

IN THE COURT OF COMMON PLEAS  
COUNTY OF SUMMIT

STATE OF OHIO, ) CASE NO. 06-09-3248  
 )  
Plaintiff, )  
 )  
vs. ) TRANSCRIPT OF  
 ) PROCEEDINGS  
SAHIL SHARMA, )  
 )  
Defendant. ) VOLUME I (Of 2 Volumes)

- - -  
**APPEARANCES:**

MARGARET KANELIS, Assistant County Prosecutor,  
On behalf of the State of Ohio.

KIRK MIGDAL, Attorney at Law,  
On behalf of the Defendant.

- - -  
BE IT REMEMBERED that upon the hearing of  
the above-entitled matter in the Court of Common  
Pleas, Summit County, Ohio, before THE HONORABLE  
JUDY HUNTER, Judge Presiding, commencing on April  
2, 2007, the following proceedings were had,  
being a Transcript of Proceedings:

TERRI G. SIMS, RMR  
Official Court Reporter  
Summit County Courthouse  
209 South High Street  
Akron, OH 44308

I N D E X

DIRECT CROSS REDIRECT RECROSS

DEFENDANT'S WITNESSES:

William D. Evans, II	21	61	82/96	98
Steven Stechschulte	100	118	128	--
Louis Rovner, Ph.D.	134	209	--	--

OPENING STATEMENTS:

By Mr. Migdal: 3, 17

By Ms. Kanellis: 10

CLOSING ARGUMENTS:

By Mr. Migdal: 260, 263

By Ms. Kanellis: 259

MOTIONS:

State's Motion for Separation of Witnesses: 19

Defendant's Motion to Admit Exhibits: 271

EXHIBITS:

- A Report of William Evans
- B Report of Steven Stechschulte
- C Report of Louis Rovner, Ph.D.
- D *The Accuracy of Physiological Detection of Deception for Subjects with Prior Knowledge*  
By Louis Rovner, Ph.D.

\* \* \*

1 \*\*\*\*\*Monday, April 2, 2007

2 P R O C E E D I N G S

3 - - -

4 THE COURT: We're assembled this  
5 morning on the case of State v. Sharma.  
6 This is Case Number 06-09-3248.

7 We're here this morning assembled  
8 for hearing on the defendant's motion to  
9 admit polygraph examinations. And, of  
10 course, that implicates Evidence Rule 702  
11 and hearing is necessary to determine  
12 whether or not these tests should be  
13 permitted into evidence. And so it's the  
14 defendant's motion and burden to go  
15 forward here today.

16 I'd like each side to make brief  
17 opening remarks to set the stage to call  
18 attention to the Court the key issues and  
19 to make a record in this case because it  
20 is a case that will have major  
21 implications if the motion is granted.

22 And so let us proceed. We'll start  
23 with Mr. Migdal.

24 MR. MIGDAL: Thank you, Judge.

25 I guess I can reiterate what's in

1 my brief in support of the motion, but  
2 what I think I put in my brief, and what I  
3 need to tell this Court is --

4 THE COURT: Let me just say that --  
5 or interrupt and note that we do have  
6 briefs that were presented by both Mr.  
7 Migdal and the State pursuant to this  
8 Court's order, so the matter's been  
9 briefed to some extent already.

10 So the Court's had the opportunity  
11 to review that, as well.

12 MR. MIGDAL: Judge, when I  
13 reviewed, because you know I've practiced  
14 20 years and I've practiced in this Court  
15 13, we just always assume -- we had many  
16 misconceptions about polygraphs; one being  
17 in this case it's been argued by the State  
18 in briefs and just in front of you, you  
19 can't test in sex cases, that somehow, and  
20 what I think is most important, that  
21 somehow this stipulation, this requirement  
22 of stipulation somehow affects the  
23 validity of the science.

24 And I think that, in my opinion, is  
25 the key issue that you're going to have to



1           decide, because I don't think there's  
2           going to be any question under Evidence  
3           Rule 702, after all three experts testify,  
4           that it will meet the qualifications under  
5           Evidence Rule 702.

6                     It has been scientific ly tested.  
7           It has gone through the scientific method.  
8           The particular people who are testifying  
9           are qualified and are experienced. It has  
10          been peer reviewed. It has gone -- the  
11          testing itself is objectively reliable.

12                    And I think simply through your  
13          history, simply through the fact that this  
14          Court has sat on cases where stipulated  
15          polygraphs come in, the fact that this  
16          Court knows that the police routinely use  
17          polygraphs, prosecutor's offices routinely  
18          uses polygraphs, the Department of  
19          Defense, the CIA, any government agency  
20          routinely uses polygraphs, which almost --  
21          I think it's just assumed they're reliable  
22          or else why would all these people use  
23          these polygraphs? It makes no sense.

24                    Judge, I appreciate the fact you  
25          granted the discovery motion. But I --

1 and I think, and maybe I'm wrong, one of  
2 the reasons you limited it to sex cases  
3 was the prosecutor saying, oh, you can't  
4 test in sex cases. Well, you can.

5 And the reason you can -- and maybe  
6 you can't test the issue what was the  
7 other person thinking, but you can clearly  
8 do it in many different ways as we have  
9 done in this case.

10 Suppose the allegation is a sex act  
11 took place and it happened in New York  
12 City.

13 You could ask the defendant on a  
14 polygraph, "Have you ever been to New York  
15 City?" You can clearly test in sex cases.

16 So when you limited the discovery  
17 rule to simply sex cases in the last two  
18 years, I think a bigger question is, how  
19 many times does the prosecutor rely on a  
20 polygraph exam in any kind of case, a  
21 murder case, a robbery case, be it for  
22 investigative purposes or otherwise, and  
23 what they're saying to you is, and to  
24 anybody, "We think that's reliable," or  
25 else why would you waste the time and the

1 money?

2 They write in their brief, well, in  
3 response to the discovery motion, "We  
4 dismissed those cases for other reasons,"  
5 one, being the polygraph. That says to  
6 you that they relied upon the polygraph.  
7 They thought the science was good.

8 I would ask the prosecutor in the  
9 court, in those cases in response to the  
10 discovery motion, what if the defendant  
11 was deceptive? Do you think they would  
12 have dismissed those cases? Uh-uh. They  
13 would have used that evidence, because  
14 they would think it's reliable.

15 We all, in our everyday lives, rely  
16 upon polygraphs for numbers of reasons.  
17 The government does, courts do, and  
18 certainly the Summit County Prosecutor's  
19 Office, along with other prosecutor's  
20 offices throughout the state do.

21 This is the only piece of  
22 scientific evidence, when I do the  
23 research, that requires stipulation.

24 It, frankly, makes no sense  
25 whatsoever. It either qualifies on its

1 own under 702 or it doesn't.

2 The requirement of a stipulation as  
3 will be testified to by Dr. Rovner, has no  
4 scientific -- it does not affect the test  
5 one iota from a scientific point of view,  
6 whether the test is stipulated or  
7 unstipulated, it doesn't make a  
8 difference.

9 So if it doesn't, the Court has to  
10 say, "Why do we not allow this in on its  
11 own?"

12 Now, you'd still have to go through  
13 in every case, as you do with any other  
14 case -- DNA, fingerprints, ballistics,  
15 gunshot residue -- whether this particular  
16 person testifying qualifies an expert  
17 because of specialized training and  
18 whether the science has been peer  
19 reviewed, gone through the scientific  
20 method, as in any other piece of evidence.

21 The polygraph should be no  
22 different and shouldn't be treated any  
23 differently, and I think we know that now.

24 Judge, I'd like to focus this Court  
25 -- obviously, I think it will meet the

1           702, but the point is, again, why the  
2 stipulation?

3                   And I know the prosecutor's argued,  
4 "Well, different people, experts  
5 disagree."

6                   Oh, my God, in a court we're going  
7 to have a battle of the experts. You  
8 know, it's like any other piece of  
9 science. Two people can look at  
10 fingerprints and come to a different  
11 conclusion.

12                   And I know they've also argued --  
13 and I thought about this -- it will take  
14 away from the jury, because if the jury  
15 hears that a person is truthful or,  
16 frankly, deceptive, then that's the end of  
17 the case.

18                   Well, I think from your own  
19 experience you know that's not true from a  
20 jury's point of view.

21                   But in addition, think about when a  
22 DNA expert comes in and says, the  
23 defendant's DNA sample, if it's a sex  
24 case, was inside the victim. It's one in  
25 4 quadrillion, or some crazy number, and

1 the defendant gets up and says, "It wasn't  
2 me," hasn't that taken away from the jury?  
3 They don't believe the defendant because  
4 of what an expert says. It's the same  
5 thing.

6 Now, you can question the DNA  
7 expert on maybe it was contaminated, or  
8 they don't know, they personally are not  
9 qualified to give the testimony, but it is  
10 no different than any other piece of  
11 scientific evidence. And that's what I  
12 want to stress to this Court in addition  
13 to the 702.

14 Thank you, Judge.

15 THE COURT: Uh-huh. Thank you,  
16 counsel.

17 Miss Kanellis.

18 MS. KANELLIS: Your Honor, the  
19 reason the State is asking the Court  
20 require a stipulation prior to it being  
21 admitted is that's what the case law in  
22 Ohio says.

23 And I've cited to you Supreme Court  
24 of Ohio, 9th District case law, and the  
25 reason for that, I think there's a problem



1 here with an issue.

2 And the defense counsel is arguing,  
3 well, in the past the State of Ohio has  
4 used a polygraph for an investigative  
5 tool, or maybe in the past they have  
6 entered into a stipulation.

7 That is not the circumstance here.  
8 The fact that in the past the State chose  
9 to waive their right to object to  
10 polygraph evidence, a defendant may have  
11 chosen to waive their right to object to  
12 otherwise inadmissible evidence does not  
13 mean that the State or the defense is  
14 bound in every future case to waive that  
15 objection.

16 The fact of the matter is, the law  
17 as it stands now, provides that a  
18 polygraph, unless there has been a  
19 stipulation, among other requirements, is  
20 not admissible.

21 If both parties get together and  
22 decide, "Hey, we're going to waive that  
23 objection. We're going to agree that  
24 otherwise inadmissible evidence is  
25 admissible," that doesn't bind in every



1 case after that, and we shouldn't say that  
2 that waiver's going to occur.

3 Furthermore, it's not as simple as  
4 just the parties agreeing. A Judge has to  
5 sign off on it. The Judge in the case has  
6 to agree to accept that; and, in fact, in  
7 this very court there are judges who, if  
8 both parties came and said, "Judge, we  
9 have agreed. We're not going to object to  
10 this polygraph," the judge wouldn't let it  
11 in.

12 So it's not just enough that the  
13 parties agree, the Judge has to sign off  
14 on it, also.

15 Your Honor, I cited the case of  
16 State versus Conner, which indicated that  
17 unstipulated polygraph evidence may not be  
18 admitted.

19 And it says, quote, "When a party  
20 who otherwise has a right to object to the  
21 admissibility of evidence consents to the  
22 admission of evidence, he gives up his  
23 right to object." This is the principle  
24 under which a stipulated polygraph is  
25 received.

1                   Another concern the State has, Your  
2 Honor, is these were not stipulated  
3 polygraphs, so the State has had no input.  
4 The State has had no input into what  
5 questions were asked. The State was not  
6 present when these polygraphs were given.

7                   There were no safeguards in check.  
8 The State was not there for the  
9 pre-interview. The State has not been  
10 involved so the State is at a  
11 disadvantage, and the safeguards that are  
12 normally in place with a stipulated  
13 polygraph are not in place in this  
14 situation.

15                   Again, the fact these are used as  
16 investigatory tools, there are many, many  
17 things that occur in an investigation that  
18 do not come into court.

19                   The Rules of Evidence -- there are  
20 lots of things; for example, hearsay, that  
21 the police or the prosecutor's office may  
22 rely on in charging someone, but that  
23 evidence may not come into court at trial  
24 on an evidentiary basis.

25                   And, in fact, I think you'll find

1 Bill Evans, as is standard when there is  
2 not a stipulated polygraph, it says right  
3 in the information that this is not for  
4 evidentiary purposes, and there's a  
5 reason. Both sides aren't involved.

6 As far as the assertion as far as  
7 testing in sex cases, Your Honor, quite  
8 frankly, I was unaware until this case  
9 that anyone -- we have just never done it  
10 in a sexual assault case.

11 That may or may not be a good  
12 enough reason, but the fact of the matter  
13 is, my understanding is that today this  
14 defendant's defense is consent. That's my  
15 understanding based on what I've read,  
16 which is different from initially. I  
17 think his defense was the fact that they  
18 never had any type of sexual contact, his  
19 next defense was, well, we might have, our  
20 privates might have rubbed up against  
21 somebody, but for today, my understanding  
22 is his latest defense is, it was  
23 consensual.

24 There's absolutely no way to  
25 polygraph on the victim's state of mind.

1           And that's essentially what the defense is  
2           arguing, that you would be doing. He has  
3           -- I mean, how can he say -- how can he be  
4           polygraphed on whether or not the victim  
5           consented?

6                   I think you'll see with the  
7           questions, they don't really even go to  
8           that issue. But I'll save that for the  
9           testimony.

10                   As far as taking -- basically, if  
11           you allow this evidence in, Your Honor,  
12           you're going to be taking away the  
13           ultimate issue from the jury.

14                   It is the jury's job to judge the  
15           truth and veracity of any witness in any  
16           criminal matter.

17                   By allowing someone to come in and  
18           say, yes, I believe this defendant is  
19           being truthful, you've made the jury's  
20           decision for them.

21                   And, Your Honor, in any other  
22           instance, witnesses are not allowed to  
23           comment on another person's veracity.  
24           That would be grounds for defense counsel  
25           or the State to object and ask for a

1           mistrial.

2                   I certainly would not be able to  
3           call up a detective to say, "Yes, I  
4           interviewed the victim, and I believe she  
5           was truthful."

6                   That would definitely get an  
7           objection, and the Court could grant a  
8           mistrial.

9                   Same with a child sexual assault  
10          case where the social workers testify.  
11          There's case law out there. They are not  
12          allowed to comment on the veracity of any  
13          given witness.

14                   Your Honor, based on the fact that  
15          this was not a stipulated polygraph, the  
16          State believes it would be unfair, it's  
17          clearly contrary to law to allow these  
18          unstipulated polygraphs in; and,  
19          furthermore, a defendant has a Fifth  
20          Amendment right not to take the stand and  
21          testify.

22                   The situation we have now is, he's  
23          going to be permitted to testify without  
24          ever being subjected to cross-examination  
25          by the State. His statements are out

1           there in the form of a polygraph, no  
2           cross-examination by the State, and that  
3           would come in, and he is effectively  
4           introducing his statements and he would  
5           never be subjected to cross-examination.

6                     And that is -- if he wants to not  
7           testify, that's his right, but then you  
8           don't have his testimony coming in. So I  
9           think that's a huge problem with this,  
10          also.

11                    There's no safeguards in place,  
12          Your Honor, and we would simply ask at  
13          this time that you deny this defendant's  
14          motion to admit these polygraphs as they  
15          were unstipulated.

16                    THE COURT: All right. That sets  
17          the stage and defines some of the issues.

18                    MR. MIGDAL: Judge, can I request  
19          about two minutes to rebut some of that,  
20          please?

21                    THE COURT: All right.

22                    MR. MIGDAL: Just listening to the  
23          State argue, I just pose the question to  
24          the Court as opposed to any other form of  
25          scientific evidence, we weren't there for

1 the testing. Therefore, we don't know  
2 what happened, that's cross-examination.  
3 That's a motion in limine under 702.

4 Suppose it's fingerprint evidence,  
5 and I have a defendant who has the  
6 financial wherewithal to get it privately  
7 tested. The State's not there.

8 Suppose it's a DNA test or any  
9 other scientific test that I can do on my  
10 own. The State's not there. Does that  
11 preclude its admissibility? No. The  
12 Court will have a 702 hearing and the  
13 prosecutor gets to cross-examine if it  
14 wasn't done correctly, if the questions  
15 were wrong, if the polygrapher is not  
16 trained, if the fingerprint examiner  
17 doesn't know what he's doing. It's the  
18 same thing.

19 So I ask again -- as opposed to any  
20 other piece of physical evidence. We are  
21 not asking in our tests what was in  
22 Michelle Sacia's mind.

23 She testified at the preliminary  
24 hearing. I gave that information to Dr.  
25 Roven and the other polygraphers based



1           upon that, the whole question is, was she  
2           awake when certain things happened.  
3           That's why we asked questions that way.  
4           Not what she was thinking. It's based  
5           upon her testimony. That's how we tested.

6                     Again, if she says this took place  
7           in New York City, we can test Mr. Sharma,  
8           not what was she thinking, were you in New  
9           York City on that day, and that's what we  
10          did in this case, based upon what she  
11          says, there are questions we can formulate  
12          that can go through and properly be  
13          tested.

14                    Again, as opposed to any other  
15          piece of scientific evidence, the same  
16          reasoning applies, just treat this as any  
17          other piece of scientific evidence and go  
18          through the same analysis.

19                    Thanks.

20                    THE COURT: All right. Let's have  
21          the defendant call his first witness then.

22                    MR. MIGDAL: We call Bill Evans,  
23          Your Honor.

24                    MS. KANELLIS: I know the Court's  
25          going to overrule, but I would ask for a

1 separation of witnesses as the defense has  
2 indicated these witnesses will testify in  
3 the trial in this matter should the Court  
4 allow.

5 THE COURT: As I understand the  
6 witnesses that are going to be called are  
7 all experts and they're not governed by  
8 the Rules of Evidence so I'll deny the  
9 request for separation.

10 Come forward, please. Raise your  
11 right hand.

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- - -

WILLIAM D. EVANS, II

1  
2 a witness herein, called on behalf of the  
3 Defendant, having been first duly sworn as  
4 provided by law, was examined and  
5 testified as follows:

6 THE COURT: Please proceed to our  
7 witness stand.

## DIRECT EXAMINATION

8  
9 BY MR. MIGDAL:

10 Q. State your name and spell your last name  
11 for the record.

12 A. William Donald Evans, II.

13 Q. How are you employed?

14 A. I own Poly-Tech, Incorporated in Akron  
15 with an office in Cleveland, and I'm also  
16 an attorney.

17 Q. Why don't we talk about your background.  
18 Have you had any other professions apart  
19 from being a lawyer and a polygrapher?

20 A. Yes. I've served on the part-time faculty  
21 at the University of Akron for probably 25  
22 years or thereabouts with a break in  
23 service in -- I think it was the late  
24 '80s.

25 I taught and lectured in the

1 department of public service and criminal  
2 justice.

3 Q. You have any law enforcement background?

4 A. Yes. I served the Summit County Sheriff's  
5 Office in the late '70s as a general  
6 assignment detective and polygraphist.

7 Q. You mentioned you're an attorney. Can you  
8 tell the Court about your background,  
9 education, training, and experience just  
10 as an attorney?

11 A. I graduated from law school in 1991. I  
12 was on the law review as a managing editor  
13 and I was on the trial team for the  
14 University of Akron.

15 The law that I practice is not  
16 criminal defense work, but it's primarily  
17 in the area of business, and some probate  
18 and estate work, generally speaking. I  
19 limit my practice considerably as a  
20 lawyer.

21 Q. Let's talk about your polygraphy  
22 experience. Can you tell the Court your  
23 education, training, and experience  
24 regarding being a polygrapher?

25 A. I graduated from the National Training

1 Center of Polygraph Science in 1977,  
2 spending time in law enforcement testing  
3 exclusively for a variety of different law  
4 enforcement entities during that period of  
5 time.

6 Then in 1978 or '79, I can't recall  
7 exactly, I went into business for myself  
8 through Poly-Tech, Incorporated, developed  
9 that business, went full-time into  
10 Poly-Tech in 1984, and began testing then  
11 for a variety of law enforcement entities  
12 as well as criminal defense lawyers and  
13 corporations on specific issue matters, as  
14 well as security clearance testing.

15 I trained with the Department of  
16 Defense for computerized polygraph testing  
17 in 1995, as I recall, and the Maryland  
18 Institute of Criminal Justice later in  
19 2001, as I recall, for a specific issue,  
20 post-conviction sex offender testing.

21 And I've lectured nationally, as  
22 well as state-wide, frequently on the  
23 subject of polygraph countermeasures,  
24 chart interpretation, a variety of  
25 different topics relative to polygraph.

1 I've lectured on ethics and also  
2 professionalism for the bar association,  
3 and I also have been involved in writing  
4 articles relative to polygraph for the  
5 *Ohio Police Chief* magazine, and also the  
6 Criminal Bar Association, Defense Bar  
7 Association of Cuyahoga County and the  
8 Akron Bar Association, as well. The --

9 Q. Do you lecture regarding polygraphy?

10 A. Yes.

11 Q. Tell the Court about that.

12 A. I've lectured at the National Training  
13 Center of Polygraph Science several times.  
14 I've lectured at the American Association  
15 of Police Polygraphists' annual convention  
16 as recently as May of last year, '06,  
17 lectured at a variety of places state-wide  
18 through the years.

19 Q. So you've been a polygrapher approximately  
20 30 years. Do you have a guesstimate as to  
21 how many polygraph exams you've actually  
22 conducted in that 30 years?

23 A. It would be a very rough guess because I  
24 haven't kept track. But thousands, and  
25 thousands, and thousands of polygraph

1 exams.

2 Q. Now, you talked about testing for  
3 prosecutor's offices. Can you tell the  
4 Court about your work with prosecutor's  
5 offices?

6 A. For 30 years I've done a lot of  
7 examinations for a variety of different  
8 prosecutors in a variety of different  
9 settings.

10 Obviously, my hometown being here  
11 in Summit County, I've tested for each  
12 prosecutor since -- each elected  
13 prosecutor since graduating from polygraph  
14 school in '77.

15 The testing that I've done for a  
16 variety of different prosecutors  
17 throughout the state would be many and  
18 varied in that sense. I couldn't name  
19 them, because I haven't written down how  
20 many prosecutor's offices I've examined  
21 for, but currently I examine exclusively  
22 for the Trumbull County Prosecutor's  
23 Office, Dennis Watkins, on a regular  
24 basis.

25 I've examined for Victor Vigluicci



1 in Portage County as a prosecutor, as well  
2 as a special appointed prosecutor in  
3 recent times.

4 I've examined for the Lake County  
5 Prosecutor's Office on some very  
6 high-profile matters through the years;  
7 some cases for Stark County, Medina  
8 County, there's some counties down south.  
9 Frankly, I don't remember the names of  
10 those counties that I've tested for, but a  
11 lot of prosecutor's offices through the  
12 years.

13 Q. Have you ever examined for the Attorney  
14 General of Ohio?

15 A. Yes.

16 Q. Tell the Court about that.

17 A. I've done some testing on some relatively  
18 high-profile matters involving the  
19 organized crime, special division of the  
20 Attorney General's Office, and some  
21 related matters that I probably shouldn't  
22 go into the detail about right now.

23 Q. Now, have you testified -- have you -- let  
24 me take that back. Not testified, have  
25 you examined for the present Summit County

1           Prosecutor, Sherri Bevan-Walsh?

2       A.       Yes.

3       Q.       Now, when you do an examination if it is  
4               stipulated, have you ever testified on  
5               behalf of a prosecutor's office and then  
6               specifically, on behalf of the Summit  
7               County Prosecutor's Office? Not examined,  
8               ultimately testified.

9       A.       Repeat the question. I'm sorry. Have I  
10              examined for the Summit County  
11              Prosecutor's Office?

12      Q.       And then ultimately testified regarding  
13              your testing.

14      A.       Yes. A variety of cases through the  
15              years, all different types of cases,  
16              dozens and dozens of cases that were in  
17              stipulated cases whereby there was a  
18              stipulation that was entered into prior to  
19              testing, and the results of that  
20              examination and any pre-test/post-test  
21              examination was admitted as evidence.

22      Q.       Were you called on behalf of the Summit  
23              County Prosecutor's Office on those cases?

24      A.       Yes.

25      Q.       And I would assume that's because the

1 defendant was deceptive?

2 A. Yes.

3 Q. Now, have you ever done a stipulated  
4 polygraph for the Summit County  
5 Prosecutor's Office, the defendant passed,  
6 and they continued the prosecution?

7 A. Not that I'm aware of.

8 MS. KANELLIS: I'm sorry. Did you  
9 say stipulated or no?

10 BY MR. MIGDAL:

11 Q. Have you done any examination on behalf of  
12 the Summit County Prosecutor's Office,  
13 stipulated or otherwise, where the  
14 defendant passed and the Summit County  
15 Prosecutor's Office continued the  
16 prosecution?

17 A. Stipulated or otherwise, I'm not familiar  
18 with any stipulated case where they've  
19 continued to prosecute.

20 Otherwise, I would have no  
21 knowledge for sure of whether that  
22 prosecution was actually levied or not.

23 Q. Let's talk about Mr. Sharma's case in  
24 particular. You did an examination of Mr.  
25 Sharma; is that correct?

1 A. That's correct.

2 Q. And I put in front of you a -- what's been  
3 marked as Defendant's Exhibit A. Could you  
4 look at that and tell the Court what that  
5 is?

6 A. This is my report of Mr. Sharma's  
7 evaluation and polygraph exam conducted on  
8 two separate days, on the 23rd of August,  
9 2006, and on the 24th of August, 2006.

10 THE COURT: What are the dates  
11 again, please?

12 THE WITNESS: August 23, 2006 and  
13 August 24, 2006.

14 THE COURT: Thank you.

15 BY MR. MIGDAL:

16 Q. Does that Defendant's Exhibit A look like  
17 an accurate copy of the actual report that  
18 you generated because of these  
19 examinations?

20 A. Yes.

21 Q. Okay. Can you tell the Court how you go  
22 about doing a polygraph examination and  
23 then, particularly, how you did this one?

24 A. Yes. The exam is conducted, essentially,  
25 the same way regardless of the type of

1 test conducted, whether it's a stipulated  
2 exam or a confidential exam for the  
3 defense lawyer.

4 I don't want to qualify that by  
5 saying essentially; they are done the same  
6 way.

7 There's a pre-test interview  
8 conducted after the person signs in on a  
9 proper waiver release form to allow the  
10 results then to be conveyed to whoever the  
11 recipient may be; being the law  
12 enforcement entity, or the defense lawyer,  
13 or a combination of both.

14 After that, the pre-test interview  
15 is conducted, which would include a time  
16 frame of 25 to 30 minutes of a  
17 biographical questionnaire to find out  
18 that person's state of mind, and also  
19 physical condition to be able to sustain  
20 and go through that polygraph exam.

21 And after that background form is  
22 completed, there's an assessment, usually  
23 in that pre-test phase, done of the  
24 person's reaction capability, which  
25 involves what is known as a stimulation

1 test. Usually, it's with colors, or it's  
2 with numbers to determine reaction  
3 capability.

4 After that pre-test is out of the  
5 way, and the person is determined to be a  
6 suitable subject for the polygraph, then  
7 there is a period of time where the  
8 questions are posed to that subject  
9 relative to the case at hand to get their  
10 version on the facts and circumstances.

11 I would, as an editorial note, say  
12 before the person is ever examined we have  
13 quite a bit of information about the  
14 allegations.

15 THE COURT: About the?

16 THE WITNESS: About the allegations  
17 and the circumstances leading to that  
18 test. And that information then is  
19 digested by the examiner in preparation  
20 for that subject showing up at the office.

21 So as a comparison between the  
22 facts and so forth presented by the  
23 historian, whether that's the defense  
24 lawyer, whether that's the police  
25 department, or whether that's a



1 combination, and then also during the  
2 pre-test interview an evaluation of the  
3 facts presented by that subject to be  
4 tested.

5 At that point then questions are  
6 framed for the purpose of testing the  
7 individual on the allegation, but  
8 questions are also framed during the  
9 pre-test interview for comparative  
10 purposes, and neutral or irrelevant  
11 questions are asked of that person in the  
12 pre-test also, which would give us a way  
13 of evaluating truthfulness and deception.

14 For example, an irrelevant question  
15 or neutral question might be something  
16 like, "Do you live in the United States?"

17 A comparison question may be  
18 something like: "Have you ever lied about  
19 something important under the age of 18,  
20 or between the age of 15 and 26, did you  
21 lie about anything other than what you've  
22 told me about that you can recall right  
23 now?"

24 These are questions that are  
25 designed to develop or evoke some type of



1 emotional change relative to an area or a  
2 point during the test that would cause a  
3 reaction on the test so we can use that  
4 reaction as a comparison to other  
5 questions of a relevant nature, such as  
6 did you kill Jane Lyons, which would be a  
7 relative question.

8 So we would be able to gauge then a  
9 lie within the context of that four-minute  
10 test that's conducted during the  
11 examination.

12 And then we would look for those  
13 reactions to determine where the greatest  
14 physiological change was occurring,  
15 whether it was occurring in a comparison  
16 question, or whether the greatest  
17 physiological change was occurring on a  
18 relevant question.

19 And then that leads to the real  
20 premise on whether that individual is  
21 telling the truth or not would be  
22 predicated on the greatest reaction  
23 strength, which category, comparison  
24 questions or relevant questions.

25

1 BY MR. MIGDAL:

2 Q. Did --

3 A. I'm sorry.

4 Q. Go ahead.

5 A. After the pre-test interview is conducted,  
6 then we would step into the actual testing  
7 phase.

8 And usually during the testing  
9 phase there are three or four relevant  
10 tests having to do with the case at hand  
11 conducted during that period.

12 Q. In this case the questions, how -- can you  
13 tell the Court how you formulated the  
14 questions in this case?

15 A. You provided to me information relative to  
16 the allegations and the facts that were  
17 determined by the police at that point  
18 that you were aware of in your discussions  
19 with law enforcement persons, and I framed  
20 questions then based on information that  
21 you had provided to me.

22 Q. You asked, it looks like, four questions  
23 that, at least you put down on the report,  
24 and they had to do with whether Michelle  
25 Sacia was awake or participated.

1                   Can you tell the Court about those  
2 questions and how you formulated, and why  
3 you felt those questions were the kind of  
4 questions you wanted to ask in this test?  
5 A. Well, the questions that were asked were:  
6 "Without Michelle's knowledge, did you put  
7 your penis in her vagina?"

8                   And the answer was no.

9                   And then the other -- second  
10 relevant question was: "Was Michelle  
11 unconscious during sexual intercourse,"  
12 and the answer was no.

13                   And the third question was: "Did  
14 Michelle actively participate in sexual  
15 intercourse with you," and the answer was  
16 yes.

17                   And the fourth question was: "Was  
18 Michelle awake during sexual intercourse,"  
19 and the answer was yes.

20                   And those questions were asked  
21 because I recognize in these types of  
22 cases state of mind issues are present or  
23 likely to be present, and I try to develop  
24 the questions as closely as I can to a  
25 factual dispute of some sort that would

1 address the same issues without addressing  
2 state of mind categories.

3 Q. In this case, correct me if I'm wrong, I  
4 told you the allegation was that Michelle  
5 Sacia says she is asleep, completely  
6 clothed, wakes up, all her clothes are off  
7 and somebody is on top of her.

8 Is that the factual issues that  
9 went then to the formulation of your  
10 questions?

11 A. Yes.

12 Q. Now, do these questions not go into  
13 whether Sahil Sharma knew what Michelle  
14 was thinking; it doesn't go into her state  
15 of mind?

16 A. No.

17 Q. Now, can you then go through the questions  
18 -- the answers and how you then evaluated  
19 and --

20 A. Let me restate my answer. On question one  
21 it may address that state of mind, but  
22 it's based on the perception of Mr. Sharma  
23 at this point, without Michelle's  
24 knowledge did you put your penis into her  
25 vagina?

1 All right. However, you have to  
2 understand that the pre-test interview, in  
3 my exams, they are -- the pre-test  
4 interview is very pointed. It's very  
5 pointed in an effort to ferret out any  
6 information of that person who is accused  
7 of committing this crime.

8 This pre-test interview I conduct  
9 is not necessarily a conversation over  
10 coffee. I mean, it isn't at all.

11 Q. What do you mean by that? How long does  
12 that pre-test interview take? How long  
13 did it take in this case, and can you tell  
14 the Court why it's that important and what  
15 you're looking for?

16 A. Well, it's important because I want to --  
17 I want to determine the truth. Regardless  
18 of what the truth is, it doesn't matter to  
19 me if the person has a problem of some  
20 kind, I want to expose the truth in that  
21 respect, and if there's something of  
22 concern for that particular accused, then  
23 they need to address the facts head on.

24 In -- and the pre-test interview in  
25 any of my tests is a very -- as I said,

1 the questioning is very pointed, and it's  
2 -- I don't want to say it's unpleasant,  
3 but it's not necessarily -- it's a  
4 deposition without a deposition being  
5 done, so to speak.

6 And my point being in regard to  
7 question one, Mr. Sharma couldn't  
8 determine necessarily what was going  
9 through Ms. Sacia's mind; however, there  
10 are three questions that are in follow up  
11 that are factually-based questions.

12 So it's not improper to ask a  
13 question about state of mind in situations  
14 like this, either.

15 In fact, I think it's probably a  
16 good idea to do that because the person  
17 taking the test is -- this is a dynamic.  
18 There are two people there, they're  
19 engaging in whatever conversation or  
20 physical activity they're engaging in, and  
21 certainly, each individual is going to  
22 have some knowledge of the circumstances  
23 and dynamics within that setting. That  
24 was the reason for the question.

25 Q. Would it -- I mean, if Michelle is



1 unconscious, that would go into question  
2 number one?

3 A. It's clear, you know. And the other thing  
4 is, each one of these questions are  
5 pre-tested, all right?

6 In other words, there are  
7 definitions given to the person.

8 Q. Tell the Court about that.

9 A. There are definitions given to the person  
10 as it relates to in this case. Knowledge,  
11 what is knowledge?

12 Well, knowledge is based on the  
13 five senses, you know. You would know --  
14 if you're the person being accused, you  
15 would know she was unconscious if, for  
16 example, she's not moving, if she is  
17 asleep and can't be aroused, if there's a  
18 situation whereby she's been knocked out  
19 by a blow that you've caused, she's  
20 unconscious.

21 However, if the person is  
22 responding in some way, either through  
23 conversation, or through touch, or  
24 movement, or whatever, then she's  
25 obviously not unconscious, she's not



1           asleep, she's knowledgeable about the  
2           facts and circumstances in that  
3           environment.

4    Q.       Now, do you discuss that with, in this  
5           case, Mr. Sharma before the pre-test  
6           interview?

7    A.       Oh, absolutely.

8    Q.       So are you then on the same page? I mean,  
9           can you explain to the Court why that's  
10           done, how it's done and --

11   A.       We don't develop a series of questions,  
12           Your Honor, and present these questions to  
13           a person in three or four minutes, you  
14           know.

15                        We don't just create these  
16           questions and say, "Here's a laundry list  
17           of the questions I'm going to ask you,"  
18           and then run tests.

19                        We do this in such a way there's a  
20           dynamic involved in that testing  
21           environment, and there's a give and a  
22           take, and I'm pressing that individual for  
23           information.

24                        If there's information and I see  
25           that there's something that person is

1           hiding, based on my evaluation of  
2           non-verbal communication and body  
3           language, we pursue that.

4                    If not, we go over the test  
5           questions being tested at that point, and  
6           then we arrive at a conclusion.

7                    Those will be the questions.  
8           They're written in stone, so to on speak,  
9           and then the questions are conducted.

10    Q.        So the questions that are ultimately asked  
11           on the test you go over with the examinee  
12           beforehand?

13    A.        Yes. In advance of the first test all the  
14           questions are known by that examinee.

15    Q.        Why is that?

16    A.        We want to take the surprise element out  
17           of a question. So as to -- first of all,  
18           the examinee has to know what the  
19           questions are going to be in order to  
20           respond properly during the test without  
21           surprise. Surprise is an element we want  
22           to take out of the exam.

23                    It may evoke a physiological change  
24           or cause a problem on the test that we  
25           can't quantify.

1 Q. So these four questions you asked Mr.  
2 Sharma he knew beforehand, correct?

3 A. Correct.

4 Q. And you asked him what his answers would  
5 be during your pre-test interview?

6 A. Yes.

7 Q. And then you went ahead and ran the test.  
8 Can you tell the Court about the specific  
9 test, his answers, and your results?

10 A. Well, the questions were asked, as I  
11 pointed out. The comparison questions and  
12 the irrelevant questions were also asked  
13 during the exam.

14 A total of nine questions were  
15 asked. Four of the those nine questions  
16 were relevant. One of those nine  
17 questions was a neutral or an irrelevant  
18 question. Another question was a  
19 quasi-relevant, symptomatic, control,  
20 whatever you want to call it. It's not a  
21 relevant question.

22 And then there were three questions  
23 that were comparison questions asked,  
24 having to do with outside issues, and the  
25 evaluation, as I've already indicated, was

1           made by way of comparison, from the  
2           comparison question reaction to the  
3           relevant question reaction.

4                   And then I evaluated that as the  
5           person is being tested and also reviewed  
6           it thereafter.

7                   After reviewing it and coming to a  
8           conclusion, on any case, I know how  
9           important this particular case is, but on  
10          any of my cases they're important, and if  
11          I have a person who's clearing a test, I  
12          exercise an abundance of caution, and many  
13          times will reexamine that person.

14    Q.        Let me back up before we get to the  
15               reexamination.

16                   When you do an examination of a  
17           person, how many tests do you run?

18    A.        Relevant tests? Three or four, sometimes  
19               five.

20    Q.        And why -- when you say "relevant tests,"  
21               do you go through the same questions, do  
22               you retest them, or can you explain to the  
23               Court what that is?

24    A.        Same questions are asked.

25    Q.        How many times do you do it?

1 A. In separate tests which last four minutes  
2 or thereabouts, usually three to five  
3 separate tests.

4 Q. And why do you do more than one?

5 A. For reliability and validity. The  
6 American Polygraph Association calls for  
7 at least two relevant tests to be  
8 conducted during that examination.

9 I frankly don't know -- can't  
10 recall of an examination that I've ever  
11 conducted that only had two relevant tests  
12 in the exam unless the person confessed  
13 after the second relevant test.

14 Q. Now, you did in this case two separate  
15 examinations. Is that the way you would  
16 call it?

17 A. Two separate sittings.

18 Q. Two separate sittings?

19 A. Yes. And Mr. Sharma, as I recall, was due  
20 to go back to New York and the optimum  
21 time period for re-exam is usually three  
22 to ten days after the first sitting.

23 Due to the time constraints of his  
24 travel and so forth, I reexamined him the  
25 second day.

1 Q. Does that affect your results?

2 A. No.

3 Q. Now, you sent this test to have it peer  
4 reviewed. Who did you send it to, why,  
5 and what did that peer review show?

6 A. Well, many times if I have -- if I have a  
7 test that -- well, first of all, if I have  
8 an exam that's truthful, that I feel is  
9 truthful, I'll send it out for peer review  
10 to someone.

11 And the reason I do that is it's  
12 good best practice. And in this  
13 particular case, I sent it to Akron Police  
14 Sergeant Ken Butler at the Akron Police  
15 Department.

16 THE COURT: What's his name?

17 THE WITNESS: Ken Butler. Sergeant  
18 Butler.

19 THE COURT: Thank you.

20 THE WITNESS: He reviewed it. I  
21 don't -- in this particular situation, I  
22 don't think he knew the results of my  
23 exam.

24 If I recall correctly, I simply  
25 provided to him the charts and provided to

1           him the questions and asked him to take a  
2           look at it, and he did.

3   BY MR. MIGDAL:

4   Q.       Explain to the Court, when you say you  
5           sent the charts and the exam, what do you  
6           mean, "the charts"?

7   A.       I gave him the polygraph tracings and he  
8           reviewed the polygraph tracings and the  
9           test questions and my background form.  
10          Everything that I had that was a piece of  
11          paper, he reviewed.

12                   And he came to the same conclusion  
13          I had, that Mr. Sharma was telling the  
14          truth based on the evaluation of what he  
15          had to read.

16   Q.       So he didn't know what your results were.  
17           When you said, "the tracings," you're  
18           talking about the squiggly lines that we  
19           talk about?

20   A.       Yes.

21   Q.       That's the charts?

22   A.       Yes.

23   Q.       You sent him the questions and the charts,  
24           and he came to the same conclusion you  
25           did?



1 A. Same conclusion.  
2 Q. Then you conducted a second test. And,  
3 again, I think you explained it, but can  
4 you say why you did a second sitting?  
5 A. Yes.  
6 Q. Go ahead.  
7 A. The -- in many cases where I examine  
8 someone and they are truthful, I don't  
9 want to be put in a position where I feel  
10 that there's a question of any kind about  
11 my exam, and if a person is truthful, I  
12 want to be absolutely clear on everything  
13 so that there's no issue later on, and  
14 I've cleared someone that I am not  
15 positive, I feel good about. So I  
16 reexamine them.

17 I'll do that regularly, many times,  
18 just as a second time, to be sure that I'm  
19 comfortable and I can sleep at night, and  
20 I reexamined Mr. Sharma for that reason,  
21 as well.

22 So having said that, I have my  
23 first test that is a truthful test. Like  
24 I said, he went through quite a bit in  
25 that pre-test interview, in the interview

1 phase, and he was going to go back to New  
2 York. I wanted to reexamine him, anyway  
3 under those circumstances, and he came  
4 back to my office the second day and I  
5 examined him a second time.

6 Q. Did you send Kenny Butler the charts of  
7 both sittings?

8 A. Yes.

9 Q. Did he come to the same conclusion  
10 regarding both sittings?

11 A. The same -- the second sitting through a  
12 hand-scoring was technically inconclusive.  
13 The reason it was technically inconclusive  
14 is because of what he went through the  
15 first day.

16 Q. What do you mean?

17 A. I said that testing was very -- it was --  
18 the questioning was very pointed. And I  
19 knew where I stood with that. I knew he  
20 was giving me information and physiology  
21 that was truthful.

22 I don't believe I disclosed the  
23 results to him at that point. I, frankly,  
24 interrogated him in the pre-test  
25 interview, and when he came back the

1 second day he was very -- he was very  
2 concerned from the first day, because I  
3 don't think I told him what he did on the  
4 exam the first day. I don't think I gave  
5 an opinion at that point.

6 So he came back not know knowing  
7 why he had to come back. He was on pins  
8 and needles and he was reexamined the  
9 second day.

10 Q. And what -- the fact he was on pins and  
11 needles and didn't know the results, what  
12 does that do for you as the examiner?

13 A. It gives me a -- it gives me -- it gives  
14 me relief in reexamining him, in testing  
15 that person a second time, and in having a  
16 comfort level that my opinion is an  
17 accurate opinion.

18 When he came back the second day --  
19 first of all, there are four components to  
20 a good polygraph exam, one of which is the  
21 instrumentation utilized. The second  
22 being the subject tested, whether or not  
23 they're a good subject for testing. I  
24 don't mean subject matter, I mean person  
25 being examined.

1                   The third is going to be the  
2                   examiner, and whether the examiner has the  
3                   proper training, education, and so forth.

4                   The fourth is the testing  
5                   environment. If we have a poor testing  
6                   environment or poor condition associated  
7                   with testing environment it's going to  
8                   affect the results of the exam, and I'll  
9                   tell you, I think because of the  
10                  circumstances the examination the second  
11                  day was not -- it was contaminated because  
12                  of the interrogation and so forth he went  
13                  through the first day, coming back the  
14                  second day, as I said, he didn't know  
15                  whether he had passed or not the second  
16                  day.

17        Q.        You had written a report Mr. Sharma had  
18                  been sensitized due to the previous day's  
19                  testing thus producing overall  
20                  inconclusive results, although pneumograph  
21                  patterns alone appear to be truthful.  
22                  What's that mean?

23        A.        Oh, okay. I forgot I put that in. Well,  
24                  what that means is that upon review of his  
25                  re-examine, the pneumograph patterns

1 appeared to be truthful due to the  
2 sensitization.

3 The first component of the channel  
4 that's going to be affected by the testing  
5 environment is the galvanic skin response,  
6 which is -- fingerplates are placed on,  
7 usually, the right ring and index finger,  
8 and skins's resistance is recorded, and  
9 that's usually the most susceptible  
10 component to any type of testing  
11 environment issue.

12 In other words, if there's a -- if  
13 there's a noise outside of the examination  
14 room while the person is being tested, the  
15 noise will result in a galvanic skin  
16 response change and be reflected in that  
17 component of testing or recording, I  
18 should say, first. You'll see it before  
19 -- and many times not in any other tracing  
20 except in the GSR.

21 So what I apparently saw were  
22 reactions in the pneumograph.

23 Q. What is the pneumograph?

24 A. The breathing parameters.

25 Q. Okay.

1 A. That was truthful. And the rest, the  
2 other components were inconclusive.

3 Q. You also wrote in your report regarding  
4 the first paragraph during the post-test  
5 interview after test four that he had a  
6 problem, can you ever -- besides what you  
7 told me prior to 2006, ever telling even  
8 one important line? And you wrote that in  
9 your report.

10 Can you tell the Court the  
11 importance of that?

12 A. Well, that goes to the importance of the  
13 comparison question. In other words, if  
14 there aren't -- if there aren't well-set  
15 comparison questions, it erodes the  
16 possibility of getting an accurate  
17 assessment for truthfulness and veracity.

18 That tells me that the comparison  
19 question raised relevant status  
20 appropriately, so there could be a good  
21 comparison between the relevant questions  
22 having to do with -- having to do with  
23 Michelle, and the issues at the hotel  
24 room, those being the relevant target  
25 questions, now these comparison questions



1 are important enough that Mr. Sharma's  
2 capable of responding to give me a good  
3 idea as to whether this test result is  
4 going to have any validity.

5 Because now I'm able to weigh where  
6 the most reaction is occurring; is the  
7 most reaction occurring in the relevant  
8 issue, or is the most reaction occurring  
9 in the comparison question.

10 In this case in his test it was in  
11 the comparison question.

12 Q. How does that relate to your opinion about  
13 truthfulness?

14 A. It adds validity to the fact that I felt  
15 he was truthful. He was most concerned  
16 about an outside issue. He wasn't most  
17 concerned about the relevant questions and  
18 the target, target being, again, the  
19 allegations by Michelle.

20 Q. Meaning he responded -- just so I'm sure  
21 -- his responses are more pronounced  
22 regarding non-relevant, meaning not the  
23 issues at hand, whether he lied about  
24 something separate and apart from the  
25 issues in the case?



1 A. Yes, exactly.

2 Q. And that goes to your scoring and  
3 obviously your opinion of whether he's  
4 being truthful?

5 A. That's correct.

6 Q. Let's go backwards now. Tell the Court  
7 what it is, how the actual test works,  
8 what do you put on him to do the testing,  
9 what happens, what's it measure?

10 A. Through a pneumograph tube across the  
11 upper chest cavity and one across the  
12 abdominal-thoracic region, right around  
13 the solar plex, right below the sternum.

14 And these pneumograph tubes are  
15 designed to monitor volume of oxygen  
16 intake in amplitude as well as duration;  
17 in other words, a breath is taken, there's  
18 an inhalation cycle and there's an  
19 exhalation cycle. Sometimes there's a gap  
20 in between the breathing cycles of, you  
21 know, maybe less than a second, maybe a  
22 second, or a block of time there. It's  
23 known as an apnea.

24 So that cessation in breathing  
25 occurs and, you know, normally, a human

1           being will breathe between 12 and 18  
2           breaths per minute, so these breath  
3           parameters known as pneumograph parameters  
4           record that cyclic-type of  
5           inhalation/exhalation over that course of  
6           four minutes.

7                        So there are two parameters  
8           recording. Pneumograph, upper and lower  
9           parameters.

10                      Then there's a blood pressure cuff  
11           placed on the upper left arm. With that  
12           blood pressure cuff, we can record blood  
13           pressure tracings, both systolic and  
14           diastolic blood pressure; in other words,  
15           the 120 over 80 a doctor would get would  
16           be recorded in a relative fashion.

17                      We're not monitoring the 120 over  
18           80 since we are monitoring relative  
19           changes, so we look at the peaks and  
20           valleys, if you will, in blood pressure  
21           changes.

22                      We'll record heart rate changes,  
23           how fast or how slow the heart's beating  
24           at any given minute.

25                      Usually, a person taking a

1 polygraph is going to range between 65 and  
2 95 beats per minute. The dicrotic notch  
3 is recorded during the course of the exam,  
4 which is the blood rebounding off the  
5 aortic valve, gives a little notch tracing  
6 in the middle.

7 We'll look at blood volume changes,  
8 and we'll also monitor indications of  
9 adrenaline reaction and some other things  
10 that occur in that blood pressure tracing.

11 And then the galvanic skin response  
12 is monitored in a separate component that  
13 I've already alluded to, the fingerplates  
14 in this case on the right ring and index  
15 finger monitor the amount of skin's  
16 resistance during the course of the test.

17 Q. What instrumentation do you use?

18 A. I use an instrument -- it's a computerized  
19 instrument, an Axciton, A-x-c-i-t-o-n  
20 instrument, and it is a polygraph that --  
21 formerly we were using analog  
22 instrumentation with pen scribing across  
23 chart paper. It's what you see in the  
24 movies. It's what you see on TV because  
25 it's got the graphics and everything.

1           That's more conducive to probably visual  
2           -- the visual side of things.

3                       But a computer simply records then  
4           the same components that I've already  
5           mentioned to you, and it monitors all  
6           those things in such a way that we can  
7           digitize the information, record it, keep  
8           it on recording. It's an advanced  
9           instrument because it has no friction.

10                      An analog instrument with those  
11           pens scribing across chart paper naturally  
12           had friction, and there was a loss of  
13           information because of that friction.

14                      In an electronic instrument there  
15           is no friction; and, therefore, we have  
16           cleaner, more pristine charts, if you  
17           will.

18    Q.           Let me change the focus a little bit now.

19                      Stipulation. You have a form, and  
20           talk to the Court about to you, as a  
21           polygrapher, what a stipulation is.

22    A.           Well, a stipulation would be a contract in  
23           simple terms, whereby the defendant  
24           decides they want to take a polygraph, the  
25           defense lawyer feels it's a good idea, and

1 the prosecutor signs off on it.

2 I mean, in the simplest of terms I  
3 guess it's a contract.

4 Q. Now, if I do an unstipulated polygraph,  
5 what is the difference? Is there a  
6 different explanation to the defendant?  
7 And tell the Court when you do an  
8 unstipulated about your contract and what  
9 you tell the defendant.

10 A. You want me to compare the stipulation  
11 with the confidential exam?

12 Q. Yes, exactly.

13 A. Well, the stipulation, you know --  
14 naturally, a confidential exam is being  
15 done for the purposes of determining that  
16 suspect or defendant's veracity by the  
17 lawyer. So the lawyer knows what he or  
18 she is dealing with in that respect, are  
19 we dealing with a problem with this case  
20 and it needs to be handled in a different  
21 way for trial, or plea bargain, and it's  
22 an exam whereby the facts are still the  
23 facts, Jane Lyons was murdered on January  
24 1st of 2006.

25 Regardless of whether or not it

1           meets with prosecutor's approval of  
2           questions or not, the questions are going  
3           to be the same: Did you murder Jane  
4           Lyons? Did you help murder Jane Lyons?  
5           Do you know for sure who murdered Jane  
6           Lyons? And can you take me to the gun  
7           used to murder Jane Lyons?

8                        So it doesn't matter whether it's a  
9           confidential or stipulated exam, the  
10          questions are the questions.

11        Q.       That's the next question, obviously. If a  
12          test is stipulated, meaning there's a  
13          contract with the prosecutor, or it's  
14          unstipulated, does that have any affect on  
15          you as the tester, the polygraph examiner,  
16          and the results?

17        A.       No, because we work for the truth either  
18          way. It doesn't matter whether Jane Lyons  
19          was killed on one particular day. The  
20          question is whether or not Jane Lyons was  
21          killed by that particular individual.

22                       It doesn't mean anything to me as  
23          the examiner whether it's a confidential  
24          exam or a stipulated exam.

25        Q.       It doesn't affect the test results



1           whatsoever?

2     A.     No.

3     Q.     Let me ask you, based on your education,  
4           training, and experience, to a reasonable  
5           degree of scientific certainty, what is  
6           your opinion on whether there were  
7           significant psychological changes  
8           indicative of truthfulness which occurred  
9           on Sahil Sharma's test?

10    A.     Significant physiological changes?

11    Q.     Yes.

12    A.     The significant physiological changes  
13           would be clearly in the comparison  
14           questions versus the relevant target  
15           questions; therefore, it led me to the  
16           conclusion that he told the truth about  
17           the target issues, those questions that  
18           were asked during this exam that I recited  
19           earlier, were such that the physiology  
20           that was recorded on this test was greater  
21           in the comparison questions than they were  
22           in the relevant questions.

23    Q.     And that leads you to what opinion?

24    A.     That he told the truth.

25                   MR. MIGDAL: I have no further



1 questions, Judge.

2 THE COURT: All right. Let's keep  
3 going here and have cross-examination with  
4 this witness.

5 CROSS-EXAMINATION

6 BY MS. KANELLIS:

7 Q. You indicated that you have performed  
8 thousands and thousands of polygraphs,  
9 correct?

10 A. Correct.

11 Q. And how many, and just limit this to the  
12 State of Ohio, in the State of Ohio  
13 approximately how many times have you  
14 testified in a criminal proceeding in  
15 regards to an exam that you had given?

16 A. Well, since '77, I can just use an  
17 average. That would probably be the best  
18 way of doing it.

19 Q. That's fine.

20 A. I think about -- I'm thinking back to my  
21 law enforcement days and so forth. I  
22 would say I've testified probably five  
23 times a year on the average.

24 Q. Okay. Since '77, how many of those were  
25 not stipulated polygraphs?

- 1 A. Many, many.
- 2 Q. What court was that in?
- 3 A. What court was --
- 4 Q. What courts were they in, if you can even  
5 think of one?
- 6 A. In terms of stipulated exams?
- 7 Q. No. The question was: How many of those  
8 that you testified to the exam -- the exam  
9 that you testified to was not stipulated?
- 10 A. Oh, oh, I see. I've testified in Grand  
11 Jury several times in regard to  
12 unstipulated polygraphs.
- 13 Q. How many times have you testified in a  
14 criminal trial in the State of Ohio  
15 regarding a non-stipulated polygraph?
- 16 A. I can't think of any.
- 17 Q. So none, zero?
- 18 A. No.
- 19 Q. Why is that?
- 20 A. It's because of the agreement stipulation  
21 we talked about. It wasn't stipulated to  
22 before the exam as evidentiary in nature,  
23 so I hadn't testified.
- 24 Q. To your knowledge, would you be permitted  
25 to testify in a criminal trial in Ohio as

1 to a non-stipulated polygraph exam?

2 A. Would I be permitted? It would be in the  
3 discretion of the Judge as to whether or  
4 not I would be permitted.

5 THE COURT: Isn't that what this  
6 hearing's all about?

7 BY MS. KANELLIS:

8 Q. You're a member of the American Polygraph  
9 Association, I think you indicated?

10 A. Yes.

11 Q. And tell me what type of licensing, if  
12 any, is a polygraph examiner required to  
13 hold in the State of Ohio?

14 A. There's no licensing requirement in the  
15 State of Ohio.

16 Q. Are you aware, are there states that do  
17 have licensing requirements?

18 A. Yes.

19 MS. KANELLIS: Now, Your Honor, may  
20 I approach? I'd like to take a look at  
21 the exhibit that Attorney Migdal provided.

22 THE COURT: You may.

23 BY MS. KANELLIS:

24 Q. You were handed an exhibit. I just want  
25 to make sure I have the same thing. Yes.

1 Defendant's Exhibit A, that is, in fact, a  
2 letter that you sent to defense counsel  
3 outlining the test of the defendant that  
4 you just described, correct?

5 A. Yes. This is a copy of my report.

6 Q. And there's a letter -- or your signature  
7 appears at the bottom of that report,  
8 correct?

9 A. Yes.

10 Q. Okay. And would it be fair to say you  
11 indicated in there that the subject matter  
12 tested on was whether the intercourse with  
13 the victim was consensual or forced?

14 A. Where --

15 Q. I'm looking at the top page.

16 A. Oh, on the first page?

17 Q. Yes.

18 A. Yes, that's correct.

19 Q. And you also indicated that this exam was  
20 conducted for informational purposes only  
21 and not for testimonial or evidentiary  
22 purposes?

23 A. That is correct.

24 Q. Is that accurate?

25 A. Yes, that's included in that paragraph.

- 1 Q. Why did you put that there? Why did you  
2 insert that sentence?
- 3 A. Well, actually, it's a form. I hate to  
4 say this, but each one of these reports  
5 isn't tailor-made in every regard and my  
6 secretary fills in the blanks on some of  
7 this, and that's a standard paragraph that  
8 I use on any test that I conduct that is a  
9 case -- that is a non-stipulated test.
- 10 Q. So this -- in every case where it's  
11 non-stipulated, this is the language that  
12 goes out?
- 13 A. If it's done for investigative purposes  
14 for a defense lawyer or investigative  
15 purposes even for a police department,  
16 that paragraph would be included.
- 17 Q. And just so that the record's clear, the  
18 polygraph in question, the two that you  
19 testified to with this defendant, Sahil  
20 Sharma, that was not a stipulated  
21 polygraph?
- 22 A. Neither were stipulated.
- 23 Q. Okay. Have you ever had a situation where  
24 you disagreed with another polygraph  
25 examiner with regards to the results,

1 let's say, for example, you polygraphed a  
2 criminal defendant on issues, another  
3 polygraph examiner polygraphs the same  
4 defendant on the same issue, has there  
5 ever been a disagreement with the results?

6 A. I can't recall any disagreement with  
7 anyone who was certified and qualified  
8 with the proper credentials. So the short  
9 answer is, yes, I disagreed.

10 Q. Now, when you say "certified or  
11 qualified," what do you mean by certified  
12 and qualified?

13 A. Well, I think -- what I mean by that is  
14 that there's certain levels of expertise  
15 in any field, any field of expertise.

16 And if it's a person who has  
17 attained, you know, high levels of  
18 expertise, education, training,  
19 experience, and so forth, I can't -- no, I  
20 can recall one now that you mention it. I  
21 can recall one.

22 Q. Who did that involve, as far as law  
23 enforcement, if you recall?

24 A. It was a case where there was a -- it's  
25 been so long ago I'm trying to remember.

1           It was a case involving a -- I can't  
2           remember the investigating agency, but it  
3           was a case involving -- seems like it was  
4           about ten years ago, you know. I don't  
5           recall the investigating agency.

6    Q.       Do you recall -- did you ever have a  
7           polygraph situation where there may have  
8           been different results, a case involving  
9           Vince Felber of the Akron Police  
10          Department, does that --

11   A.       Vince Felber?

12   Q.       Of APD.

13   A.       No.

14   Q.       You don't recall that?

15   A.       No, but I -- I know Vince, and I don't  
16          remember any case that we -- he's not an  
17          examiner.

18   Q.       Okay. But you don't remember a case  
19          involving Vince Felber and two different  
20          polygraphs with different results?

21   A.       No.

22   Q.       Okay.

23   A.       No.

24   Q.       But it is fair to say that you have had  
25          instances where you've polygraphed a



1           defendant and the same questions have been  
2           asked by a different polygraph examiner  
3           and there have been different results;  
4           you're aware that situation has occurred?

5       A.     No, I don't know about the same questions,  
6           no. I don't know about the same  
7           questions. I -- there could be a  
8           disagreement. If there's not a  
9           disagreement among professionals, then it  
10          would surprise me.

11       Q.     Okay.

12       A.     You know, through -- as many examinations  
13           that I've conducted and as many  
14           examinations that other examiners have  
15           conducted, sometimes the test, retest  
16           would involve different questions on the  
17           same subject matter.

18       Q.     Okay. And as far -- I think you said  
19           certified, is there a certification in  
20           Ohio?

21       A.     Well, there's a certification from the  
22           Ohio Association of Polygraph Examiners  
23           that is a certification process. It's  
24           internally-monitored.

25                           Certification comes from the school

1 or the training academy that you attend.  
2 And then that certification is either  
3 granted or not through an internship  
4 program, usually lasting about, usually,  
5 about a year after your graduation.

6 Q. So everyone performing polygraph exams in  
7 the State of Ohio would have this  
8 certification?

9 A. No, not everyone would, no. There are  
10 those out there that are conducting  
11 examinations that may not be certified.  
12 That's why I was alluding to the fact that  
13 I -- I can't remember in 29 years, I  
14 really can't -- I struggle to recall any  
15 disagreeing opinions of any substance with  
16 the same questions.

17 I can't recall identical questions  
18 in a disagreement between a certified,  
19 qualified examiner and myself.

20 Q. Now, you spoke, and I think I've actually  
21 heard you lecture on polygraph  
22 countermeasures.

23 Could you tell the Judge a little  
24 bit about what those are?

25 A. Countermeasures are an attempt to defeat

1           the exam, an attempt to employ some level  
2           of -- some level of manipulation during  
3           the exam to distort the results or change  
4           the results, so that countermeasures are  
5           usually employed by a person who's lying  
6           and trying to then create tracings that  
7           look like they're telling the truth.

8    Q.       I want to jump to a different area.

9                        When you score -- you indicate that  
10                      you felt that Sahil Sharma had been  
11                      truthful with regard to the questions you  
12                      asked him.

13                     Do you do a scoring that's like a  
14                     positive, negative -- positive negative 6,  
15                     positive negative 13? How do you do your  
16                     scoring?

17    A.       Well, the -- what you're referring to  
18               would be a numerical scoring method.

19    Q.       Is that something that you use?

20    A.       Routinely, no. Do I? Yes.

21    Q.       Did you use it in the instant case, Sahil  
22               Sharma?

23    A.       Yes.

24    Q.       Now, you said you normally don't use that.

25    A.       Normally not.

1 Q. Why not?

2 A. Because I can globally evaluate an exam  
3 and determine in my opinion whether that  
4 person is telling the truth or not by  
5 evaluating it without the numerical  
6 scoring method.

7 Q. Why did you use the numerical scoring  
8 method in this case?

9 A. Well, actually, I did both. I did a  
10 global evaluation and a numerical  
11 evaluation.

12 Q. Why did you choose to use the numerical in  
13 this case?

14 A. Because I knew that I was going to be  
15 submitting it for peer review.

16 Q. How is it that you knew it was going to be  
17 submitted for peer review?

18 A. Because I felt he was telling the truth,  
19 and it was a case that was of significant  
20 importance.

21 Q. How many polygraphs had Sahil Sharma taken  
22 prior to the polygraph you administered?

23 A. None.

24 Q. And how do you know that?

25 A. I asked him and he told me that.

1 Q. Okay. You indicated that there were a  
2 total of nine questions, and I think the  
3 four that you determined were relevant are  
4 in that report. What were the other five  
5 questions?

6 A. The first would have been: "Do you live  
7 in the United States?"

8 The second was regarding this case  
9 involving Michelle's rape allegations, "Do  
10 you intend to answer each question  
11 truthfully?"

12 "Can you recall, besides what we  
13 have talked about, prior to your 18th  
14 birthday telling even one important lie  
15 that we hadn't discussed?"

16 The fourth question was: "Without  
17 Michelle" -- excuse me.

18 The next non-relevant question,  
19 I'll put it that way, was: "Can you  
20 recall, besides what we talked about prior  
21 to 2006, telling either one important lie  
22 that we hadn't discussed?"

23 And the last was: "Can you recall,  
24 besides what we have talked about, between  
25 the age of 11 and 21 telling even one

- 1           important lie we hadn't discussed?"
- 2    Q.       And you determined that those were not
- 3           relevant questions in your mind?
- 4    A.       They're comparison.
- 5    Q.       Comparison?
- 6    A.       Right, comparison questions.  The last
- 7           three are comparison questions, the last
- 8           three that I read.
- 9    Q.       And was he truthful on those questions?
- 10   A.       Well, he showed greater significance in
- 11           physiological change on those questions.
- 12           So I guess one would conclude that he was
- 13           -- that he was showing an amount of
- 14           physiological reaction on those questions
- 15           suggesting they were most disturbing to
- 16           him out of the nine.
- 17   Q.       Which means?
- 18   A.       Well, which would translate into, that's
- 19           the premise and basis for my opinion of
- 20           truthfulness.
- 21   Q.       But as with regards to those five
- 22           questions, was he being truthful in his
- 23           response to those?
- 24   A.       Well, the first two that I read aren't
- 25           evaluated.  One's an irrelevant question

1 and the other is a sacrifice relevant  
2 question.

3 But in regard to the other three,  
4 the -- the answer would be he's not  
5 telling the truth on those three  
6 questions, or they are of greater  
7 importance causing a physiological change  
8 because they are most disturbing to him.

9 I can probably explain that better  
10 by way of analogy, if you'd like.

11 Q. That would be fine.

12 A. Let's assume for a moment that I'm  
13 examining on the case of John Kennedy,  
14 Jr.'s airplane crashing in the Atlantic  
15 Ocean, and the person that I'm examining  
16 was not involved in any way, shape, or  
17 form, in fact, wasn't even on the East  
18 Coast that day.

19 And I asked that same person if  
20 they had ever lied about something between  
21 the age of 18 and 28, and they said,  
22 "Yeah, I remember lying about something  
23 that's unimportant," but they remember  
24 lying about something they can articulate  
25 to me.



1                   There would be some reservation as  
2 to whether they had told everything there  
3 is about that particular question, even  
4 when I went into the test.

5                   So the emotional disturbance and  
6 change would then manifest on that  
7 question about the outside issue more so  
8 than the relevant question of tampering  
9 with a vacuum line on the airplane causing  
10 the crash, because that person would know  
11 full well that they weren't on the East  
12 Coast and couldn't have done that.

13    Q.           Okay.

14    A.           But there may have been an important lie  
15 of some kind that they told during that  
16 time block, that time frame, but they're  
17 not recalling.

18                   It doesn't necessarily mean they're  
19 lying to the question. What it does mean,  
20 though, is that there's enough of an  
21 emotional concern or disturbance  
22 associated with that topic that it  
23 translates into a physiological change on  
24 the graph.

25    Q.           Now, you referenced several times how

1           important this case is. And I know you  
2           polygraph on all sorts of criminal cases  
3           all the time.

4                       Why is this case, State of Ohio  
5           versus Sahil Sharma, of such importance to  
6           you?

7    A.       It's not important to me; it was important  
8           to Mr. Sharma. This case is as important  
9           as a candy bar theft to me.

10   Q.       Okay.

11   A.       It's as important as a homicide to me. I  
12           handle all my cases the same way. As I  
13           said earlier, they're all done the same  
14           way, whether they're confidential or  
15           stipulated, all the tests are structured  
16           the same.

17   Q.       And I think you indicated that you always  
18           -- you did two different exams or two  
19           different sittings --

20   A.       Yes.

21   Q.       -- for Sahil Sharma? And I think, am I  
22           accurate if I say whenever you administer  
23           an exam and you determine that someone's  
24           been truthful, you do another exam. Is  
25           that a matter of routine for you?

1 A. Not every time necessarily. I do that --  
2 it's not unusual to reexamine on a case if  
3 a person is telling the truth, to be sure.  
4 It's -- it's just this thing that I do  
5 from a professional standpoint that I  
6 think is the right thing to do.

7 Q. Fair enough.

8 But sometimes you wouldn't;  
9 sometimes you would just give the exam, it  
10 is what it is, and you wouldn't have  
11 another sitting?

12 A. Sometimes.

13 Q. All right. Do you have any concerns as a  
14 polygraph examiner about the time frame  
15 between the first sitting for the first  
16 exam and the second sitting for the second  
17 exam?

18 A. Well, it's -- yes. As I said, optimally,  
19 I think a reexam should be done sometimes  
20 between three and ten days after the first  
21 sitting.

22 Q. Why is that?

23 A. It lets the dust settle on the subject  
24 matter more. The person who's taking the  
25 test the first time is usually in a better

1 frame of mind when they come in than if  
2 you examine them within a 24-hour period  
3 of time.

4 In this case it was impossible  
5 because Mr. Sharma was on his way back to  
6 New York.

7 Q. And I think you indicated that you felt  
8 the second exam, the second sitting, was  
9 inconclusive --

10 A. Yes.

11 Q. -- and you described why. Do you, as a  
12 polygraph examiner, just in general, is  
13 there any problem if I want to go out and  
14 be polygraphed and take a polygraph every  
15 day for a month; would you see any problem  
16 with that?

17 A. Help me with that now.

18 Q. Can someone be over-polygraphed? Is there  
19 such a thing?

20 A. Over-polygraphed?

21 Q. Yes.

22 A. Well, every day for a month?

23 Q. Just as an example. Hypothetically, let's  
24 say every day for a month.

25 A. I'd say it's a problem.

1 Q. Why is that?

2 A. Well, the first question that I would have  
3 is, what's the point? We're talking about  
4 a situation where the person is taking 30  
5 tests, and they're all truthful or they're  
6 all deceptive?

7 Q. Sure. Either/or.

8 A. We're beating that dead horse.

9 Q. Is there any type of concern you would  
10 have about someone physiologically; for  
11 example, the more polygraphs someone  
12 takes, do you expect them to adjust  
13 physiologically, are there any concerns  
14 about multiple polygraphs that you have?

15 A. No. The -- I realize that there's some  
16 literature out there that test, retest,  
17 test, retest, test, retest climatizes that  
18 person to the testing environment, and  
19 it's been known as the friendly  
20 polygraphist syndrome, and I, frankly, in  
21 doing what I've done for 29 years, find no  
22 validity to that theory.

23 If a person -- and, in fact, it may  
24 work in the reverse in many situations,  
25 whereby a test, retest situation, I just

1 don't see that as having any issue or  
2 concern about adding any credence to that  
3 friendly polygraphist theory.

4 Q. Okay. Now, you indicated at the second  
5 sitting that you believe Sahil Sharma was  
6 -- I think you said on pins and needles  
7 because he was not aware that he had  
8 passed?

9 A. Well, I'm characterizing that in my own  
10 words. The circumstances were happening  
11 pretty quickly in regard to his need to  
12 fly back to New York.

13 Q. Okay.

14 A. I don't recall exactly why he needed to  
15 get back, but it had something to do with  
16 an academic-type of commitment he had.

17 Q. Had -- I'm sorry.

18 A. The -- the second exam -- coming back in  
19 for that second exam, I had already talked  
20 to him about the issues involving what you  
21 alluded to earlier regarding his -- the  
22 reaction and statement on the comparison  
23 question, and so when he came back in he  
24 was very concerned.

25 I don't know exactly what he was

1 concerned about, because I can't read his  
2 mind. But I know he was very concerned  
3 about that situation involving the  
4 comparison issue.

5 So having said that, he didn't know  
6 where I was going with the reexam.

7 Q. And you had not informed him he had, in  
8 fact, passed the first time?

9 A. No, I said I don't think I had. I don't  
10 think I had rendered that opinion.

11 Q. Had you given that opinion to his  
12 attorney?

13 A. Yes, I think I did.

14 Q. Now, I think you talked about there's two  
15 different types -- there's the Axciton and  
16 analog polygraph instrument. Are there  
17 any others?

18 A. Well, there's the -- Axciton is a  
19 manufacturer of the computer. The analog  
20 is a generic term for a polygraph that  
21 uses pen scribing across chart paper. And  
22 the manufacturers include -- the major  
23 manufacturers include Axciton and  
24 Lafayette, the computer, and also the  
25 analog, Lafayette, and Axciton doesn't



1 make an analog. But Lafayette and  
2 Stoelting make analog instruments.  
3 Axciton doesn't make an analog instrument.  
4 Q. So it's either going to be analog with the  
5 pen, or it's going to be computerized, and  
6 you use the computerized?

7 A. I can use them both, but I prefer the  
8 computer.

9 Q. Okay.

10 MS. KANELLIS: Thank you.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION

13 BY MR. MIGDAL:

14 Q. Mr. Evans, just a couple of issues.

15 Regarding your language in your  
16 report that the test is for informational  
17 purposes and not for evidentiary purposes,  
18 suppose you were doing a test for a trial,  
19 would you conduct it any differently?

20 A. No.

21 Q. Countermeasures, what are some? Do you  
22 detect them? Is there a way to detect  
23 them? Did Mr. Sharma exhibit any kind of  
24 them?

25 A. As a way of detecting them, I didn't note

1           any attempt at countermeasures during the  
2           exam.

3       Q.     What are some countermeasures that you're  
4           aware of?

5       A.     Probably the most archaic, the one we hear  
6           about most of the time, is the tack in the  
7           shoe technique.

8       Q.     What's that?

9       A.     Put a tack in the shoe, step on it during  
10          the test.

11      Q.     What's the point of doing that?

12      A.     Inflict pain, self-infliction of pain, and  
13          --

14      Q.     And for what purpose?

15      A.     Usually, there's a pain response on -- you  
16          know, I mentioned earlier in my testimony  
17          that one of the things that's most  
18          affected by any outside interference with  
19          the test, such as a noise outside the room  
20          or whatever it might be, would be the  
21          galvanic skin response.

22                    The event -- if there's a pain type  
23          of response it shows up very clearly in  
24          the GSR.  It's -- it's very evident that  
25          there's an issue involving pain during the

1 test, and then we look for what's causing  
2 it. I might ask for the person to remove  
3 their shoes, whatever, to determine what  
4 happened, but there are other ways.

5 Q. Is that something you look for as an  
6 examiner, somebody attempting to use  
7 countermeasures?

8 A. Sure; absolutely.

9 Q. Have you experienced that before?

10 A. Sure, absolutely.

11 Q. Okay. Have you caught the person who's  
12 attempting to use countermeasures and then  
13 dealt with it?

14 A. Yes.

15 Q. In the two sitting of Sahil Sharma, did he  
16 make any attempt to use any  
17 countermeasures to affect the test?

18 A. I didn't detect any.

19 Q. Now, just so the Court's aware, and maybe  
20 I didn't deal well enough with this on  
21 direct, comparison questions, they sound  
22 like these tough questions versus relevant  
23 questions.

24 Explain to the Court what it is  
25 you're attempting to elicit, or what are

1 the comparison questions and relevant  
2 questions, and why the fact that he may or  
3 may not have been deceptive is frankly a  
4 good thing for the showing of the truth?

5 A. Well, if -- there's an assessment test  
6 done initially, anyway, as I mentioned to  
7 you with numbers in this case, to  
8 determine reaction capability.

9 And that reaction capability is  
10 important, because if a person is  
11 incapable of responding to any question on  
12 the test, this examination may end up  
13 uninterpretable; you just can't read what  
14 you need to read.

15 So the comparison questions evoked  
16 a response, and that response was greater  
17 in those comparison questions than on the  
18 relevant questions.

19 Q. Let me stop you. Are these comparison  
20 questions, are they supposed to evoke a  
21 response?

22 A. Yes.

23 Q. Explain that.

24 A. However, if it's a person who is lying,  
25 who is deceptive, who has done the crime,

1 the greatest reaction occurs on relevant  
2 questions, not on comparison questions.

3 So, theoretically, a person can  
4 react to relevant questions and to  
5 comparison questions, but our evaluation  
6 is done in such a way to determine where  
7 the greatest response is actually  
8 occurring.

9 If the greatest response is  
10 occurring on relevant questions, then the  
11 person is determined to have lied, okay?

12 The greatest physiological change  
13 occurs in those relevant areas and the  
14 person therefore is -- that physiologic  
15 change is consistent with what we know is  
16 deception.

17 How do we know that? Because  
18 there's a high percentage of people that  
19 end up confessing after the test is  
20 completed to the individual -- to the  
21 questions where they've responded greatest  
22 on relevant issues.

23 There's a correlation between those  
24 responses and confessions, so we know  
25 physiological change taking place on

1 relevant questions leads to a lot of  
2 confessions and those reactions on  
3 relevant questions have been then balanced  
4 against the comparison question, the  
5 greatest reaction on relevant questions  
6 was consistent on each test the person is  
7 deemed to be deceptive.

8 On the other hand, if the reactions  
9 are occurring in the comparison question,  
10 the person's deemed to be truthful, as in  
11 this case.

12 Q. For example, comparison question, have you  
13 ever told a significant lie, suppose I'd  
14 been cheating on my wife for 20 years.  
15 That would be a significant lie, and I  
16 don't tell you about it, you would ask me,  
17 and I would react on that comparison  
18 question, right?

19 A. Right. There would be the question -- if  
20 you hadn't told me about that, then the  
21 question, "Can you recall besides what  
22 you've told me prior to the year 2006  
23 telling any important lie that we hadn't  
24 discussed?" would be of significant  
25 relevance to you.

1 Q. So when you asked me that on the test, I  
2 haven't told you I've been cheating on my  
3 wife, all the measures of my body are  
4 going to react to that comparison  
5 question?

6 A. Correct.

7 Q. But the issue is: Did I steal that clock  
8 and I really didn't, you ask me did I  
9 steal that clock in relation to the  
10 comparison question where you know I'm  
11 lying about something significant, the  
12 reaction is going to be much different  
13 when you ask me something about stealing  
14 the clock?

15 A. You're going to react more to the  
16 comparison question than the target  
17 relevant question.

18 Q. That's where you get your determination of  
19 truthfulness?

20 A. That's the underlying theory of the exam.

21 MR. MIGDAL: No further questions,  
22 Judge.

23 THE COURT: Before we break, let me  
24 just go over in a little more detail this  
25 matter of how you get certified.



1                   And, for instance, to help me  
2 understand numbers of qualified people out  
3 there in Ohio, how many schools are there  
4 for becoming certified as a polygrapher?

5                   THE WITNESS: In Ohio there aren't  
6 any schools, any training academies or  
7 schools that I'm aware of.

8                   THE COURT: I thought I heard you  
9 mention the Ohio Polygraph something.

10                   THE WITNESS: Ohio Polygraph  
11 Association.

12                   THE COURT: The Association.

13                   THE WITNESS: Yes. The Ohio  
14 Association of Polygraph Examiners is the  
15 title.

16                   Through the American Polygraph  
17 Association, there is a -- there's a way  
18 in which a polygraphist can be recognized  
19 as having criteria, training criteria, to  
20 the equivalent of certification.

21                   However, I'm certified as a -- not  
22 just me, but any examiner in Ohio is  
23 certified by their training academy.

24                   For example, in the country there  
25 may be, I'm going to pick a number, you

1 know, I hate to do this, but maybe there  
2 are 12 to 15 in the country of training  
3 academies, maybe there are 18, I don't  
4 know, maybe there are 12, but the whole  
5 point being there aren't a whole lot of  
6 places you can go to get the training.

7 THE COURT: Then again this  
8 national organization that you talked  
9 about with the standards, repeat that for  
10 me.

11 THE WITNESS: The American  
12 Polygraph Association?

13 THE COURT: Yes. Help me  
14 understand what that is about.

15 THE WITNESS: Yes. The American  
16 Polygraph Association, the National  
17 Polygraph Association, the American  
18 Association of Police Polygraphists, I'm a  
19 member of each of those, and each has an  
20 accreditation type of process.

21 For example, when I became a member  
22 of the American Polygraph Association, I  
23 had to take a test to become a member to  
24 make sure that I knew the basics of  
25 polygraph associated with conducting an

1 examination from a physiological  
2 standpoint, from a procedural standpoint,  
3 and methodology standpoint.

4 THE COURT: How extensive was that  
5 test?

6 THE WITNESS: Well, the -- you  
7 know, the test was before we became a  
8 member, and then we have ongoing training  
9 requirements also.

10 THE COURT: But initially. I guess  
11 I'm trying to analogize, for instance, to  
12 other areas where we have standard  
13 testing, and --

14 THE WITNESS: Well, it wasn't a  
15 two-day bar examination, but it -- if I  
16 recall correctly, it was about 150 or 200  
17 questions on an --

18 THE COURT: Written?

19 THE WITNESS: Yes, on an objective  
20 test, and then there was also a -- it was  
21 a query relative to different things that  
22 were important in the technique and  
23 methodology that you had to know as part  
24 and parcel of that exam.

25 THE COURT: Which organization is

1 the preeminent one, if there is one, for  
2 certification of qualification?

3 THE WITNESS: The American  
4 Association of Police Polygraphists has  
5 more federal examiners and more law  
6 enforcement examiners in it than the  
7 American Polygraph Examiners.

8 The American Polygraph Association,  
9 I think, which is pretty much equal as I  
10 -- as I recall, the balance is close to  
11 the APA, about half private examiners,  
12 about half federal or law enforcement;  
13 whereas the American Association of Police  
14 Polygraphists has more law enforcement or  
15 federal examiners in it. So it really  
16 depends.

17 Frankly, it depends on whether you  
18 want to belong to three, or two, or one,  
19 and each has their own -- each has its own  
20 membership, and it's geared toward the  
21 type of exams that you're going to be  
22 conducting as an examiner.

23 THE COURT: Are you aware of what  
24 kind of credentialing requirement is  
25 required, for instance, by someone who

1 administers a polygraph for the Akron  
2 Police Department?

3 THE WITNESS: Well, the Akron  
4 Police Department, many and most schools  
5 require a Bachelor's degree before you go.  
6 Some do not. You have a -- there are a  
7 couple that I can think of that do not if  
8 you have a combination of investigative  
9 experience, five years of investigative  
10 experience and an Associate's degree or a  
11 blend in that regard.

12 Specifically, answering your  
13 question, the Akron Police Department sent  
14 their two examiners to the National  
15 Training Center in New York, and I believe  
16 Ken Butler has a Bachelor's degree.

17 THE COURT: What do you think is  
18 the critical issue or the critical  
19 component for a skilled polygrapher?

20 THE WITNESS: Jack Nicklaus said,  
21 "I can teach you how to play the game of  
22 golf, but I can't give you the feel for  
23 the game."

24 And a -- I don't know. I think at  
25 the very least you have to attend a good

1 training academy, at the very least.

2 The examiner has to be able to  
3 adhere to the rigors of that internship  
4 afterwards.

5 Not everyone gets qualified to be  
6 an examiner and certified after that  
7 internship.

8 My guess would be that probably  
9 three-fourths -- probably there's a 75  
10 percent non-certification --

11 THE COURT: Really?

12 THE WITNESS: -- rate.

13 Yes. In my class, I think it was  
14 about two-thirds were certified.

15 I think a person has to have good  
16 interpersonal skills, be able to  
17 communicate with people, but more  
18 importantly, they have to know the  
19 methodology they're employing.

20 There are several different  
21 methodologies that work. One school's not  
22 necessarily better than the other.

23 Just like there might be a way of  
24 performing surgery, whether it's  
25 laparoscopic or otherwise, it's dependent



1           upon the surgeon's skill. How long  
2           they've been in practice is one thing and  
3           the experience associated with how good  
4           they are is probably demonstrated more so  
5           by reputation than anything else.

6                         In other words, you're going to go  
7           to a doctor that you know is qualified to  
8           do the surgery, and if you want to take  
9           your risks with someone in some part of  
10          the country that you don't know for a cost  
11          that is less than that at The Cleveland  
12          Clinic, then that's up to you.

13                        THE COURT: Again, let's go back to  
14          your report and this letter in this first  
15          paragraph, why is that form paragraph in  
16          this report when the report was prepared  
17          for a non-stipulated result?

18                        THE WITNESS: That's why. It was  
19          prepared for a non-stipulated result. The  
20          reason behind that, really, is I want to  
21          make it clear to whoever the reader is,  
22          whoever that person is, in generic form,  
23          when it's in our computer, that I didn't  
24          rely on police reports here. I relied on  
25          information that was, in this case,



1 produced by Mr. Migdal, because this  
2 report may come up in a case in a  
3 neighboring county 20 years later, and I  
4 don't remember that case 20 years later.  
5 But I remember now looking at this report  
6 20 years later that this was a  
7 confidential test and I relied upon  
8 information supplied by the defense  
9 lawyer.

10 THE COURT: All right. I don't  
11 think I have anything further.

12 Let's take a break here. Take ten  
13 minutes and we'll come back.

14 MR. MIGDAL: Can I take two minutes  
15 based on what you said? He has a doctor's  
16 appointment.

17 THE COURT: In follow up to my  
18 questions?

19 MR. MIGDAL: Yes. Maybe we left  
20 one thing out.

21 THE COURT: You may.

22 FURTHER REDIRECT EXAMINATION

23 BY MR. MIGDAL:

24 Q. The training academy, Mr. Evans, how long  
25 is that? I don't know if you were asked

1           that particular question. How long does  
2           that take place?

3       A.     It's really hours. Some are more  
4           condensed, some are, you know, five or six  
5           days a week.

6       Q.     For how long?

7       A.     It depends, six weeks to two and a half  
8           months -- excuse me, six months.

9       Q.     How long did you go in New York?

10      A.     257 classroom hours, plus one year of  
11           internship.

12      Q.     And just one other question, I just want  
13           to make sure, I think you've already  
14           answered this, the results of the test  
15           would be the same whether you prepared  
16           that for trial or informational purposes,  
17           you wouldn't have done anything  
18           differently; am I correct?

19      A.     I wouldn't have done anything different.

20                   THE COURT: That would be about the  
21           third time.

22                   MR. MIGDAL: Thank you, Judge.

23                   THE WITNESS: The only thing I'd  
24           like to correct, I don't know on the  
25           average, it was an estimate, I don't know

1           that I've testified five times a year on  
2           the average.

3                       There are some years I've testified  
4           more, sometimes less. I simply don't  
5           know.

6                       But there are a lot of stipulations  
7           that I conducted that never went to  
8           testimony, just so you know that.

9                       MS. KANELLIS: Your Honor, may I --

10                      THE COURT: I think you  
11           misunderstood the question when you were  
12           asked the first time.

13                      MS. KANELLIS: May I ask a  
14           follow-up question based on your questions  
15           and Attorney Migdal's questions?

16                      THE COURT: One.

17                      REXCROSS-EXAMINATION

18           BY MS. KANELLIS:

19           Q.        You indicated that you did not, in this  
20           particular polygraph, Sahil Sharma, you  
21           did not review police reports prior,  
22           correct?

23           A.        I don't think I had any police reports to  
24           review.

25           Q.        And you based -- the information that you



1 THE COURT: Raise your right hand.

2 STEVEN J. STECHSCHULTE

3 a witness herein, called on behalf of the  
4 Defendant, having been first duly sworn as  
5 provided by law, was examined and  
6 testified as follows:

7 THE COURT: Thank you. Please take  
8 the witness stand.

9 DIRECT EXAMINATION

10 BY MR. MIGDAL:

11 Q. State your name and spell your last name  
12 for the record.

13 A. My name is Steven, Stechschulte,  
14 S-t-e-c-h-s-c-h-u-l-t-e.

15 Q. Mr. Stechschulte, how are you employed?

16 A. I'm a private polygraph examiner, retired  
17 from the Ohio Attorney General's Office.

18 Q. Okay. Why don't we go back. Before you  
19 were a polygrapher, were you in law  
20 enforcement?

21 A. Yes, I was.

22 Q. Tell the Court about that.

23 A. I started in law enforcement in 1975. I  
24 was a deputy sheriff for 16 years; 13  
25 years of that as a supervisor. After that

1 I ran for sheriff and was defeated.

2 I freelanced taught for about 19  
3 months after that, and at the same time I  
4 was also commissioned as a police officer  
5 for the Village of Columbus Grove where I  
6 live.

7 Q. What sheriff's department?

8 A. Putnam County Sheriff's Office.

9 Q. You're a polygrapher, is that what you  
10 said?

11 A. That's correct.

12 Q. Tell the Court about your education,  
13 training, and experience being a  
14 polygrapher.

15 A. I was trained in September of 1993 at the  
16 National Training Center of Polygraph  
17 Science under Richard Arthur.

18 The course was actually conducted  
19 in Columbus, Ohio. He -- his main office  
20 is in New York City, New York. He  
21 conducted a class at the Ohio State  
22 Highway Patrol Academy in Columbus.

23 The course lasted six weeks. I  
24 went Monday through Saturday for those six  
25 weeks.

1                   And after that point in time we  
2 went through an internship, and once you  
3 went through the internship, if you  
4 successfully completed the internship you  
5 were certified through the National  
6 Training Center of Polygraph Science.

7     Q.     Tell the Court about your internship,  
8            where you did it, and what that  
9            encompassed.

10    A.     After I completed my training, I worked  
11            for a few weeks at the headquarters at BCI  
12            in London, Ohio.

13                   After that time I was assigned to  
14            the northwest office in Freemont, Ohio,  
15            where I conducted polygraph examinations  
16            there, and the office eventually moved to  
17            Bowling Green, but I took care of the 23  
18            counties in northwest Ohio during that  
19            time.

20                   My internship, it consisted of the  
21            first five examinations were sent straight  
22            to Mr. Arthur, and they had to be sent  
23            within five days of the time that you  
24            completed your fifth examination.

25                   At that point he would score them



1 and make marks on them and send them back  
2 to you. You had to have a typewritten  
3 response for each one of those comments  
4 that he made and have it back to him  
5 within seven days of that time that you  
6 had it sent to you.

7 After reviewing those, you did your  
8 next 25 tests and sent a list to him of  
9 the next 25 examinations that you did. He  
10 would pick the five that he wanted at  
11 random. He would review those.

12 If those were -- had anything it  
13 would be the same process. He would mark  
14 those, you would have a typewritten  
15 response.

16 If at that point in time he was  
17 satisfied, you would be certified. If  
18 not, he would continue your internship.

19 Q. And how did your internship go in relation  
20 to Mr. Arthur?

21 A. In most cases, examiners usually average  
22 30 to 50 tests a year, private examiners,  
23 but at the Attorney General's Office at  
24 BCI taking care of that many counties I  
25 would average around 25 to 30 tests a

1 month on some occasions, and they were all  
2 criminal examinations. They were not  
3 preemployment tests or anything like that.  
4 They were in criminal cases, and which my  
5 internship went rather quickly, within the  
6 first three months my internship was  
7 completed, and then I moved on to doing  
8 regular tests for BCI at that point.

9 Q. So you completed your internship at BCI?

10 A. Yes, I did.

11 Q. And did they then hire you on full-time as  
12 a polygrapher?

13 A. Yes, they did.

14 Q. And how long did you remain at BCI as a  
15 polygrapher?

16 A. I was at BCI for 12 years and five months,  
17 and then I retired with 30 years in the  
18 PERS system.

19 Q. I know the Court knows, but just for the  
20 record, BCI is what?

21 A. Ohio Bureau of Criminal Identification and  
22 Investigation.

23 Q. That's through the Attorney General's  
24 Office?

25 A. A division of the Attorney General's

1 Office, yes.

2 Q. How long did you stay at BCI?

3 A. 12 years and five months.

4 Q. And after you did 12 years and five  
5 months, then what did you do as far as  
6 your polygraph work?

7 A. I started a private polygraph practice.

8 Q. And how long have you been there?

9 A. Since February of -- just a little over a  
10 year now.

11 Q. As a polygrapher, are you a member of any  
12 professional organizations?

13 A. Yes, I am.

14 Q. Tell the Court about them.

15 A. I am a member of the Ohio Association of  
16 Polygraph Examiners, served two years as  
17 president, two years as vice-president,  
18 two years as chairman of the Board of  
19 Directors, and I'm still on the Board of  
20 Directors of the Ohio Association of  
21 Polygraph Examiners.

22 And I'm also a member of the  
23 American Association of Police  
24 Polygraphists, was certified -- I am  
25 certified by the National Training Center,

1 by the Ohio Association of Polygraph  
2 Examiners and was previously certified  
3 with the American Association of Police  
4 Polygraphists, although if you don't  
5 attend one of their seminars within three  
6 years, they make you come back and make  
7 sure you attend one of their seminars to  
8 make sure that you're in compliance with  
9 their certification.

10 Q. In the 12, 13, 14 years or so, do you know  
11 how many polygraphs you've actually  
12 conducted?

13 A. While I was at BCI, I conducted over 2700  
14 criminal polygraphs. In the last year it  
15 would be approximately, if I'm talking  
16 criminal polygraph tests, it would be  
17 about 40, 45.

18 I also did post-conviction sex  
19 offender testing for the Lucas County  
20 Probation Department, which I did 33 there  
21 for them.

22 And some private or the -- that  
23 pretty much consists of post-conviction.

24 Q. What you just talked about, you conducted  
25 polygraphs for who?

- 1 A. Lucas County Probation Department.
- 2 Q. What do you -- what are they doing those  
3 for?
- 4 A. It's part of therapy or part of their  
5 treatment after they've been convicted of  
6 a sex offense, when they go into treatment  
7 as part of their probation, they're  
8 required to take a polygraph test to make  
9 sure that there is no recidivism in their  
10 activities, to make sure that we don't  
11 have them reoffending while they're on  
12 probation.
- 13 Q. Is that a condition of their probation; do  
14 you know?
- 15 A. That is a condition of their probation.
- 16 Q. Do they have a choice on whether to take  
17 it or not?
- 18 A. Yes, they do.
- 19 Q. Are those tests stipulated?
- 20 A. No, they're not.
- 21 Q. Okay. And has anybody gone back to prison  
22 who's been deceptive on your tests if you  
23 know?
- 24 A. I don't know.
- 25 Q. Okay. What instrumentation do you use

- 1                   when you conduct a polygraph?
- 2    A.           Well, when I was first trained I started  
3                   on a Stoelting UltraScribe, which is an  
4                   analog instrument where you have paper  
5                   going across and pens that would make the  
6                   polygraph.
- 7                                I currently use an Axciton  
8                   computerized polygraph.
- 9    Q.           That's a computer?
- 10   A.           Yes.
- 11   Q.           Did you say computer?
- 12   A.           Yes.
- 13   Q.           I want to direct your attention to January  
14                   12th of this year. Did you conduct a  
15                   polygraph examination with Sahil Sharma?
- 16   A.           Yes, I did.
- 17   Q.           You did that at my request?
- 18   A.           Yes, I did.
- 19   Q.           Can you look at State's Exhibit B -- I'm  
20                   sorry, Defendant's Exhibit B. Do you  
21                   recognize that?
- 22   A.           Yes, I do.
- 23   Q.           Can you tell the Court what it is?
- 24   A.           It appears to be a photocopy of my report  
25                   pertaining to a polygraph examination I

1 did on Mr. Sharma.

2 Q. Is that an accurate copy of the original  
3 that you produced?

4 A. Yes, it is.

5 Q. Let me talk about that particular  
6 polygraph that you did of Mr. Sharma.

7 Prior to beginning the polygraph,  
8 what information did you have?

9 A. I had police reports, I had a report from  
10 you as to the prior polygraph that he had  
11 taken with Mr. Evans, and I think that's  
12 about all I had.

13 Q. You had the police reports, the incident  
14 reports?

15 A. Yes.

16 Q. You are a police officer; you're familiar  
17 with those?

18 A. Yes.

19 Q. And did that include Michelle Sacia's  
20 statements as to what had happened?

21 A. I'd have to refer back to that, if I  
22 could.

23 Q. Okay. Did you bring --

24 A. I have it with me.

25 (Pause in the proceedings.)



1                   THE WITNESS: I don't have her  
2                   actual statement, although I do have a  
3                   summary.

4       BY MR. MIGDAL:

5       Q.        You don't have the written statement, you  
6                   have a summary in a police report of what  
7                   she says happened?

8       A.        That's correct.

9       Q.        Okay. Can you tell the Court how you  
10                  conducted Mr. Sharma's polygraph  
11                  examination, how you formulated the  
12                  questions, the pre-test interview,  
13                  basically your whole protocol?

14      A.        I conducted the test at Mr. Migdal's  
15                  office here in Akron. And after setting  
16                  up my equipment, I had him read a journal  
17                  which consisted of how the polygraph  
18                  works.

19                        Basically, it's done in a question  
20                        and answer form. It answers questions  
21                        people have, concerns about getting an  
22                        electrical shock, how about if it says I'm  
23                        lying when I'm telling the truth, and  
24                        things like that.

25                        They read that first, and they're

1 also given an opportunity to write down  
2 questions they might want me to ask them  
3 on the test.

4 After that point in time they are  
5 taken into the test room, or in this case  
6 it was given all in one room.

7 And in the room it is, again,  
8 explained in a pre-test format. We went  
9 over the -- basically the contract of what  
10 he was going to take care of with that,  
11 but after that it was a background form  
12 where we deal with some dealings of his  
13 past, any medical conditions he may have  
14 that would interfere with the test, any  
15 family background issues that may  
16 interfere with the test or that may assist  
17 me in putting the test together. It's  
18 pretty much what the background form does.

19 And after that, we proceed on with  
20 the test.

21 Q. The fact that he had taken a test four or  
22 five months before, August 30th of '06,  
23 did that have any effect upon your test?

24 A. It did in my question formulation. In my  
25 question formulation, I wanted to make

1           sure I didn't ask exactly the same  
2           questions. It concerned me he had already  
3           passed one test, and I discussed this with  
4           Mr. Migdal about giving a second test, and  
5           that after reading the reports I was also  
6           concerned that everything that was alleged  
7           in this case by the victim was stated that  
8           it happened while she was sleeping and  
9           then she woke up to the events that were  
10          happening at the time.

11                 So my concern was, that if she  
12                 stated that all this had happened to her  
13                 while she was sleeping, and I wanted to  
14                 ask Mr. Sharma at that point if he did any  
15                 of these things to her while she was  
16                 sleeping.

17                 That was my main concern of  
18                 formulating my questions in this  
19                 particular case, because the allegation  
20                 was that this occurred while she was  
21                 sleeping and she woke up to this  
22                 happening.

23                 So my question was: While she was  
24                 sleeping, did you do any of these things?  
25                 And that prior test and that information

1 had a lot to do with my question  
2 formulation.

3 Q. Can you tell the Court about the pre-test,  
4 the questions you actually answered -- or  
5 the questions you actually asked and the  
6 results?

7 A. The background form of the pre-test or  
8 just the questions during the test?

9 Q. Yes, how you formulated the comparison  
10 questions and how you went about  
11 formulating the questions in the test.

12 A. May I also refer to this? I have my  
13 comparison questions on that list.

14 Q. If it will help you, yes.

15 A. The background form assists me in putting  
16 together comparison questions for the  
17 test, itself.

18 Comparison questions were questions  
19 that we want the person to understand and  
20 believe have equal weight with the  
21 relevant questions in the test, that they  
22 are also, we feel, that they should also  
23 feel that they're just as relevant as any  
24 other question.

25 So all the questions they look at

1 in the test to them are relevant; as to --  
2 the examiner looks at it as a comparison  
3 and a relevant question.

4 So not to confuse the issue of  
5 relevance in comparison questions is, when  
6 he answers the questions on the test, or  
7 anybody answers the questions on the test,  
8 they believe that they have to get all the  
9 answers or answer truthfully for all the  
10 questions because if they lie to one of  
11 the questions they fail the test.

12 So in that, in the background form  
13 we asked questions about their family, and  
14 those types of issues, and their  
15 relationships with their families, or  
16 girlfriends, or boyfriends and so forth,  
17 which may have an influence in their life,  
18 and then we will form our comparison  
19 questions based on that in relevance to  
20 the relevant questions, as well.

21 Q. And can you tell the Court what the  
22 relevant questions were, his answers, and  
23 then your opinion?

24 A. Okay. My relevant questions in this  
25 examination were: "While Michelle was

1 sleeping, did you put your finger into her  
2 vagina?"

3 His answer was no.

4 "While Michelle was sleeping, did  
5 you put your penis into her vagina?"

6 His answer was no.

7 "While Michelle was sleeping, did  
8 you pull her pants down?"

9 His answer was no.

10 "While Michelle was sleeping, did  
11 you have sexual intercourse with her?"

12 His answer was no.

13 Q. Now, you wrote in your report that he told  
14 the substantial truth.

15 A. Yes.

16 Q. What does that mean?

17 A. That means based on the reactions that I  
18 saw on the charts, and based on the  
19 reactions as in comparison to the  
20 evaluation that I did, that it was my  
21 opinion that he told the truth.

22 Q. Okay. Does the word "substantial," why do  
23 you use that word?

24 A. That was basically a format that we used  
25 at BCI. And I think substantial truth

1 means the substance of the test, itself,  
2 the main part of the test, itself, when he  
3 was asked those questions that he told the  
4 truth.

5 Q. Okay. Now, you indicated that in your  
6 report that this was quality control  
7 reviewed. Is that the equivalent of peer  
8 reviewed?

9 A. Yes.

10 Q. Who did you send it to?

11 A. I sent it to Michael LoPresti --

12 Q. Who's he?

13 A. -- and Cindy Erwin.

14 Q. Who is LoPresti?

15 A. Michael LoPresti is the polygraph examiner  
16 at the Richfield laboratory of BCI&I. And  
17 Cindy Erwin is the London examiner at  
18 headquarters at BCI&I in London, Ohio.  
19 They're both polygraph examiners who work  
20 for the Attorney General and BCI.

21 Q. Did they look at your charts and opinions?

22 A. Yes, they did.

23 Q. And what was their conclusion?

24 A. Their opinions concurred with my opinion  
25 that Mr. Sharma was telling the truth.



1 Q. You know what a stipulation is regarding a  
2 polygraph examination?

3 A. Yes, I do.

4 Q. Are you familiar with those?

5 A. Yes, I am.

6 Q. Okay. And that is an agreement between  
7 the prosecutor and defense lawyer that the  
8 results can go into a trial?

9 A. That's correct.

10 Q. Is there any scientific effect when you do  
11 a polygraph examination on whether the  
12 test is stipulated or unstipulated?

13 Do you do the test any differently,  
14 and does it have any affect on the results  
15 of the test?

16 A. No, it does not.

17 Q. Based on your education, training, and  
18 experience as a polygrapher, and to a  
19 reasonable degree of scientific certainty,  
20 do you have an opinion as to whether Sahil  
21 Sharma on January 12, 2007 was truthful in  
22 response to your four relevant questions  
23 in this case?

24 A. Yes, I do. And my opinion is Mr. Sharma  
25 was truthful.

1                   MR. MIGDAL: Thank you, Judge. No  
2 other questions.

3                   THE COURT: All right. We'll turn  
4 to cross-examination.

5                   MS. KANELLIS: Thank you, Your  
6 Honor.

7                                   CROSS-EXAMINATION

8 BY MS. KANELLIS:

9 Q.           The polygraph that you administered to  
10 Sahil Sharma, that was not a stipulated  
11 polygraph, was it?

12 A.           No, it was not.

13 Q.           Through the course of your tenure with BCI  
14 and privately, have you had an opportunity  
15 to testify in court in criminal trials in  
16 regards to polygraphs you've administered?

17 A.           I have not privately, although through my  
18 tenure with the Bureau of Criminal  
19 Investigation and Identification, yes, I  
20 have.

21 Q.           And in a criminal trial, have you ever  
22 testified to the results of a polygraph  
23 that was not stipulated to?

24 A.           No, I have not.

25 Q.           Now, what is your understanding of the

1 difference between a polygraph where  
2 there's a stipulation and one that's not  
3 stipulated; I mean above and beyond the  
4 fact the parties have agreed?

5 For example, is there paperwork  
6 involved? What are the differences?

7 A. At BCI, we used a form that consisted of  
8 11 paragraphs. The 11 paragraphs are  
9 based on what was set forth in State  
10 versus Souel, 1978 Supreme Court case that  
11 allowed for stipulations in Ohio.

12 That form is sent out to  
13 prosecutors, the prosecutors initiate that  
14 form both with the defense attorneys and  
15 the defense attorneys usually initiate  
16 that form with the defendant. And then a  
17 copy is sent back to BCI, or was sent back  
18 to us before we would conduct the  
19 examination.

20 Q. What is the purpose of that form?

21 A. Basically to be in compliance with State  
22 versus Souel.

23 Q. Now, you indicated that you had initially  
24 a concern, or felt there might be an issue  
25 because of the fact that Sahil Sharma had

1                   previously taken and passed a polygraph.

2                   What was that concern?

3       A.       My concern was, not so much that there  
4                   would be a difference in the results, but  
5                   my concern was, is if a certified  
6                   polygraph examiner who had a good  
7                   reputation, asked good questions, and had  
8                   good charts, I couldn't understand why we  
9                   would subject somebody to a second  
10                  polygraph when they'd already passed the  
11                  first one.

12                         I -- if the man -- if the examiner  
13                         was qualified, my question was, why should  
14                         we do a second test when we already had a  
15                         good test to start with.

16       Q.       Has that question been answered for you?

17       A.       Yes.

18       Q.       What was the answer?

19       A.       I posed that question to Mr. Migdal who  
20                   told me that he was basically using it as  
21                   a form of an argument to the Court to try  
22                   to show the Court that his client was  
23                   truthful; but not only that, to try to get  
24                   this type of information admitted because  
25                   of State versus Souel.

1 Q. So you agree -- you had an opportunity --  
2 did you have an opportunity to hear Bill  
3 Evans testify?

4 A. I listened to part of his testimony. I  
5 got in late in his testimony.

6 Q. Did you hear the part about what he says  
7 about polygraphing multiple times, why  
8 beat a dead horse? Did you hear that part  
9 of his testimony?

10 A. Yes, I did.

11 Q. Do you pretty much agree with that?

12 A. To a point, yes.

13 Q. Okay. Now, how -- at the time, or around  
14 the time you administered the polygraph,  
15 did you question the defendant as to how  
16 many prior polygraphs he had taken?

17 A. I asked him. I knew that coming in  
18 because of what Mr. Migdal had told me,  
19 but I also asked him if he took any other  
20 tests and he said yes, he had.

21 That's one of the first questions  
22 we always ask because when I was at BCI it  
23 was not uncommon for a defense attorney to  
24 have their client tested. They call it a  
25 practice run, and then they would bring

1           them to us because then they would want to  
2           enter into an agreement, stipulation, and  
3           then have the second test done.

4                        So one of the first questions we  
5           always ask, have you been tested, not only  
6           have you been tested, but have you been  
7           tested in this case.

8    Q.       The answer you received from the defendant  
9           is there was only the one prior polygraph  
10          which was administered by Bill Evans?

11   A.       Not just one. He had been tested the day  
12          after, as well.

13   Q.       I'm sorry. The two, I'm sorry, the two  
14          polygraphs by Bill Evans?

15   A.       That's correct.

16   Q.       Now, you are certified to give polygraphs  
17          in the State of Ohio, correct?

18   A.       Yes, I am.

19   Q.       But not -- I think I touched on this with  
20          Bill Evans -- not everyone has to have  
21          that certification before they can  
22          administer a polygraph; is that correct?

23   A.       That's correct.

24                       MS. KANELIS: Your Honor, may I  
25          approach?

1 THE COURT: Yes.

2 MS. KANELLIS: I'd like to take a  
3 look at Defendant's Exhibit B. Thank you.

4 BY MS. KANELLIS:

5 Q. On the test that you administered to Sahil  
6 Sharma, you indicated there were, I think,  
7 four relevant questions. What other  
8 questions did you ask?

9 A. Would you like me to recite those to you?

10 Q. Sure.

11 A. Okay. "Do you live in the United States?"

12 "To hurt your parents, did Michelle  
13 and you together make up a fake rape  
14 complaint?"

15 "Besides what you told me, did you  
16 ever commit even one other unusual sex  
17 act?"

18 "To embarrass your family, did you  
19 tell Michelle to say you sexually abused  
20 her?"

21 And, "Besides what you told me, did  
22 you ever tell even one other specific  
23 lie?"

24 And the last one was, "Do you live  
25 in Canada?"



1 Q. And the results of these, I think you said  
2 they were irrelevant questions, did he --  
3 was he found to be truthful on those  
4 questions?

5 A. Those are not considered to be relevant  
6 questions. There are two irrelevant  
7 questions in the test. Do you live in the  
8 United States, and do you live in Canada.  
9 Those two are basically used to -- a  
10 person is somewhat apprehensive when they  
11 first sit down, and the first time they  
12 hear your voice when they know the test is  
13 starting they will have a tendency to kind  
14 of react.

15 So they're given an irrelevant  
16 question to just kind of get them settled  
17 in, and at that point we move on with the  
18 rest of the questions.

19 The other four questions, besides  
20 the two irrelevants, the four comparison  
21 questions are used for just that, for  
22 purposes of comparison for scoring the  
23 charts.

24 Q. And what were the results on those four  
25 comparison questions?

1 A. His reactions to the comparison questions  
2 were larger than his reactions to the  
3 relevant questions. Therefore, my opinion  
4 was that he was being truthful.

5 Q. So he was being truthful on the comparison  
6 questions as well as the relevant  
7 questions?

8 A. When his reactions are bigger to the  
9 comparison questions than they are to the  
10 relevant questions, even though he may  
11 react some to the relevant questions, the  
12 reaction or the -- to the comparison  
13 questions that is a larger reaction, then  
14 the subject is telling the truth.

15 Basically, I think an easy way to  
16 explain that would be, if I may --

17 Q. Sure.

18 A. -- is that if you stole \$100, and in  
19 stealing that \$100, you knew you stole  
20 that \$100. I think that they were using a  
21 clock earlier, but about stealing the  
22 \$100.

23 Very simply if you were sitting  
24 there and you knew that you didn't steal  
25 the \$100, you would not have a concern

1           about the \$100, but if someone asked you  
2           if you've stolen anything else in your  
3           entire life, and you held something back  
4           prior to that when they established that  
5           in the comparison questions, they would  
6           say, "Oh, I remember stealing that thing,  
7           and oh, my gosh, I got to pass all these  
8           questions, and if I say no to that I know  
9           I'm lying," so already you're getting a  
10          physiological reaction to that question.

11                 But if you're asking about the  
12          \$100, they don't care about that because  
13          they know they didn't steal it.

14                 So the emotional reaction or  
15          physiological response to that question is  
16          going to be minimal compared to the one  
17          where they say, "Oh, I do remember  
18          stealing that football or bicycle, or  
19          whatever. But I didn't tell them about  
20          that."

21                 So now I'm lying when I say my  
22          answer to that, and I'm going to have a  
23          reaction because I'm hiding that, and that  
24          comparison answer is going to be bigger  
25          than the relevant about the \$100.

1 Q. So would it be correct if I said these  
2 comparison questions are very important in  
3 that, that's what literally you make your  
4 decision of truthfulness on the relevant  
5 questions based on the reaction to the  
6 comparison questions; is that an accurate  
7 --

8 A. Correct. That's accurate.

9 Q. All right. It's basically your reading,  
10 and I don't want to misstate it, but a  
11 chart or a graph, and you're interpreting  
12 the data that the computer compiles?

13 A. That's correct. The computer or the  
14 analog, either one, are just recorders,  
15 and they're recording that physiological  
16 reaction from the person's body.

17 Q. Did you review any newspaper articles in  
18 regards to this case prior to conducting  
19 the polygraph?

20 A. No, I did not.

21 Q. And I may have missed something, but it  
22 sounded to me at least, you and Bill  
23 Evans, do you have substantially the same  
24 qualifications?

25 A. I didn't hear Bill's qualifications so I

1 don't know.

2 Q. Fair enough.

3 MS. KANELLIS: Thank you.

4 THE COURT: Thank you.

5 Anything more to follow up, Mr.

6 Migdal?

7 REDIRECT EXAMINATION

8 BY MR. MIGDAL:

9 Q. Would you agree that the stipulation  
10 issues, that's a legal issue but it's not  
11 a scientific issue?

12 A. It has nothing to do with my test, so I  
13 would say there's no scientific issue  
14 there.

15 Q. Okay. And you're certified to give  
16 polygraphs in Ohio, there's no licensing;  
17 am I right?

18 A. That's correct, there is no licensing.

19 MR. MIGDAL: Nothing else, Judge.

20 THE COURT: So, sir, what kind of  
21 objective verification do you have that  
22 your test results are correct?

23 THE WITNESS: Based on my private  
24 practice --

25 THE COURT: This one right here,

1           this case.

2                   THE WITNESS:  This case here?

3                   THE COURT:  Uh-huh.

4                   THE WITNESS:  By looking at the  
5 chart, Your Honor, we make our opinion.  
6 After making my opinion, those two charts  
7 I sent out to two other examiners who had  
8 no knowledge of what the questions were,  
9 all they know is that they had a chart in  
10 a rape case.

11                   They didn't -- they know which are  
12 the relevant questions, which are the  
13 comparison questions.  They have not been  
14 exposed to having an interview with the  
15 defendant in the case.  They have not had  
16 the chance to do a pre-test interview to  
17 ask any questions.  All they have is the  
18 chart, itself.

19                   I mean, they have nothing to  
20 influence them at all, other than the fact  
21 that they're looking at the graph.

22                   And based on those charts and the  
23 reactions on those charts, they make an  
24 opinion, which makes it very objective  
25 that they have no idea what went on in



1 conversation. All they have is the chart,  
2 itself, to determine whether or not the  
3 person is telling the truth or lying.

4 THE COURT: Do you believe there is  
5 wide acceptance of the validity of --  
6 maybe I should use reliability -- of  
7 polygraph testing and results therefrom?

8 THE WITNESS: Yes, I do, Your  
9 Honor. Even in non-stipulated tests,  
10 being that in those 12 years, over 12  
11 years, I was dealing with prosecutors from  
12 23 counties, prosecutors and assistant  
13 prosecutors, who have looked at those  
14 tests, looked at the results of the tests,  
15 and we have a requirement at BCI that at  
16 least an officer, or in a stipulated test,  
17 we have a requirement that the defense  
18 attorney and the prosecutor both be there  
19 to watch the test on closed-circuit  
20 television, in that I feel that there's a  
21 wide acceptance because I've watched  
22 prosecutors dismiss cases even over the  
23 results of non-stipulated cases.

24 THE COURT: And, again, why do you  
25 think the design of your test was



1 reliable?

2 THE WITNESS: I didn't think it was  
3 any more reliable than Mr. Evans'. I feel  
4 it was reliable because I based the  
5 questions on what the accusation was from  
6 the victim.

7 And in that, I feel that, with my  
8 pre-test in establishing my comparison  
9 questions, by being careful and making  
10 sure those were in a balanced nature, I  
11 feel that the results I got were, in fact,  
12 valid.

13 THE COURT: Do you think that  
14 anything occurred in this particular test  
15 that would cause an inaccurate result?

16 THE WITNESS: No, I don't, Your  
17 Honor.

18 THE COURT: There wasn't anything  
19 unusual that came to your attention?

20 THE WITNESS: Not during this  
21 examination, Your Honor, no.

22 THE COURT: All right. I don't  
23 have anything further.

24 MR. MIGDAL: Nothing, Judge.

25 THE COURT: I think that concludes

1           your testimony. You may step down. Thank  
2           you for your testimony.

3                   THE WITNESS: May I be excused,  
4           Your Honor?

5                   THE COURT: Yes, you may.

6                   THE WITNESS: Thank you.

7                   (Witness excused.)

8                   THE COURT: Counsel, what's your  
9           pleasure about continuing with the  
10          testimony?

11                   MR. MIGDAL: Judge, and I know  
12          you're asking -- can we go off the record?

13                   THE COURT: Yes.

14                   (Off the record discussion between  
15          Court and counsel.)

16                   (Luncheon recess.)

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