAS TRAUMATIZED BY THIS PROCESS, IS THAT

1 CORRECT?

2 A CORRECT.

3 Q YOU NEVER ASKED HIM, DID YOU?

4 A NO.

5 Q YOU NEVER ASKED MR. COPE IF HE WAS TRAUMATIZED,
6 DID YOU?

7 A (NO RESPONSE.)

8 Q SIR?

9 A I DID NOT. IT IS ALSO --

10 Q YOU HEARD THAT --

11 MR. BAITY: YOUR HONOR, HE HAS AN
12 OPPORTUNITY TO EXPLAIN HIS ANSWER.

13 THE COURT: GO AHEAD.

14 A MY OPINION ABOUT THE RELEVANCE OF THE PRINCIPLES
15 THAT I TALKED ABOUT HAVE NOTHING TO DO WITH MR. COPE.

16 Q WELL, ISN'T MR. COPE THE WHOLE FOCUS OF YOUR
17 ANALYSIS?

18 A NO.

19 Q AS TO WHETHER HE WAS TRAUMATIZED?

20 A NO. NO. I NEVER DID AN ANALYSIS OF WHETHER HE
21 WAS TRAUMATIZED. IT WAS NEVER MY INTENTION. MY
22 INTENTION WAS TO INDICATE WHAT ARE THE SITUATIONAL
23 FACTORS OF INTERVIEWING AND INTERROGATION THAT PUTS
24 PEOPLE IN GENERAL AT RISK AND AS A SOCIAL, I'M NOT A
25 CLINICAL PSYCHOLOGIST, I'M NOT A PSYCHIATRIST. I

1 DON'T DO TESTING.

2 Q OKAY.

3 A AND I DON'T DO DIAGNOSIS SO THAT WOULD BE
4 OUTSIDE OF MY REALM. IF I THOUGHT THIS WERE A CASE
5 WHERE MR. COPE WAS THE ISSUE AND HIS MENTAL STATE WAS
6 THE ISSUE I WOULD HAVE REFERRED IT TO A CLINICAL
7 PSYCHOLOGIST.

8 Q BUT YOU TESTIFIED MR. COPE WAS TRAUMATIZED,
9 CORRECT?

10 A I'M NOT SURE THAT I DID. I THINK I TALKED IN
11 HYPOTHETICAL TERMS ABOUT A PERSON IN THIS CASE MIGHT
12 BE TRAUMATIZED AND THAT MIGHT BE ONE OF THOSE FACTORS
13 THAT WOULD MAKE HIM VULNERABLE.

14 Q ALL RIGHT.

15 A NO, BUT I DIDN'T.

16 Q SO YOU DON'T HAVE ANY INFORMATION --

17 A NO.

18 Q ---ABOUT THAT?

19 A NO.

20 Q AND YOU NEVER TALK, IN SIX MONTHS YOU NEVER
21 TALKED TO MR. COPE AND THEY'VE NEVER OFFERED HIM TO
22 TALK TO YOU?

23 A I SAID EARLIER I TRY TO RELY ON STRICTLY
24 OBJECTIVE INFORMATION, EITHER THE TAPES OR SWORN
25 TESTIMONY. I TRY NOT TO TAKE SELF-SERVING REPORTS

1 FROM A DEFENDANT AS WORD.

2 MR. GREELEY: THANK YOU. NOTHING FURTHER.

3 THE COURT: MR. BAITY.

4 MR. BAITY: JUST ONE, YOUR HONOR.

5 REDIRECT EXAMINATION BY MR. BAITY:

6 Q DR. KASSIN, I WANT TO SHOW YOU A COPY OF THE
7 MEMORANDUM THAT MR. BRACKETT MADE REFERENCE TO, TAKE
8 A MOMENT TO LOOK AT THAT. HAVE YOU EVER SEEN THAT
9 MEMORANDUM?

10 A THIS IS YOUR E-MAIL NOTE TO PROFESSOR HONTS.

11 Q YES. HAVE YOU EVER SEEN THAT BEFORE?

12 A I DON'T THINK SO.

13 Q ALL RIGHT, SIR. PLEASE TAKE A MOMENT TO SCAN IT
14 AND PLEASE TELL ME, DOES IT NOT MENTION YOU IN THERE
15 A FEW TIMES?

16 A YES, IT DOES.

17 Q PLEASE TAKE A MOMENT TO LOOK AT WHAT IT SAYS
18 ABOUT YOU?

19 A OKAY.

20 Q NOW DR. KASSIN, DO YOU BELIEVE THAT THAT
21 MEMORANDUM IS A FAIR AND ACCURATE DESCRIPTION OF OUR
22 CONVERSATION, YOU AND I, THAT WE HAD?

23 A YES.

24 Q CONCERNING THE POLYGRAPH?

25 A YES.

1 Q AND DOES THAT MEMORANDUM INDICATE THAT WE'RE OF
2 THE SHARED BELIEF THAT THE POLYGRAPH IS A VERY
3 IMPORTANT PIECE OF INFORMATION IN THIS TRIAL?

4 A YES.

5 Q DOES THAT MEMORANDUM AT ANY TIME SUGGEST THAT
6 YOU SUGGESTED TO ME THAT I FIND AN EXPERT WHO IS
7 GOING TO FIND THAT THE POLYGRAPH WAS IMPROPERLY
8 GRADED?

9 A NO, I WOULDN'T DO THAT.

10 Q DID YOU EVER DO THAT?

11 A NO.

12 Q DOES THAT MEMORANDUM SUGGEST POSSIBLE OR DR.
13 HONTS AS AN EXPERT IN THE FIELD OF POLYGRAPHS?

14 A YES.

15 Q ALL RIGHT. AND IT DOES FAIRLY SET FORTH OUR
16 CONVERSATION WITH RESPECT TO DR. HONTS?

17 A YES.

18 MR. BAITY: YOUR HONOR, AT THIS POINT I
19 MOVE THAT IT BE MOVED INTO EVIDENCE?

20 MR. BRACKETT: OBJECTION, YOUR HONOR. I
21 THINK THERE IS SOME ISSUES ON THIS.

22 MR. GREELEY: OBJECTION.

23 THE COURT: I SUSTAIN THE OBJECTION. YOU
24 MAY MAKE IT A COURT'S EXHIBIT.

25 MR. BAITY: THANK YOU, YOUR HONOR.

1 Q DR. KASSIN, IS IT NECESSARY THAT SOMEONE BE
2 MENTALLY RETARDED OR DRUNK OR MENTALLY INCAPACITATED
3 IN ANY WAY TO BE, TO FALL VICTIM TO A FALSE
4 CONFESSION?

5 A NO.

6 Q IS THAT NECESSARY TO THE ANALYSIS OF A
7 CONFESSION BEING FALSE THAT THE PERSON BE SOMEHOW
8 MENTALLY IMPAIRED OR ANYTHING SUCH AS THAT?

9 A NO, SOME FALSE CONFESSIONS OCCUR BECAUSE OF
10 MENTAL IMPAIRMENT. IF THIS WERE A CASE WHERE THAT
11 WAS THE RISK FACTOR I WOULD HAVE REFERRED YOU TO A
12 CLINICAL PSYCHOLOGIST.

13 (COURT'S EXHIBIT NUMBER NINE E-MAIL
14 MARKED FOR EVIDENCE.)

15 Q HAVE YOU STUDIED CASES OF FALSE CONFESSION WHERE
16 THERE WAS NO MENTAL IMPAIRMENT, NO INTOXICATION, NONE
17 OF THE FACTORS THAT MR. GREELEY WAS ASKING YOU?

18 A YES, THAT IS WHAT SOCIAL PSYCHOLOGISTS STUDY IS
19 THE WAY IN WHICH WE ARE PROFOUNDLY INFLUENCED BY
20 SOCIAL SITUATIONS AND FIGURES OF AUTHORITY. THAT'S
21 WHAT WE STUDY AND IT HAPPENS TO NORMAL ORDINARY
22 PEOPLE.

23 Q AGAIN YOUR EXAMINATION OF THE MATERIALS THAT
24 WERE PROVIDED TO YOU TODAY, I BELIEVE I ASKED YOU,
25 BUT DID NOT INCLUDE AN ANALYSIS OR INTERVIEW WITH

1 MR. COPE?

2 A NO.

3 Q WERE YOU MORE FOCUSED ON THE TECHNIQUES THAT
4 WERE USED IN THESE INTERVIEWS?

5 A YES, BECAUSE I'M INTERESTED IN THE GENERAL
6 PRINCIPLES OF INFLUENCE.

7 Q AND MR. COPE HAD NOTHING TO DO WITH THOSE
8 TECHNIQUES USED AGAINST HIM, THAT WAS A DECISION MADE
9 BY THE POLICE?

10 A THAT'S RIGHT.

11 Q DR. KASSIN, HAVE YOU RECEIVED 14 OR \$15,000
12 FROM, FOR YOUR PAYMENT IN THIS CASE?

13 A NO.

14 Q DO YOU ALWAYS CHARGE THE FULL AMOUNT THAT YOU
15 COULD IN ANY CASE?

16 MR. BRACKETT: OBJECTION AS TO RELEVANCY.

17 THE COURT: I SUSTAIN THE OBJECTION.

18 MR. BAITY: ALL RIGHT.

19 Q DO YOU TESTIFY FOR A LIVING?

20 A THIS IS, I CAN PROBABLY COUNT STILL ON TWO HANDS
21 THE NUMBER OF TIMES I HAVE TESTIFIED. I DON'T DO IT
22 FOR A LIVING. THE CALLS I GET ARE CALLS THAT I
23 PRIMARILY REJECT AND SEND ELSEWHERE.

24 Q THANK YOU, DOCTOR.

25 RECROSS EXAMINATION BY MR. BRACKETT:

1 Q YOU PREVIOUSLY TESTIFIED THAT YOU TESTIFIED
2 ABOUT 30 TIMES?

3 A NO. I AGREED TO TESTIFY ABOUT 30 TIMES. I'VE
4 TESTIFIED TEN OR TWELVE.

5 Q ALL RIGHT. NOW THE MEMO THAT YOU WERE SHOWN.

6 A YES.

7 Q OKAY. IN THE PART THAT RELATES TO YOU.

8 A YES.

9 Q WE HAVE RETAINED, ASSOCIATED SAUL KASSIN OF
10 WILLIAMS COLLEGE TO TESTIFY AS OUR FALSE CONFESSION
11 EXPERT, CORRECT?

12 A CORRECT.

13 Q WE EXPECT THE TRIAL TO BEGIN THE TUESDAY AFTER
14 LABOR DAY. SAUL SUGGESTED THAT I CONTACT YOU TODAY
15 FRIDAY, AUGUST 27.

16 A OKAY.

17 Q DR. KASSIN TELLS ME THAT THE POLYGRAPH IS THE
18 MOST IMPORTANT PIECE OF EVIDENCE IN THE CASE BESIDES
19 DNA.

20 A OKAY.

21 Q I NEED SOMEONE WHO CAN TESTIFY ABOUT IMPROPER
22 POLYGRAPH USE. COULD YOU POSSIBLY HELP US.

23 A OKAY.

24 Q ISN'T THAT WHAT THAT SAYS?

25 A YES, SIR.

1 MR. BRACKETT: NO FURTHER QUESTIONS.

2 MR. GREELEY: I DON'T HAVE ANYTHING
3 FURTHER.

4 THE COURT: NO. NO. THAT'S IT. ALL
5 RIGHT. THANK YOU. CAN THIS WITNESS BE EXCUSED.

6 MR. BRACKETT: CERTAINLY.

7 MR. GREELEY: NO OBJECTION.

8 MR. BAITY: YES, YOUR HONOR.

9 THE COURT: ALL RIGHT. THANK YOU FOR YOUR
10 TIME. WE APPRECIATE IT. HAVE A SAFE TRIP HOME.

11 MR. KASSIN: THANKS.

12 THE COURT: CALL YOUR NEXT WITNESS.

13 MR. SMITH: BILLY COPE CALLS B. J.
14 BARROWCLOUGH.

15 THE COURT: ALL RIGHT.

16 B. J. BARROWCLOUGH, BEING FIRST DULY
17 SWORN TESTIFIES AS FOLLOWS.

18 DIRECT EXAMINATION BY MR. SMITH:

19 Q AFTERNOON, MR. BARROWCLOUGH. HOW YOU DOING?

20 A OKAY.

21 Q GOOD. IF YOU WOULD STATE FULL NAME FOR THE
22 COURT REPORTER PLEASE?

23 A BRYSON JAN BARROWCLOUGH.

24 Q IF YOU WOULD SPELL YOUR LAST?

25 A B-A-R-R-O-W-C-L-O-U-G-H.

1 STATE OF SOUTH CAROLINA }
2 COUNTY OF YORK }

3 I, JANET RICH, OFFICIAL COURT REPORTER FOR THE
4 SIXTEENTH CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
5 CERTIFY THAT THE FORGOING IS A TRUE, ACCURATE, AND COMPLETE
6 TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE
7 INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO
8 APPEAL, IN THE CIRCUIT COURT FOR YORK COUNTY, SOUTH CAROLINA,
9 ON THE 16TH DAY OF SEPTEMBER 2004.

10 I DO FURTHER CERTIFY THAT I AM NEITHER KIN, COUNSEL,
11 NOR INTEREST TO ANY PARTY HERETO.

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Janet M Rich

JANET M. RICH