

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 II (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.

\* \* \*

## AFTERNOON SESSION

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THE COURT: Mr. Migdal, you may  
call your next witness.

MR. MIGDAL: Dr. Rovner.

THE COURT: Good afternoon. If  
you'd raise your right hand, sir.

- - -

LOUIS ROVNER, PH.D.

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: Thank you then. Please  
7 proceed to our witness stand.

8 DIRECT EXAMINATION

9 BY MR. MIGDAL:

10 Q. Please state your name and spell your last  
11 name for the record, please.

12 A. Louis Rovner, R-o-v-n-e-r.

13 Q. Dr. Rovner, where do you live?

14 A. Los Angeles.

15 Q. And how are you employed?

16 A. I am a private practice polygraph examiner  
17 in L.A.

18 Q. Let me talk about your academic training.  
19 Can you tell the Court about your academic  
20 background?

21 A. Certainly. I have a Bachelor's degree in  
22 psychology from UNOV, University of  
23 Nevada, Las Vegas, a Master's degree in  
24 psychology from the University of British  
25 Columbia with a specialty in

1           biopsychology, and a Ph.D. in psychology  
2           from the University of Utah, with a  
3           specialization in psychopsychology.

4                        I also attended the Los Angeles  
5           Institute of Polygraph, which is a  
6           professional polygraph school in 1986 and  
7           graduated from that institution, as well.

8    Q.    Have you taught at all regarding  
9           polygraphs and/or psychology? Tell us  
10          about your teaching background.

11   A.    Yeah. I have taught a variety of  
12          psychology courses and statistics courses  
13          at the University of Utah, California  
14          Lutheran University, and Westminster  
15          College, for roughly 20 years.

16                       I taught psychology, physiology and  
17          psychophysiology at the Los Angeles  
18          Institute of Polygraph.

19                       And I'm currently an instructor at  
20          the Marston Polygraph Academy in San  
21          Bernardino, California.

22                       I've also given numerous guest  
23          lectures and workshops in various places  
24          through the years on polygraph issues.

25   Q.    Are you a member of any organizations,

1 professional organizations?

2 A. Yes, I am. With regard to polygraph, I am  
3 a member of the American Polygraph  
4 Association. I'm a member and a former  
5 vice-president of the California  
6 Association of Polygraph Examiners.

7 I'm a member of the American  
8 Society For Testing and Materials, ASTM,  
9 which has a committee dedicated to  
10 polygraph issues.

11 I'm also a full member of the  
12 American Psychological Association, the  
13 Society for Psychophysiological Research  
14 -- tell me when you want a spelling -- and  
15 the American Psychology-Law Society, and  
16 I'm also on the -- I'm on the panel of  
17 experts for the Superior Court of Los  
18 Angeles, the criminal division.

19 Q. Publications, have you published?

20 A. I've published quite a few articles about  
21 polygraph in a variety of different  
22 publications, and I have published some  
23 scientific research dealing with polygraph  
24 accuracy.

25 Q. And do you lecture about polygraphs and

1            psychopsychology?

2    A.        Yes.

3    Q.        Tell the Court about your lecturing.

4    A.        Well, at both schools and private seminars  
5            or organizational seminars, I'm talking  
6            about topics including psychopsychology or  
7            psychology as they relate to polygraph  
8            testing.

9    Q.        Let me go through and talk some more about  
10            your credentials.

11                    You attended what school to -- what  
12            polygraph school?

13   A.        Los Angeles Institute of Polygraph.

14   Q.        And how long is that, how many hours? Can  
15            you tell the Court about your  
16            certification?

17   A.        Yeah. That school was a typical polygraph  
18            training institution. It was, I believe,  
19            320 hours of training.

20                    And I -- as a matter of fact, I was  
21            teaching the physiology part of their  
22            course while I attended.

23   Q.        And did you do an internship?

24   A.        Yes, I did.

25   Q.        And where was that?

1 A. That was an organization called Whaley's  
2 Polygraph in which I did a number -- and I  
3 can't remember how many polygraph  
4 examinations that were reviewed by Ken  
5 Whaley.

6 Q. And are you a certified polygrapher?

7 A. Yes.

8 Q. And you've been in private practice in  
9 polygraphy?

10 A. I have.

11 Q. And for how long?

12 A. I've been giving polygraph tests since  
13 1976.

14 Q. Okay. Now, you talked about you have a  
15 Ph.D. in psychopsychology.

16 A. Well, the specialization was in that area,  
17 yes.

18 Q. Tell the Court, what is psychopsychology?

19 A. Psychopsychology is the study of the  
20 relationship between mental and physical  
21 events.

22 For example, when we experience an  
23 emotion like happiness or depression, what  
24 are the physiological correlates of that  
25 mental state.



1                   And for many, many years  
2                   psychophysicologists have been doing an  
3                   enormous amount of research in diverse  
4                   areas to find out how our body and our  
5                   mind interact.

6       Q.       Regarding the polygraph, how does the  
7                   polygraph relate to psychopsychology and  
8                   does it become a valid indicator of  
9                   truthfulness?

10      A.       That's a good question. That's probably  
11                  the most practical application of the  
12                  principles of psychopsychology.

13                   What we have here is a situation in  
14                   which a person is saying something. We --  
15                   research has shown that just by looking at  
16                   a person, or listening to that person,  
17                   we're all pretty poor at determining his  
18                   truthfulness or deception.

19                   And so about 100 years ago,  
20                   actually, it was 1915, a professor at  
21                   Harvard University, a psychologist named  
22                   William Marston, asked himself a question,  
23                   well, could we determine somebody's  
24                   truthfulness or deception by means of some  
25                   physiological measurement.

1                   And that was the beginning of  
2 polygraph testing. His methodology was  
3 obviously a little crude, but it's  
4 developed over the last 90-some years into  
5 a very sophisticated technology and  
6 methodology.

7    Q.    Explain how it's progressed and why it's  
8           sophisticated and --

9    A.    Sure. To understand how polygraph works  
10           and how polygraph testing works you have  
11           to know a little about psychology, and  
12           stress, and threat, and how we respond to  
13           threat.

14                   When I was teaching psychology, or  
15           whenever I would teach a psych 101 course,  
16           and we talked about the issue of stress  
17           and threat, I gave an example that almost  
18           everybody gives to get this across.

19                   This is a situation in which we  
20           talk about a caveman walking along one  
21           day, and he walks into an open field, and  
22           he sees a sabre-tooth tiger a couple  
23           hundred yards away from him.

24                   And he knows, boy, if he doesn't do  
25           something right away, the tiger's going to

1 have him for lunch.

2 So what does he do? He has a  
3 choice of only two things he can do in  
4 order to survive the situation. He can  
5 fight the tiger. He can look for a stick,  
6 or a rock, or some sort of a weapon to  
7 fight him, and hope that he'll succeed in  
8 that; or his other choice is running away.  
9 So we call that the fight or flight  
10 phenomenon.

11 Once he realizes that there's a  
12 threat to him, a lot of physiological  
13 activity begins, and there's good reason  
14 for this.

15 We can all relate to this on some  
16 level in our daily lives. When somebody  
17 goes to the gym in the morning to work  
18 out, or do whatever exercise you do, a  
19 typical routine for someone is spending  
20 five or ten minutes stretching and then  
21 spending another five or ten or 15 minutes  
22 on a treadmill or exercise bike, and we  
23 call that the process of warming up.

24 What we're doing is stretching our  
25 muscles and supplying blood and oxygen

1 throughout our body to a level that when  
2 we actually get into the meat of our  
3 exercise, the heavy lifting and stuff,  
4 we're less likely to hurt ourselves.  
5 We're less likely to pull muscles or  
6 strain ligaments or break things.

7 And we know from experience that if  
8 you do a heavy workout at the gym, or go  
9 into a sporting activity without warming  
10 up, the likelihood you are going to injure  
11 yourself is a lot higher than if you're  
12 fully warmed up.

13 Well, in the situation of the  
14 caveman and the tiger, he knows that he's  
15 got a life-threatening situation to deal  
16 with. And he's going to have to exert  
17 maximum physical force or else he'll  
18 probably die.

19 In order to do that, nature has  
20 programmed us almost with a mechanism that  
21 in a very stressful situation where there  
22 is a true threat to us, to our well-being,  
23 nature supplies an instant warm-up.

24 And that's the activation of part  
25 of our nervous system called the autonomic

1 nervous system; and, actually, a  
2 sub-system of that called the sympathetic  
3 nervous system.

4 The sympathetic nervous system sets  
5 off an immediate reaction of a number of  
6 physiological and biological events in our  
7 body in reaction to that threat to enable  
8 us to more effectively deal with it, while  
9 at the same time not hurting ourselves.

10 So that if the caveman picks up a  
11 rock and tries to hit the tiger with it,  
12 he's not going to pull a muscle in his  
13 shoulder and render himself helpless.

14 If he tries to run away, if he  
15 tries the flight part of fight or flight,  
16 if he tries to run away, he's not going to  
17 pull a thigh muscle and be unable to run  
18 any faster and the tiger will overtake him  
19 and eat him.

20 Well, this is an old, old example  
21 that we have all given in psych 101  
22 classes.

23 Marston wondered one day back in  
24 1915 whether this same fight or flight  
25 phenomenon would occur in response to a

1 physical -- to a mental threat or  
2 psychological threat, and thus lie  
3 detection was born, because for his  
4 experimental variable, he said well, how  
5 can I tell what a psychological threat is?

6 What he said to himself finally was  
7 that, well, why do we lie? Well, we lie  
8 to people typically because we're  
9 threatened by what might happen if we were  
10 to tell the truth. There are consequences  
11 sometimes to telling the truth, and  
12 therefore, we lie.

13 He said, if -- it would be  
14 interesting to see, and he had no stake in  
15 this game, he wasn't starting a company or  
16 anything, he said it would just be  
17 interesting from a scientific point of  
18 view to see if people had the same fight  
19 or flight physiological response to an  
20 emotional threat or a mental threat as  
21 they have to a physical one.

22 His results for a series of  
23 experiments was published in 1917 in the  
24 *Journal of Experimental Psychology*, in  
25 which even with his fairly unsophisticated

1 methodology, he was able to report a 96  
2 percent rate of accuracy, and being able  
3 to tell who was lying and who was telling  
4 the truth.

5 Our methodology now are worlds, of  
6 course, ahead of his. We have had the --  
7 we have 90 years' worth of practice, and  
8 decades and decades worth of high-level  
9 scientific research now to rely on, and to  
10 provide evidence of the real validity and  
11 reliability of polygraph testing.

12 Q. Before we get into the research, how is  
13 the -- explain to the Court what the  
14 physical polygraph is.

15 I know Mr. Evans did, but go  
16 through that, and why that apparatus is a  
17 valid indicator of truthfulness.

18 A. Both of the examiners gave a good  
19 description of the polygraph instrument,  
20 itself.

21 We're measuring respiration,  
22 breathing, at two different sites on a  
23 person's body. One is by the upper chest,  
24 the thorax, and one is near the abdomen,  
25 and we use two of these because different

1 people have different patterns of  
2 breathing. Some are abdominal breathers  
3 predominantly, and some breathe in their  
4 chest. We don't want to miss important  
5 information so we use both channels.

6 We measure the sweat on a person's  
7 hand, on the palm or surface of his hand  
8 by putting two metal plates on his  
9 fingertips to determine how much he's  
10 sweating at any given moment during the  
11 test.

12 And then, of course, we measure the  
13 cardio. We use cardiovascular cuff, same  
14 kind a physician uses to measure blood  
15 pressure in his office, and we're looking  
16 for what we call the relative blood  
17 pressure, we're looking for changes or  
18 increases in blood pressure from time to  
19 time in the test.

20 Question arises, why do we use  
21 these measures and how do they relate to  
22 the fight or flight phenomenon?

23 When the sympathetic nervous system  
24 responds, kicks in, when I spoke about it  
25 a few minutes ago, a number of very, very



1 important things happen inside our body;  
2 many that wouldn't be practical to measure  
3 during a polygraph examination.

4 For example, during the sympathetic  
5 reaction, our digestive system stops or  
6 slows down abruptly, which is why you hear  
7 people who are under great stress have  
8 gastrointestinal problems, their system  
9 isn't simply working right.

10 However, for a polygraph examiner  
11 to measure that he'd have to use some  
12 ridiculously invasive technique, and  
13 nobody is ever going to consider doing  
14 that.

15 But there are changes in -- there  
16 are vascular changes we can measure  
17 adequately by means of a cardio cuff. We  
18 can certainly measure the amount of sweat  
19 on a person's palm and changes in  
20 respiration.

21 If you'd like, I can go into why  
22 these changes actually occur.

23 Q. That was the next question I had.

24 A. Oh, okay. The cardiovascular one is the  
25 most difficult and complicated of all of

1           them.

2                       When we have a fight or flight  
3           response or a sympathetic nervous system  
4           reaction, what happens, among other  
5           things, is that we want -- we -- our body  
6           wants to send its energy to the parts of  
7           our body that are the most important  
8           relative to fight or flight, relative to  
9           threat -- to the threat of the moment, and  
10          to take energy away from parts of us that  
11          are not related to our survival in a  
12          threat situation, such as our digestive  
13          system.

14                      So that we talk about something  
15          called the blood flow pattern. Blood  
16          circulates in our body in order to carry  
17          oxygen and supply oxygen to all of our  
18          billions and billions of cells.

19                      Oxygen is our body's primary source  
20          of energy and food on a cellular level.  
21          So that automatically, the muscles of our  
22          arms, our upper arm, our shoulders, our  
23          chest, and the big muscles in our back,  
24          the latissimus dorsi, as well as our thigh  
25          muscles, receive an enormously, or an

1 unusually large amount of blood so they  
2 can have the energy to do what they have  
3 to do in fighting or running away, and  
4 other parts of our body, our skin, our --  
5 many of our internal organs are deprived  
6 of blood; e.g, oxygen, for that very short  
7 amount of time in which the sympathetic  
8 nervous system is being stimulated.

9 So we're seeing this increase in  
10 blood pressure because some arteries are  
11 constricting in order to allow other  
12 arteries to dilate and carry more blood to  
13 where it has to go. That's a basic  
14 explanation of the cardio response.

15 The GSR response that they spoke  
16 about earlier in the day, the galvanic  
17 skin response, the amount of sweat on your  
18 hand, is really interesting, actually,  
19 from an evolutionary point of view.

20 When our caveman was looking for a  
21 rock or a tree branch to use as a weapon,  
22 the last thing he wanted to do if he found  
23 one and decided to stand and fight was to  
24 take one swipe at the tiger and have the  
25 weapon fly out of his hand.

1                   So what happens is, nature supplies  
2                   us with this marvelous little mechanism of  
3                   sweating in our palms, the type of sweat  
4                   glands on our palms biologically, and the  
5                   palms and soles of our feet are  
6                   structurally different from the sweat  
7                   glands on the rest of our body.

8                   This is called, in the textbooks,  
9                   emotional sweating. It doesn't serve the  
10                  same purpose as sweating to dissipate heat  
11                  or to cool us down, our bodies, when it's  
12                  real hot out.

13                 This serves to provide a function.  
14                 When our hands are a little moister, they  
15                 develop more friction with whatever we  
16                 happen to be holding at the time, so it  
17                 makes it more likely that when he takes  
18                 his first swipe at the tiger, he'll have a  
19                 firmer grip, more friction between his  
20                 skin and the object he's using as a  
21                 weapon, and he won't lose it.

22                 His survival will be more likely  
23                 with a second blow, or a third blow, and  
24                 the same is kind of true with the soles of  
25                 his feet, because we have that same kind

1 of sweat gland on our soles, if he decided  
2 to run away, well, we know that the -- our  
3 skin is more resistant to being punctured  
4 or torn if it's slightly wet.

5 And as he's running away if he  
6 doesn't have shoes, he might run over  
7 twigs, or little rocks and cut himself.

8 The pain or the blood loss could  
9 slow him down and make him more  
10 vulnerable.

11 And so this mechanism is sort of  
12 explained by our common knowledge, too, of  
13 baseball, the batter when he steps up to  
14 the plate and spits on his hands to get  
15 them a little moist, that's so the bat  
16 doesn't go flying into the grandstands  
17 after he takes a swing at the ball. The  
18 same -- it's the same exact function  
19 creating that friction.

20 As far as breathing, there are  
21 several measures we look for when we  
22 evaluate a respiration channel on a  
23 polygraph, but changes in our breathing  
24 which all -- which all translate into  
25 breathing less when we are facing a threat

1 -- excuse me -- allows our ears to receive  
2 more information from the environment.

3 Right now we're all breathing in  
4 here and with -- we're so used to it we  
5 don't realize it, but we're hearing our  
6 own breathing. We have this constant hum  
7 in our heads that we have been doing since  
8 we were first born, and so we don't  
9 realize it. We only realize it when we  
10 stop breathing; the great acuity we now  
11 have when we're not breathing, or talking,  
12 or doing anything else.

13 It's the same phenomenon that if  
14 you're at home alone and it's 3 in the  
15 morning and you can't sleep, and you get  
16 up, and you pick up a book or something,  
17 and you're the only one awake in the  
18 house, and the only light on in the house  
19 is the room that you're in, and all of a  
20 sudden you hear some unexpected noise from  
21 the kitchen, another room in the house,  
22 the first thing you do, if you think about  
23 it, or the next thing that happens, we all  
24 stop breathing and turn our ear towards  
25 the source of the sound.

1                   We instinctively, or maybe we don't  
2                   know, but our instinct is to stop  
3                   breathing as to not interfere with all of  
4                   the information we get from that  
5                   unexpected sound so we can determine if  
6                   it's a threat, or if it just happens to be  
7                   the cat knocking up against the garbage  
8                   can.

9                   The wonderful thing about this  
10                  fight or flight response that in 2007 we  
11                  all experience any number of times a day  
12                  is that it is absolutely involuntary. We  
13                  can't control it in any sort of systematic  
14                  way, it just happens.

15                  And over the last 90-some years  
16                  polygraph -- the polygraph profession has  
17                  found a way to use this in a very  
18                  systematic way in order to determine when  
19                  somebody is telling the truth or not.

20        Q.        You had mentioned before the machine,  
21                  itself, measures those responses and then  
22                  a trained polygrapher can determine the  
23                  truthfulness?

24        A.        That's correct.

25        Q.        You talked about the research. Have you

1 done research, yourself, regarding the  
2 validity of that procedure using the  
3 polygraph to determine truthfulness?

4 A. I have.

5 Q. And tell the Court about your own research  
6 you've conducted.

7 A. As part of the requirements for my  
8 doctorate in Utah, I conducted a study  
9 that lasted roughly two years to determine  
10 a couple of things. We wanted to  
11 determine, using a specific kind of a test  
12 format which is now known as the Utah Zone  
13 of Comparison Test.

14 Number one, how accurate was this,  
15 really. How well do we do when we follow  
16 the Utah procedure on a large number of  
17 subjects.

18 Number two, this was back in the  
19 late '70s, and books were starting to show  
20 up on library shelves and information was  
21 beginning to become publicly available  
22 about polygraph testing techniques.

23 And we were -- we thought it was  
24 time that we should have some experimental  
25 evidence to deal with that reality, if



1 people had -- if a person who is about to  
2 take a polygraph test went to a library or  
3 ordered a book on his own and learned what  
4 it was that we were doing by reading all  
5 about it, because just -- it's not rocket  
6 science. Any reasonably intelligent  
7 person can understand this.

8 So would that knowledge have any  
9 effect on our rate of accuracy when we did  
10 tests both with guilty and innocent  
11 people.

12 And then we went one step further  
13 and asked the experimental question or the  
14 research question, what if a person who  
15 then had all of this knowledge by reading  
16 were to find a polygraph examiner who was  
17 unscrupulous enough to become his  
18 coconspirator and to teach him how to beat  
19 a polygraph test, would that affect our  
20 accuracy.

21 And so that was the start. Those  
22 questions were the basis of this two-year  
23 study that became my doctoral  
24 dissertation. It was also published in  
25 abstract form and presented to the Society

1 for Psychophysiological Research in person  
2 at their annual meeting in, I believe,  
3 1979, and then the full-blown study, all  
4 39 pages of it or so, were published in  
5 the *Journal of Polygraph*, which is the  
6 scientific journal of the American  
7 Polygraph Association.

8 You want me to --

9 Q. Tell the Court about your study.

10 A. The study was a typical laboratory study.  
11 Let me -- before I tell you about the  
12 specifics of my research, let me tell you  
13 about the two areas of research that  
14 relate to polygraph.

15 One is called laboratory research,  
16 and the other major area of research is  
17 known as field research.

18 Laboratory research is done in a  
19 laboratory, or it can be done in an office  
20 or wherever.

21 It's called laboratory because  
22 typically the experiments are designed  
23 under standard scientific research  
24 designs. They're designed in a way in  
25 which we can analyze the results with

1 standard statistical techniques, apply  
2 concepts like Null Hypothesis and draw  
3 conclusions so that we can present these  
4 results to the world in the same form as  
5 do physicists, biologists, meterologists,  
6 or any other scientist, and we have a long  
7 research history that I'll tell you about  
8 in a while.

9 Field research deals with the  
10 results of polygraph tests of people who  
11 have been, or are, under investigation for  
12 crimes and have been tested by the police  
13 or law enforcement people, or even private  
14 examiners.

15 The -- I use the word carefully.  
16 Laboratory research, the issues for which  
17 people are being tested are contrived. We  
18 develop what we call mock crime scenarios.

19 In mock crime scenarios, a crime is  
20 essentially designed by the research team.  
21 The people who are -- who will be guilty  
22 subjects actually carry out this crime,  
23 and I'll tell you a little bit more about  
24 how this is all done, and then at some  
25 later time they're tested on whether they

1 committed it or not.

2 Innocent people, innocent subjects  
3 in our laboratory experiments, are simply  
4 told that a crime has been committed, you  
5 didn't do it, but you're going to be  
6 tested about it, anyway.

7 What we have in the laboratory is  
8 the ability to determine ground truth.  
9 Someone, not the person giving the  
10 polygraph test, but someone knows exactly  
11 who the people who are guilty of  
12 committing the crime are, and who the  
13 innocent people are.

14 So at the end of an experiment we  
15 can take the polygraph examiner's results  
16 and compare them against the ground truth  
17 of which he was previously unaware, and  
18 that's how we generate our accuracy rates  
19 in a high-quality laboratory study.

20 In field research, and this is  
21 important, and I'll come back to this  
22 later in my testimony, in field research  
23 we never really have ground truth.

24 A person who's convicted at a trial  
25 or who's acquitted at a trial, it could be

1 argued nobody ever really knows absolutely  
2 100 percent for sure if that person is  
3 actually guilty or innocent. It's --  
4 you're far more conversant in these issues  
5 than I am, but having lived through OJ  
6 Simpson in my backyard, I say to people  
7 even now, there's one person who knows if  
8 he's guilty. One person alive at least  
9 who knows if he did it or not, and that's  
10 him.

11 We draw our conclusions based on  
12 other evidence, but we don't have ground  
13 truth. We didn't watch him do it.

14 However, field research takes all  
15 of that into account and looks for  
16 variabilities, like was there a confession  
17 on the part of the defendant? Was there a  
18 confession on the part of someone else?  
19 What does the physical evidence look like?

20 Essentially, if this person was  
21 convicted or not convicted, did it make  
22 sense?

23 And then we'll look at his  
24 polygraph test and see if that agreed or  
25 disagreed with the case outcome and the

1 case evidence and all of that.

2 I'll tell you in advance, and I'll  
3 tell you in a little more detail in a  
4 while, that there's a real convergence on  
5 accuracy rates that are found in the field  
6 and the laboratory. They're about the  
7 same with field rates being a little  
8 higher.

9 My research was a mock crime  
10 situation, a laboratory setting, in which  
11 we set up a situation in which our  
12 subjects, or at least the guilty ones,  
13 were to go to a different location, steal  
14 a ring out of a secretary's desk, and in a  
15 certain amount of time come back and take  
16 a test on whether they stole the ring or  
17 not.

18 To give you a little bit of feel  
19 for this, they would come into our -- we  
20 were on the fifth floor of a 12-story  
21 building in the psychology department at  
22 the University of Utah.

23 And subjects were recruited for  
24 this study by means of a classified  
25 advertisement in a local newspaper. All

1           it said is: Subject wanted for a  
2           psychological experiment at the University  
3           of Utah, and you'll be compensated at the  
4           rate of \$20, I think. I may be wrong  
5           about the amount, but it was a minimal  
6           amount.

7                        When they came in they were told  
8           that this was a polygraph testing  
9           experiment, and they were given a set of  
10          instructions.

11                      If they were going to be guilty of  
12          the theft, they were told how to carry it  
13          out.

14                      They were also told if they were  
15          able to beat the polygraph test, if they  
16          were able to produce what we call a  
17          truthful outcome, in spite of the fact  
18          that they stole the ring, they would be  
19          given a bonus, another 50 percent of their  
20          original fee for participating in the  
21          experiment. We wanted to motivate them to  
22          try to beat us, which all guilty people  
23          are motivated, I think, in real life to  
24          try to beat the test, to try to look  
25          truthful or innocent, as are all innocent

1 people want to have a truthful outcome.

2 So they went through a procedure  
3 that we had tape-recorded and described to  
4 them.

5 We left them in a room with a tape  
6 recorder and a pad and paper so they could  
7 take some notes.

8 They were told to get on the  
9 elevator, go up to the 7th floor, when the  
10 door opened they would see the 7th floor  
11 secretary's office.

12 And what they were to do is make up  
13 some sort of an excuse to get her out of  
14 her office. We did that to get them more  
15 emotionally and intellectually involved in  
16 the whole situation so it didn't seem so  
17 much like a parlour game to them.

18 So they did all spend time coming  
19 up with some not so good and some very  
20 creative ways of getting our secretary out  
21 of her office.

22 Once she went they were told that  
23 somewhere on her desk was an envelope  
24 containing a ring, and they were to take  
25 that envelope out of her office -- out of



1 the drawer once they found it, conceal it  
2 somewhere in their clothing, and leave her  
3 office, walk down to the end of the hall  
4 and walk down the stairs.

5 Now, this engendered more  
6 involvement for them because they weren't  
7 told where on her desk the ring was, and  
8 as I recall there were five or seven  
9 drawers, two or three on the side and one  
10 in the middle, so some of them went  
11 through all of the drawers before they  
12 located the ring.

13 They were told to leave in a manner  
14 that was different from the way they got  
15 up there and to report back to us.

16 Now, we had two groups of -- we had  
17 three experimental groups. We had what we  
18 call the standard group, made up of 50  
19 percent of the subjects in the standard  
20 group actually stole the ring, they were  
21 our guilty subjects, and the other 50  
22 percent were not, they didn't steal the  
23 ring. They were our innocent subjects and  
24 we had an equal number of each.

25 Now, we had a second experimental

1 group we called the information group.  
2 This was to replicate the group of people  
3 in the community who might go to the  
4 library and read up on this, and come to  
5 their test with real information about  
6 polygraph techniques, what we were doing  
7 and all of that. And we wanted to know  
8 how much this would affect our accuracy.

9 So these people went through the  
10 same procedures the guilty ones went  
11 through, exactly the same mock crime  
12 scenario, and the innocent ones were just  
13 told, well, a theft has been committed,  
14 you won't know anything about it.

15 But after a certain period of time,  
16 and I believe it was 15 or 20 minutes that  
17 we gave them to either commit the crime or  
18 just go away and come back for the  
19 innocent people, they were given almost a  
20 primer in polygraph testing that I had  
21 developed for them in very plain and  
22 understandable language.

23 It was a short course in what a  
24 polygraph test is, what we measure on the  
25 polygraph physiologically, why it works,

1           what kind of questions the examiner is  
2           going to ask you.

3                     At that time comparison questions  
4           were called control questions, and I'll  
5           tell you a little bit more about those in  
6           a little while, in the parlance of the  
7           time, we said relevant questions are going  
8           to be about the issue at hand, the reason  
9           you're being tested.  If it's a theft,  
10          they'll be about what was stolen.

11                    And then we gave them some examples  
12          of what control questions would be, and  
13          told them in no uncertain terms that  
14          people who are called deceptive; e.g,  
15          guilty on a polygraph test, are those  
16          whose physiological responses are greater  
17          to the relevant questions.

18                    People whose physiological  
19          responses are relatively greater to the  
20          control questions are those who passed the  
21          test who were called truthful or innocent.

22                    They knew all of that.  They had  
23          examples of the tracings, things -- what a  
24          pneumo-tracing would look like, or a GSR  
25          tracing would look like.  We gave them

1 very nice information.

2 And then there was a section in  
3 this primer about countermeasures. We  
4 heard countermeasures mentioned a couple  
5 of times this morning.

6 We gave them the names and  
7 techniques of virtually every known  
8 countermeasure that anybody had ever  
9 reported using or even thought about  
10 using, how to do it and when to do it.

11 Obviously, the time to use a  
12 countermeasure, if they're going to work,  
13 is during the control question while it's  
14 being asked, or just as you answer it.

15 You want to use these control --  
16 these countermeasures to make your  
17 responses artificially large to the  
18 control questions, so that an examiner  
19 looking at the chart would say wow, he's  
20 telling the truth because look at these  
21 big responses to the controls.

22 So we gave him or her all of that  
23 information, and it was presented rather  
24 well.

25 After directly having spent as much

1 time with that information as they chose,  
2 they told our floor secretary they were  
3 done, and then she escorted them to the  
4 laboratory where I would conduct their  
5 polygraph tests.

6 Now, we had yet a third  
7 experimental group, and that was what we  
8 called our information plus practice  
9 group.

10 This was to cover the person who  
11 would have all of the information in the  
12 -- in the community who would go to the  
13 trouble of reading up on it, but the --  
14 then this person who was so intent on  
15 beating his polygraph exam that he would  
16 go to the trouble of finding, locating a  
17 polygraph examiner, qualified examiner who  
18 was so unscrupulous that he would impart  
19 his knowledge to this stranger in order to  
20 help him beat the polygraph test. We call  
21 that information plus practice.

22 These subjects, both guilty and  
23 innocent, after having spent all of the  
24 time they wanted with the materials that I  
25 had prepared, the primer, as I called it

1           before, they were then shown to yet  
2           another room in which another one of our  
3           graduate students named John Kircher  
4           played the part of an unscrupulous  
5           polygraph examiner.

6                        We had prepared a test with  
7           questions that were similar to, but not  
8           exactly the same, as the ones that I was  
9           going to use on -- when I tested them,  
10          because in real life, a confederate like  
11          I'm describing would not know exactly what  
12          questions I would ask.

13                       But they would be similar in  
14          nature, same ballpark, a theft is a theft  
15          is a theft.

16                       So John would discuss polygraph  
17          issues with that person, answer any of his  
18          questions that he might have got from  
19          reading the materials, and then John would  
20          hook him up to a polygraph and run a  
21          polygraph test on him. He'd run what we  
22          call one chart, one time through the  
23          question sequence.

24                       At that point John would -- we were  
25          still using analog instruments, the ones

1 with the pens and the ink and all, he'd  
2 rip the chart off, and they'd sit down and  
3 examine it question, by question, by  
4 question, and if John saw nice big  
5 responses to the control questions, he'd  
6 ask, well, are you doing anything? And  
7 the person would say yes or no. And what  
8 are you doing? And they'd discuss it and  
9 John would give them very sophisticated  
10 feedback on how to use countermeasures  
11 effectively, how they were doing so far.

12 After that discussion he ran a  
13 second chart on them, same questions, to  
14 reinforce the practice. And then they  
15 reviewed that second chart, too.

16 After that session was done, those  
17 subjects, both guilty and innocent, were  
18 immediately taken to the laboratory where  
19 I did their polygraph test.

20 Now, it's important to know that I  
21 never knew who I was testing. I never  
22 knew whether the person was guilty or  
23 innocent of the theft, and I didn't know  
24 which of the three conditions they were  
25 in.

1                   That -- those decisions were made  
2                   arbitrarily by our department secretary or  
3                   our floor secretary. She made that  
4                   decision before we started the experiment.  
5                   She had a list of who was going to be who  
6                   and locked it in a drawer and nobody  
7                   involved with the actual experiment ever  
8                   saw it until the last subject was tested  
9                   and my decision was rendered.

10       Q.       Let me stop you there. Is that of some  
11               scientific validity, not to know?

12       A.       Yes, yes.

13       Q.       Explain.

14       A.       Any scientist in a situation like this has  
15               to be blinded to the condition of his  
16               subject so he's not influenced by external  
17               factors.

18                   If I knew somebody came in and was  
19                   in the information plus practice group and  
20                   I knew that for a fact, I might be a  
21                   little more careful and give him more time  
22                   and consideration than I would give  
23                   somebody in another group because that  
24                   might let my own feelings and emotions  
25                   into the process.



1                   We want it to be totally objective,  
2                   totally impartial, and have no real  
3                   intellectual involvement of the  
4                   researcher, so that the results are what  
5                   the results are and can't be assailed.

6                   It wasn't until the end of all that  
7                   that we matched then my outcomes, the  
8                   people I call truthful and deceptive, with  
9                   the real ground truth of who was really  
10                  truthful and deceptive and came to our  
11                  conclusions about polygraph accuracy.

12                  Now, would you like to know what  
13                  those were?

14        Q.        That was my next question.  What were the  
15                  results of your questions regarding the  
16                  accuracy of the polygraph that you  
17                  conducted?

18        A.        Sure.  Our first group, the standard  
19                  group, which had no information, no  
20                  practice, they just either committed or  
21                  didn't commit the crime and then were  
22                  shown to me to take a polygraph test, when  
23                  I made a decision of truthfulness or  
24                  deceptive, I was correct 95.5 percent of  
25                  the time.

1                   The point -- the 4.5 error was what  
2                   we call a false positive.

3       Q.       What is that?

4       A.       A false positive is when we call a person  
5               -- when a person is telling the truth but  
6               we mistakenly say that he's deceptive, a  
7               false positive.

8                   In the same way, it's borrowed from  
9                   medical terminology when, God forbid, if  
10                  you have some disease and the test comes  
11                  back positive that says you have it, but  
12                  if the test is wrong, that's a false  
13                  positive. We borrowed that terminology.

14                  My only mistake in that standard  
15                  group was a false positive. No liar beat  
16                  the test. And by the way, that was  
17                  consistent with other research up until  
18                  that time.

19                  Essentially, my standard group was  
20                  a replication of some previous experiments  
21                  which did -- I did -- I followed the same  
22                  procedures that they reported, and got  
23                  virtually the same accuracy rate as what  
24                  they did.

25                  We then did the statistical

1 analysis of the information group to find  
2 out if somebody went to the library, read  
3 up, they have any advantage. In that  
4 group we got -- the accuracy rate was  
5 exactly the same, 95.5 percent. The one  
6 mistake was another false positive.

7 And that kind of, by the way,  
8 followed the research up until that point,  
9 existing research that when we make a  
10 mistake we are more likely to make a false  
11 positive than a false negative mistake.

12 People are not very likely to beat  
13 the polygraph test, but we sometimes make  
14 mistakes in the opposite direction which  
15 is unfortunate.

16 The information plus practice group  
17 data statistics were a bit different and  
18 not quite as good.

19 When we looked at those the overall  
20 accuracy rate of the information practice  
21 group was 71 percent. And the errors were  
22 equally split, false negatives and false  
23 positives, which told us a couple of  
24 things.

25 First of all, that if you're

1           innocent, the worst thing you can do is to  
2           learn a lot about polygraph testing  
3           because -- excuse me -- because you raise  
4           your likelihood of being an examiner  
5           error.

6                        So we try -- I try to discourage  
7           innocent people from knowing anything  
8           about polygraph testing.

9                        The guilty people are -- our error  
10          rate was three times as high in the guilty  
11          group as it was without this additional  
12          practice.

13                       And this concerned me to some  
14          extent at the time, and I can remember a  
15          conversation I had with one of my  
16          committee members. His name was Lionel  
17          Frankel, and he was a senior law professor  
18          at the University of Utah Law School.

19                       And I went into his office one day  
20          to show him the results before I wrote my  
21          dissertation, and I was really sort of  
22          down and out about the whole thing, and he  
23          looked at me and he said, "No, no, no.  
24          You don't realize what this is."

25                       What -- he said, "What you did was

1 design strong and optimal conditions for  
2 any kind of a result."

3 He said, "In real life, a person  
4 wouldn't get material written as well as  
5 our written material was. In real life  
6 our -- our examiner would not be as  
7 knowledgeable about psychology and  
8 physiology and polygraph testing as our  
9 confederate was. And in real life there  
10 would be a time span between that practice  
11 and the time he actually took his  
12 polygraph test. He wouldn't go next door,  
13 literally next door, to take his real  
14 polygraph test, so there would be a period  
15 of time in which what he learned from the  
16 confederate would decay a little, as in  
17 all things when we learn -- when we're  
18 exposed to something for the first time."

19 He said, "With those extremely  
20 optimal conditions, you were still right  
21 71 percent of the time; more than seven  
22 times out of ten they didn't beat you."

23 And he said, "The reality is, it is  
24 so unlikely that a professional examiner  
25 would risk his livelihood and actually

1 sort of open himself up to prosecution of  
2 one sort or another, it's unlikely that's  
3 going to happen, anyway. But even in that  
4 unlikely set of circumstances," Dr.  
5 Frankel said, "You're still much, much  
6 better than they are," and, frankly,  
7 statistically we were. Statistically,  
8 even in that situation, 71 percent is  
9 significantly better than chance.

10 Q. Let me ask you just to make sure, false  
11 negative and false positive.

12 A false negative means a person is  
13 truthful with you they come up deceptive  
14 on a polygraph?

15 A. You got it backwards. A false negative is  
16 a person who is lying to the examiner but  
17 produces a truthful outcome. Essentially,  
18 somebody who beats the test.

19 Q. And what is the percentage, at least in  
20 your test and the research in general  
21 regarding a liar beating the test?

22 A. In my research, in the first two groups,  
23 in the information only group and in the  
24 standard group we had zero percent false  
25 negatives. No liar, no guilty person,

1 beat the test.

2 In the literature at large, the  
3 false negative -- the false negative rate  
4 is very, very low across the board.

5 It tends to be, if you look at most  
6 -- all of the research combined, it's  
7 probably in the area of three to four  
8 percent, but no larger than that.

9 The false positive rate is at least  
10 twice that, a little more.

11 Q. Okay. Now, the research you did in this  
12 particular dissertation, has that -- that  
13 was published?

14 A. Yeah.

15 Q. Is it cited by other researchers?

16 A. Yeah. I've lost count of how many times,  
17 but many, many times it's cited. As a  
18 matter of fact, it's cited in an article  
19 appearing that will come out this year in  
20 the *Journal of the British Psychological*  
21 *Society*.

22 Q. So they cite your research back to '79?

23 A. Yes.

24 Q. Talk about replication in relation to the  
25 scientific method.

1     A.     Replication is very important in science.  
2            We want to be sure that -- and any one  
3            person or research team can do a piece of  
4            research and it can be honest research  
5            with no personal involvement in the  
6            outcome.

7                    However, anomalies happen and  
8            everybody's aware of that.  Science is  
9            very plotting and slow because it's  
10           thorough.

11                   Any scientist doing research in any  
12           phenomenon can do an experiment, have that  
13           experiment published where the world at  
14           large might say, whoa, this is great, new  
15           information about whatever it happens to  
16           be, other scientists; and, particularly,  
17           those involved in that research area, or  
18           that knowledge base, will say, okay, we're  
19           going to just sit back and wait for a  
20           replication.  We're going to wait for  
21           another research team at another  
22           institution to do exactly what that first  
23           team did.

24                   If they get the same results, or  
25           very similar results to the first research



1 team, then we'll say, ah-ha, we have  
2 replicated that research in all of its  
3 aspects. They found the same thing to be  
4 true. Now we believe.

5 Without that replication in the  
6 scientific world, research is meaningless.

7 Q. Let's talk about replication in relation  
8 to the polygraph research.

9 A. Okay. My study in particular was a  
10 replication of some previous studies that  
11 had been done and serve as the basis for  
12 studies that replicated my research.

13 In all of those cases the results  
14 have been fairly similar or exactly the  
15 same.

16 As a matter of fact, the study that  
17 I mentioned that will be coming out this  
18 year is, in fact, a replication of my  
19 research of the late '70s showing  
20 virtually the same results in that  
21 knowledge of -- I'll tell you, the  
22 stimulation for that experiment, there is  
23 a lot of sophisticated information on the  
24 Internet nowadays available to virtually  
25 anyone with an Internet connection.

1                   The most complete source of  
2 information is on a Web site known as  
3 antipolygraph.org. It generates out of  
4 the Netherlands.

5                   And in it the owner of that Web  
6 site's name is George Maschke. He has  
7 provided a sophisticated and accurate  
8 account of what goes on in a polygraph  
9 test, essentially what I did in my  
10 research, but his is so thorough and  
11 complete it's just breathtaking how good  
12 and how accurate the information is.

13                   And the polygraph community has  
14 been a little concerned about this for  
15 some years now.

16                   Well, a researcher who's been very  
17 prolific in the polygraph area, Charles  
18 Honts, Dr. Honts, downloaded the  
19 information on antipolygraph.org. It's  
20 available for download for anybody.

21                   Matter of fact, Maschke asks  
22 people, suggests they do download it for  
23 free.

24                   What Dr. Honts did was replicate my  
25 research, but instead of the materials

1           that we gave them, we gave -- he gave them  
2           the material from George Maschke's Web  
3           site, the one everybody in the world has  
4           access to immediately, and found that it  
5           did not lead to one guilty person beating  
6           the polygraph test. The accuracy rates of  
7           people who had not read that information  
8           and people who had were identical. Guilty  
9           people.

10                        I know that there is another  
11           replication ongoing of my stuff in  
12           Singapore, but it's -- I don't know. It's  
13           not completed yet.

14    Q.        So you're saying in the scientific  
15           community, generally the results are the  
16           same as yours doing replications of the  
17           same type of test you did?

18    A.        Correct.

19    Q.        Talk about the prevalence, if you could,  
20           of the use of the polygraph in the United  
21           States. Who's using it, under what  
22           circumstances, and how -- do you know  
23           these people, that sort of thing?

24    A.        Yes. It's used extensively, all levels of  
25           government, as far as federal government,

1 the Department of Defense is a major user,  
2 the FBI, the CIA, the NSA, the DEA, the  
3 Secret Service, all branches of the  
4 military forces, all of these have ongoing  
5 polygraph testing programs, law  
6 enforcement agencies for the state, and  
7 cities, local law enforcement use  
8 polygraphs daily for a variety of reasons,  
9 thousands and thousands a day.

10 I was told by a scientist from the  
11 Department of Defense that his estimate is  
12 that the annual budgets for federal  
13 polygraph testing is in the neighborhood  
14 of \$50 million. They're very serious  
15 about it.

16 In addition, all over the country  
17 and, frankly, all over the world there are  
18 private polygraph examiners like me who  
19 give tests on a regular basis. So we can  
20 -- I can easily say thousands of tests a  
21 day throughout the country.

22 Q. Regarding the polygraph within the  
23 scientific or the psychological community,  
24 the relevant community, can you speak as  
25 to whether it's generally accepted?

1       A.       Yes, it is. We have several sources of  
2               evidence for this. Starting in the  
3               mid-'80s, there was a survey done by the  
4               Gallup Organization. They surveyed the  
5               society for psychophysiological research.  
6               It's been a point of some discussion over  
7               the years as to, does the scientific  
8               community accept polygraph as an accurate  
9               technique, as a valid technique.

10              Well, clearly there are some  
11              scientists whose opinions about this are  
12              not particularly relevant, like botanists,  
13              or zoologists would be qualified to say  
14              that, although they have scientific  
15              credentials, they don't have the right  
16              kind.

17              So Gallup went to the Society for  
18              Psychology-physiological Research because  
19              it was made up of Ph.D.s and MDs whose  
20              specialty was psychophysiology.

21              What they found in, I believe 1983,  
22              give or take a year, was that scientists  
23              in that society who knew something about  
24              the polygraph research who considered  
25              themselves to be informed, 83 percent of

1           them said yeah, polygraph works. It's a  
2           viable and valid technique for  
3           discriminating between truth and  
4           deception.

5                       Some ten years later that survey  
6           was replicated by a woman named Susan  
7           Amato as her Master's thesis project, and  
8           the results were virtually the same.  
9           Those scientists who were members of SPR  
10          and consider themselves to be highly  
11          informed about the scientific literature,  
12          some 83 percent, again, said yeah, we have  
13          got a good technique here, a technique  
14          that we can rely on to discriminate  
15          between truth and deception.

16                      In 2003 the government commissioned  
17          a report or a study by -- from the  
18          National Academy of Sciences.

19                      When -- now, this was a more  
20          diverse group of scientists, and, frankly,  
21          it was a pretty distinguished panel of  
22          people.

23                      As a matter of fact, I brought with  
24          me all of their names and bios, if that is  
25          of any interest to you, but they came from

1 a wide variety of disciplines; statistics,  
2 biometrics, psychology, sociology, some of  
3 the physical sciences, as well, I believe,  
4 and none of these people had any prior  
5 knowledge of polygraph testing. They  
6 didn't know much about the polygraph  
7 research, but they were given the mission  
8 of coming through the existing scientific  
9 research on polygraph accuracy, which we  
10 call validity, and coming up with some  
11 conclusions.

12 Their conclusions were that when we  
13 give a specific issue test, like the  
14 general category that Mr. Sharma was  
15 given, the laboratory research they said  
16 has an average accuracy of 86 percent and  
17 the field research has an average accuracy  
18 of 89 percent.

19 I was impressed with how strong  
20 these numbers were from a group of people  
21 who, I assume, might have had a little  
22 negative bias toward polygraph when they  
23 went into this, because this whole study  
24 was spurred on by a group of disgruntled  
25 scientists at one of our national

1 laboratories about the whole issue of  
2 testing them; nevertheless, this group of,  
3 we can only consider them ultimately to be  
4 impartial scientists, said this has a  
5 substantially high rate of accuracy,  
6 whether we look at the laboratory or the  
7 field research and slightly higher in the  
8 field.

9 Oh, and one last thing. That is  
10 the only decision we have from the broad  
11 scientific community, and it's a good one  
12 from my point of view.

13 Q. What about the Department of Defense, they  
14 believe it's reliable, National Academy of  
15 Science?

16 A. Oh, yeah. The Department of Defense has  
17 an ongoing polygraph program, not only of  
18 testing people for a wide variety of  
19 issues, but for conducting ongoing  
20 research into polygraph accuracy and new  
21 techniques and things like that.

22 And so they -- right now they're  
23 probably the most prolific source of  
24 research of any one location in the world.

25 Q. Do you know those people personally?



1 A. Oh, yeah. Yeah. I -- I have a good  
2 relationship with the deputy director of  
3 the Department of Defense Polygraph  
4 Institute. I know examiners from many of  
5 the federal agencies, CIA, FBI, and so  
6 forth and so on.

7 Q. Let me ask you, you just said the National  
8 Academy of Science study, you said was 86  
9 percent accurate in the laboratory, higher  
10 in the field?

11 A. Yeah.

12 Q. And you're saying your research which has  
13 been replicated puts it somewhere higher  
14 to in the high mid-90s; am I correct?

15 A. In their project the NAS panel looked at a  
16 wide variety of -- or a large number of  
17 studies that used a variety of different  
18 testing techniques.

19 And like anything else, like any  
20 other thing that human beings do, there is  
21 some variability involved.

22 It can be -- well, let me tell you  
23 how they arrived at that 86 percent  
24 number. It's sort of interesting.

25 What they did was take -- they used

1 a technique called intercotile ranking,  
2 where they took -- they rank-ordered all  
3 of these studies from the lowest accuracy  
4 to the highest accuracy.

5 They took the lowest one quarter of  
6 the studies and threw them out, and then  
7 they took the highest one quarter of all  
8 the studies and threw them out leaving the  
9 middle 50 percent.

10 They said, you know, we're just --  
11 we want to get rid of the outliers here,  
12 the really high numbers, the really low  
13 numbers. We don't want them artificially  
14 affecting the averages.

15 Now, we can take issue with that at  
16 another time, and I do, but nevertheless,  
17 that's what they did.

18 What they then found was the  
19 average accuracy for the middle two  
20 cortiles were 86 percent, meaning there  
21 were a lot of high quality studies that  
22 showed higher accuracy rates, mine being  
23 one of them, and a lot from our  
24 laboratory, that were not even included in  
25 that 86 percent.

1                   I'll tell you that studies that use  
2                   the technique that I used in my research  
3                   are typically finding -- will typically  
4                   find the same or very similar levels of  
5                   accuracy as I did.

6       Q.       Has there been a study done regarding a  
7                   specific questioning technique that is the  
8                   most accurate?

9       A.       Yeah.  It was just published within, I  
10                  think it was published in December of last  
11                  year.  It appeared in the journal  
12                  *Polygraph*, which is the scientific journal  
13                  of the American Polygraph Association.

14                  The study was done by a fellow  
15                  named Don Krapohl.  Don is the president  
16                  of the American Polygraph Association and  
17                  the deputy director of the Department of  
18                  Defense Polygraph Institute.

19                  He is the first one to  
20                  systematically go through different  
21                  polygraph testing formats and  
22                  rank-ordering them in terms of the  
23                  published research on them, what those  
24                  accuracy rates are.

25                  So he took some publications from

1 -- scientific publications from each of  
2 those formats, got an average, and then  
3 rank-ordered all of those formats on the  
4 basis of that -- on those averages.

5 The one that came out on top is the  
6 Utah Zone of Comparison Test. On the  
7 average in the scientific research, it  
8 produced higher rates of accuracy than any  
9 other format.

10 Q. And what is the Utah Zone of Comparison  
11 Test?

12 A. It's a technique and a format that is  
13 designed to test one specific issue. It's  
14 the format that we used in our research,  
15 that I used in my research, that  
16 repeatedly produced accuracy rates in the  
17 mid-90 percent range.

18 Q. So the study that just came out in  
19 December says the best test is the Utah  
20 Zone of Comparison Test, of all of the  
21 polygraph tests?

22 A. The most accurate.

23 Q. And that research shows the accuracy  
24 research of that test is in the mid --

25 A. The accuracy rate of all published studies

- 1           that Don relied on was 91 percent.
- 2    Q.       Okay.  And is the Utah Zone Test 91
- 3           percent?
- 4    A.       Yes.
- 5    Q.       Okay.  Let's talk about Mr. Sharma's test
- 6           that you actually did.
- 7    A.       Uh-huh.
- 8    Q.       Did you give him the Utah Zone Test?
- 9    A.       Yes, I did.
- 10   Q.       What information did you have before you
- 11           did the -- gave the test?
- 12   A.       Well, aside from what I believed from
- 13           speaking with you on the phone, I had
- 14           several police reports.
- 15                        I believe -- I had a report.  I
- 16           believe it was a preliminary hearing.
- 17   Q.       Did I send you a copy of the preliminary
- 18           hearing?
- 19   A.       I think you did.
- 20   Q.       Did you listen to it?
- 21   A.       The one on the CD, yes, I did.
- 22   Q.       Okay.  Did you use that to base the
- 23           questions, and can you talk about the way
- 24           you went about conducting the test with
- 25           Mr. Sharma?

1 A. Sure. I read through all of that material  
2 early one morning, and then Mr. Migdal was  
3 kind enough to send me the actual charge,  
4 and based on all of that I determined that  
5 the way the single issue in this test that  
6 was the most salient was whether Miss  
7 Sacia was awake or not awake before they  
8 engaged in whatever sexual activity they  
9 had.

10 Q. When you say "charge," you mean the actual  
11 crime he's alleged to have committed?

12 A. That's correct.

13 Q. Go ahead.

14 A. So that was the basis of me selecting that  
15 as the relevant issue, the one that we  
16 would test on. I don't write questions  
17 before I get to the office. In a  
18 situation like this, I have all that  
19 information and I sort of know what I'm  
20 doing, but I do want to spend sufficient  
21 time during the pre-test interview to  
22 determine if there's something I've  
23 missed.

24 And so Mr. Sharma's questions were  
25 all developed during that pre-test

1           interview.

2       Q.     Let me -- before I forget, can you look at  
3           what's been marked as Defendant's Exhibit  
4           C?

5       A.     Okay.

6       Q.     Can you identify that and tell the Court  
7           what that is?

8       A.     Well, the first one, two, three -- the  
9           first four pages are my report about the  
10          results of the polygraph test. And then  
11          there is one page of my CV, the first page  
12          of my CV, and a motion to amend polygraph  
13          examinations, and a certificate of  
14          service.

15      Q.     Okay. Apart from those last two pages  
16          which I accidentally stapled to it --

17      A.     That's my report, yes.

18      Q.     Okay. Is that an accurate copy of the  
19          report, the original that you generated  
20          from the test of Sahil Sharma on --

21      A.     March 11th.

22      Q.     -- March 11, 2007?

23      A.     Yes, it is.

24      Q.     Can you go ahead and continue how you went  
25          about --

1 THE COURT: Could I interrupt, Mr.  
2 Migdal? Has that heretofore been  
3 submitted to the Court?

4 MR. MIGDAL: It should have been  
5 attached to my motion to amend.

6 THE COURT: Motion to amend. I  
7 wonder if I have that. Here it is.

8 MR. MIGDAL: It should be attached,  
9 Judge.

10 THE COURT: Okay.

11 MR. MIGDAL: Is it attached?

12 THE COURT: Yes.

13 BY MR. MIGDAL:

14 Q. Go ahead, Dr. Roven.

15 A. What was the question?

16 Q. Continue on with the way you went ahead  
17 and conducted Mr. Sahil's polygraph  
18 examination.

19 A. It was essentially the same as the other  
20 two examiners. He was kind enough to fly  
21 out to Los Angeles to my office in  
22 Brentwood.

23 When he came in, we spent roughly  
24 an hour, could have been a little more, on  
25 what we call a pre-test interview, where I



1           get to learn a little about the person I'm  
2           about to be testing.

3                       We discussed the charges and the  
4           situation in real detail, and on the basis  
5           of that, I developed his questions, or the  
6           questions that were to be on his test, on  
7           Mr. Sharma's test.

8                       During that period of time a couple  
9           of things happened. I explained to Mr.  
10          Sharma much of what I explained in this  
11          room a while ago about how a polygraph  
12          works, why it works, what are the  
13          physiological and psychological  
14          underpinnings of this technique, stressing  
15          to him, as I stress to everyone I ever  
16          test, that the responses are involuntary,  
17          the physiological responses that we're  
18          looking at, and that there's no point in  
19          trying to control them because we do know  
20          from a great deal of research that it  
21          can't be done effectively.

22                      Once I developed the questions I  
23          reviewed each question with Mr. Sharma  
24          word for word and asked him what his  
25          response would be when we actually ran the

1 test, and after that was completed, after  
2 the question review was completed and we  
3 were well into the second hour of our  
4 session, I attached the components of the  
5 polygraph to Mr. Sharma, and we did what's  
6 called an acquaintance test or a Stim  
7 test, in which I asked him to lie about  
8 one of a series of numbers I was asking  
9 him, and that's primarily to see if he's  
10 physiologically responsive at a level  
11 that's adequate for evaluating the results  
12 of the test and he was. And --

13 Q. That's what the other two polygraphers  
14 were talking about?

15 A. Yes, they each did one. It's standard  
16 practice. We all do it and it should be  
17 done.

18 Once I found out that he was  
19 sufficiently responsive physiologically I  
20 went ahead with the test.

21 The Utah methodology is that we --  
22 one time through the questions, now, there  
23 was an 11-question sequence, and we refer  
24 to it in the polygraph world as being a  
25 chart, one time through the question

1           sequence, I ran three charts on Mr. Sharma  
2           and, frankly, had a conclusion then, but  
3           knowing that he had come so far and that  
4           he wouldn't be back, I ran two subsequent  
5           charts, a fourth and a fifth just to be  
6           sure that if I missed something, or  
7           erroneously scored something in the first  
8           three, I had two more to rely on.

9                   Our typical practice in the Utah  
10           method is we run three charts. If we can  
11           not reach a decision of truthfulness or  
12           deception, we run two more for a total of  
13           five.

14                   I had reached a conclusion after  
15           three charts, but thought it was just wise  
16           to run two more just for the sake of  
17           completeness and thoroughness.

18                   While he was there, I did two  
19           evaluations of the polygraph charts, found  
20           Mr. Sharma to be truthful to the relevant  
21           questions, and told him that.

22                   I then reviewed all of my own work  
23           the next morning at home and found the  
24           same -- and reached the same conclusion.

25    Q.           What questions did you ask him? Let me

1 strike that.

2 They were relevant questions which  
3 had to do with whether he -- or regarding  
4 this alleged incident and then comparison  
5 questions. Go ahead.

6 A. Right. There are actually three classes  
7 of questions. There are three relevant  
8 questions in this test format about the  
9 crime for which he was accused. There are  
10 three comparison questions.

11 There are four neutral questions  
12 that I'll get to, and there's one what we  
13 call a sacrifice relevant, which is no  
14 more than a buffer, an initial buffer of  
15 responding. We don't attach any  
16 significance to it and it's not ever a  
17 part of our final evaluation.

18 The relevant questions that I asked  
19 Mr. Sharma on the test were these: "Did  
20 Michelle Sacia talk to you in bed before  
21 your sexual activity with her?"

22 The second was: "Was Michelle Sacia  
23 awake and talking with you before your  
24 sexual encounter?"

25 And the third: "Was Michelle Sacia

1           unconscious or sleeping when you began  
2           your sexual activity?"

3       Q.     Let me ask you about the first question,  
4           because in the prosecutor's response, you  
5           are aware Mr. Sharma and Miss Sacia had  
6           talked in the bar hours earlier?

7       A.     Uh-huh.

8       Q.     Is there any problem with the way you  
9           asked that question knowing that hours  
10          earlier that evening that they had had  
11          conversations?

12      A.     I don't think so.  I -- I was quite clear.  
13          I'm fairly thorough in my pre-test  
14          interviews.  That's the most important  
15          part of this process.

16                   And in that thoroughness, I was  
17          convinced, and I am now after reviewing  
18          the tape, myself, that Mr. Sharma knew, at  
19          least for that question, that I was  
20          talking about the -- what transpired after  
21          2 am or whenever it was that he returned  
22          to his hotel room.

23      Q.     Is that why you said, "Did Michelle Sacia  
24          talk to you in bed before"?

25      A.     Exactly.

1 Q. That puts the place --

2 A. Yes, exactly.

3 Q. All right. Continue.

4 A. Do you want to know what the other  
5 questions were?

6 THE COURT: I have them here in the  
7 brief, but for the purposes of completion  
8 of the record --

9 THE WITNESS: Okay. I have them  
10 here in my briefcase if you'll just give  
11 me a second here.

12 (Pause in the proceedings.)

13 THE WITNESS: Of course they'd be  
14 down near the bottom.

15 BY MR. MIGDAL:

16 Q. Let me ask you, the three charts you did  
17 on Mr. Sharma while you're looking for  
18 this, were they conducted in a way that  
19 would yield an accurate result of his  
20 polygraph examination?

21 A. They were conducted in the standard Utah  
22 Zone of Comparison format using all of the  
23 procedures that were used in the research  
24 that resulted in the accuracy rates that I  
25 mentioned earlier.

1 Q. Let me ask you, and I'm just reading from,  
2 frankly, the statute, is the theory upon  
3 which the procedure, test, or experiment  
4 is based objectively, verifiably, or is it  
5 validly derived from the accepted  
6 knowledge, facts, or principles?

7 A. I would say so.

8 Q. The design of the procedure, test, or  
9 experiment, does it reliably implement the  
10 theory of psychopsychology in relation to  
11 telling the truth?

12 A. Indeed it does.

13 Q. While you're looking for the comparison  
14 questions --

15 A. I'm sorry. I know they're in here.

16 Q. That's okay. You've heard talk about a  
17 stipulation which is an agreement among  
18 prosecutor and defense lawyer that the  
19 results will be admitted at trial?

20 A. Yes.

21 Q. Talk about any scientific effect that that  
22 agreement would make upon the science of  
23 polygraphy.

24 A. In my opinion, there is none at all. As a  
25 matter of fact, there is some scientific

1 research that leads to the exact opposite  
2 conclusion.

3 I think, from my point of view, and  
4 I think this is what we're getting at,  
5 we're talking about something that's  
6 called the friendly polygraph  
7 hypothesis.

8 The friendly polygrapher hypothesis  
9 is as follows: If someone is going to  
10 take a polygraph examination from someone  
11 who was retained by his attorney, it's  
12 understood that the client-attorney  
13 confidentiality extends to the polygraph  
14 examiner so that the person knows if he  
15 goes and fails his test, no one will ever  
16 know except for he and the polygraph  
17 examiner and maybe his attorney.

18 Therefore, the hypothesis goes, he  
19 can go into that test so relaxed and  
20 care-free that he can pass any polygraph  
21 test because there's not the degree of  
22 stress or threat necessary to producing a  
23 valid outcome.

24 This hypothesis was generated by a  
25 man named Martin Orne in 1975. Orne did



1 not then, nor has not since, produced any  
2 evidence whatsoever of any kind that  
3 there's any truth to this. It's nothing  
4 but mere speculation. It's certainly  
5 unscientific speculation, but to answer  
6 this, a couple of researchers, one of whom  
7 gave a recent address to the American  
8 Psychological Society, went through his  
9 own files and found that it didn't make a  
10 difference, he had done stipulated tests  
11 where everybody knew the results would be  
12 made public, and he gave plenty of tests  
13 that were not stipulated in which no one  
14 would know if the person had failed it or  
15 not, and found that the results of that  
16 analysis were opposite what the friendly  
17 polygrapher hypothesis would have  
18 predicted.

19 The friendly hypothesis -- the  
20 friendly polygrapher hypothesis predicts  
21 if you go to a private polygraph examiner  
22 who's retained by your attorney, what will  
23 happen is that more people will pass the  
24 test. You have a higher likelihood of  
25 passing because it's going to be such a

1 breeze and there's nothing really at  
2 stake. There's no piper to pay if you  
3 flunk.

4 The fact is that he had a higher  
5 rate of failing tests, a substantially  
6 higher rate of failing tests in his  
7 non-stipulated tests than he did in his  
8 stipulated tests.

9 Totally counterintuitive if one is  
10 to believe that there is something, you  
11 know, intuitive about the friendly  
12 polygrapher hypothesis. Other people have  
13 published similar data.

14 Frankly, most polygraphers who keep  
15 records and are asked this question will  
16 say that what we call private tests,  
17 non-stipulated tests, still the majority  
18 of the tests you give end in deceptive  
19 outcomes, failing outcomes, and it  
20 shouldn't happen that way if the friendly  
21 polygrapher hypothesis was correct, we  
22 would all pass, almost everybody.

23 Q. Now, you know he took Bill Evans' two  
24 tests, Steve Stechschulte's test, you've  
25 seen both of those, and your own test?

1 A. Yes.

2 Q. Do you have an opinion regarding the  
3 probability of somebody passing all of  
4 those tests?

5 A. Yes, I do.

6 Q. Go ahead.

7 A. When you generate these probabilities, you  
8 have -- and as when you're generating all  
9 probabilities, probability is based on the  
10 assumption that we really don't know for  
11 sure, so we have to make certain  
12 assumptions.

13 For example, if I gave anyone in  
14 this courtroom who's here right now a  
15 polygraph and with no knowledge they'd do  
16 a polygraph test on anybody in this  
17 courtroom on any issue and come up with a  
18 result, I would say the likelihood of them  
19 being correct is 50 percent, a coin toss.

20 It would have nothing to do with  
21 their ability as a polygraph examiner,  
22 obviously, or their acuity in evaluating  
23 polygraph charts, or anything.

24 They probably would be looking at  
25 all of the wrong things and guessing. And

1 we tend to guess half right, half wrong on  
2 things we don't know anything about, or at  
3 least scientifically. That's the  
4 hypothesis, 50 percent.

5 When we look at a trained polygraph  
6 examiner, the odds of him being right go  
7 up a little bit because he's working with  
8 an established technology and set of  
9 procedures, and as he gets more and more  
10 experienced and proficient, the odds go up  
11 even more.

12 So that if we hypothesize, or if we  
13 speculate that the odds of my being wrong,  
14 or the probability of me being wrong in my  
15 test were ten percent, one out of ten, and  
16 I think I'm better than that, but let's  
17 say it, and that the odds of Mr.  
18 Stechschulte's are ten percent him being  
19 wrong, and then the odds of Mr. Evans  
20 being wrong are ten percent, what we do  
21 statistically is multiply ten percent, by  
22 ten percent, by ten percent, and if we,  
23 going on those assumptions, the  
24 probability that all three of us made the  
25 same exact mistake using different

1 questions, but questions about the same  
2 exact issue, the probability of us all  
3 being wrong is one out of 1,000.

4 Q. Do you have any background in statistics?

5 A. Yes. I have taught statistics for a  
6 number of psychology departments which are  
7 statistics for the social scientists.

8 I taught business and economic  
9 statistics in the MBA program at --

10 Q. When -- I'm sorry.

11 When you say one in 1,000 it's not  
12 just some saying, I mean, that's an actual  
13 --

14 A. I think that's a reasonable assumption,  
15 yeah.

16 Q. Regarding Mr. Sharma's Utah Zone of  
17 Caparison Test that he did with you, based  
18 on your education, training, and  
19 experience, and to a reasonable degree of  
20 scientific certainty, do you have an  
21 opinion on whether there is significant  
22 physiological changes indicative of  
23 truthfulness which occurred on Sahil  
24 Sharma's test?

25 A. I do have an opinion. I believe Mr.

1 Sharma was truthful when he answered the  
2 relevant questions.

3 MR. MIGDAL: Thank you, Judge. I  
4 don't have any other questions.

5 THE COURT: Let's just take five  
6 minutes and break here and stretch and  
7 then come back to it.

8 (Recess had.)

9 MR. MIGDAL: Judge, may I ask one  
10 more question?

11 THE COURT: Yes.

12 BY MR. MIGDAL:

13 Q. Dr. Rovner, I've marked Defendant's  
14 Exhibit D. Can you identify that?

15 A. Yes, that's the published report of the  
16 research that I described that I had done  
17 in the late '70s.

18 Q. Is that a complete and accurate copy of  
19 the report that was generated?

20 A. Yes, it is.

21 MR. MIGDAL: Thank you.

22 THE COURT: All right. Let's turn  
23 to cross-examination. Miss Kanellis.

24 MS. KANELLIS: Thank you, Your  
25 Honor.

## CROSS-EXAMINATION

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BY MS. KANELLIS:

Q. You had an opportunity to hear Bill Evans, and I know I'm going to say his name wrong, Stechschulte from BCI testify, correct?

A. I did.

Q. What -- and you heard them talk at length about the polygraphs they did on Sahil Sharma?

A. Yes.

Q. How is the polygraph that you did on Sahil Sharma, how is that different from what those two did, if it is at all?

A. It's different in that we used different testing formats. And by that I mean, although we used control or comparison question tests, we ordered the questions differently.

Q. Could you explain what you mean by that, that the questions were --

A. Well, my control and relevant questions, or my comparison and relevant questions were ordered according to the procedure under Utah Zone of Comparison Test. Theirs

1           were in a different order.

2       Q.       But you state that they, too, in your  
3           opinion, used the Utah Zone of Comparison  
4           Test?

5       A.       No, I didn't.

6       Q.       No? Okay. What did they use? If you  
7           know.

8       A.       They used something called the Modified  
9           General Question Test.

10      Q.       And they both used the same?

11      A.       They used different formats or different  
12           variations of the same test, yes.

13      Q.       I'm sorry, what?

14      A.       The Modified General Question Test. MGQT  
15           is how we speak of it.

16      Q.       And how -- and does that -- is that  
17           different from the Utah Zone of  
18           Comparison, just in the order of the  
19           questions, or is there something else  
20           that's different about those two different  
21           tests?

22      A.       Primarily, it's different in that the  
23           order of the questions is different and  
24           they don't look at just a single issue.  
25           They will look at different -- or



1 different issues or different aspects of  
2 the same issue.

3 Q. Do you, in your practice, ever use the  
4 Modified General Question Test?

5 A. No.

6 Q. Why not?

7 A. It's a choice of mine. I feel -- my  
8 reliance in what I do is based almost  
9 entirely on techniques that have strong  
10 scientific foundation.

11 The Utah Zone of Comparison Test, as  
12 I said, has now been shown to be what I  
13 always assumed it was, the most accurate  
14 of all of the testing techniques, and  
15 that's why I use it.

16 Q. Is it your opinion that the Modified  
17 General Question Test is less accurate  
18 than the Utah Zone of Comparison?

19 A. My -- well, frankly, there hasn't been  
20 enough research done on the MGQT to really  
21 satisfy me or for me to give a really good  
22 answer to that.

23 However, I will say that it's a  
24 testing technique that's widely used  
25 throughout the polygraph world.

- 1 Q. Now, you do not have any -- I'm assuming,  
2 any background in law enforcement; would  
3 that be fair to say?
- 4 A. That's correct.
- 5 Q. Other than that, how -- did you notice any  
6 difference in the credentials that you  
7 have and the other two polygraph  
8 examiners?
- 9 A. Yes, I noticed some differences.
- 10 Q. What were those?
- 11 A. Well, I have some advanced degrees and I  
12 didn't hear them state that they have. I  
13 did some university teaching, and I don't  
14 know that either of them has.
- 15 Q. And you are also certified?
- 16 A. Yes.
- 17 Q. And who are you certified by?
- 18 A. By the California Association of Polygraph  
19 Examiners, CAPE, and I also have a  
20 certificate of advanced training from the  
21 American Polygraph Association.
- 22 Q. Now, is there -- is California primarily  
23 where you practice?
- 24 A. Yes.
- 25 Q. Okay. Have you ever testified in Ohio

1 before?

2 A. No.

3 Q. Is there such a thing in California, do  
4 you have to be licensed to perform  
5 polygraph examinations?

6 A. I'm sorry to interrupt.

7 Q. That's okay.

8 A. We used to have a license. Polygraph  
9 examiners were licensed until the late  
10 '80s or 1990, actually, when the Employee  
11 Polygraph Protection Act was passed in  
12 1988 prohibiting employers from giving  
13 pre-employment polygraph tests to job  
14 applicants, which, by the way, is a  
15 totally different kind of test than what  
16 we're talking about here, probably a  
17 majority of the examiners in California  
18 found some other way to make a living.

19 There were so few licensing fees  
20 being paid that the office could not  
21 sustain itself based on the fees that they  
22 collected, and the governor made a  
23 decision to let the licensing law go. And  
24 so, no, we don't have a license now.

25 Q. You're certified by the American Polygraph

- 1 Association?
- 2 A. Well, I have their certificate of advanced  
3 training.
- 4 Q. In order to perform or administer  
5 polygraph examinations, I guess I have to  
6 be specific, are you aware in Ohio, do you  
7 have to have any type of certification?
- 8 A. I don't know anything about Ohio law.
- 9 Q. What about California?
- 10 A. California, unfortunately, there are  
11 absolutely no requirements for legally  
12 giving polygraph tests. There are those  
13 of us who are working hard to see that  
14 change, but the reality is, anybody with a  
15 polygraph in California can call  
16 themselves an examiner.
- 17 Q. And you had an opportunity to administer a  
18 polygraph to Sahil Sharma?
- 19 A. Yes.
- 20 Q. Were -- prior to your administering the  
21 polygraph, were you able to determine how  
22 many polygraphs he had taken prior?
- 23 A. I was aware of those, yes.
- 24 Q. And how did you become aware of that?
- 25 A. Mr. Migdal told me.

1 Q. Is it something that you asked the  
2 defendant, yourself, or did you just base  
3 -- did you rely on what his attorney had  
4 told you?

5 A. You know, I don't recall.

6 Q. Okay.

7 A. I wouldn't think that Mr. Migdal would  
8 tell me he had three tests if he didn't.

9 Q. I'm not suggesting he would, I was just  
10 asking if you knew.

11 So you're aware of three. Did that  
12 cause you any type of concern, or did that  
13 give you any pause for thought, the fact  
14 that Sahil Sharma had taken three  
15 polygraphs prior to coming to you?

16 A. Not particularly.

17 Q. Is it, for lack of a better term, is it  
18 common for someone to come to you to take  
19 a polygraph exam when they have taken  
20 prior polygraph exams for the same  
21 scenario or same issue or same --

22 A. Although it's not unheard of, it's not  
23 common.

24 Q. Not common?

25 A. But I'll tell you, when Mr. Migdal first

1           called me I was the one who suggested the  
2           test. It wasn't him. He didn't ask me to  
3           test.

4                        To be complete and honest, Mr.  
5           Migdal wanted me to come and testify as an  
6           expert witness about all of the other  
7           topics that we have discussed so far  
8           today. And it was I who suggested that I  
9           also test Mr. Sharma.

10    Q.       And there was one test that you did?

11    A.       I'm sorry, one test?

12    Q.       One test.

13    A.       Yes.

14    Q.       And I think you had indicated that you --  
15           before you formed your questions, you had  
16           an opportunity to review the police  
17           reports, you had an opportunity to listen  
18           to a transcript of the preliminary  
19           hearing?

20    A.       That's correct.

21    Q.       And you also had a conversation with  
22           Attorney Migdal where he kind of gave you  
23           the run-down of the facts?

24    A.       I did.

25    Q.       Anything else that you know of or can

1 recall?

2 A. I can't recall any other documents.

3 Q. Okay. And did you have a conversation  
4 with Sahil Sharma prior to administering  
5 the test about the facts of the case?

6 A. Prior to his coming to my office?

7 Q. Well, no, prior to actually the test  
8 questions being read.

9 A. We had an extensive pre-test interview,  
10 yes.

11 Q. And in that interview, he indicated to you  
12 that it was, in fact, the victim or  
13 Michelle Sacia, who had initiated the  
14 sexual activity?

15 A. Correct.

16 Q. And he indicated to you that she was awake  
17 and that she had spoken to him before they  
18 engaged in sexual activity?

19 A. Yes.

20 Q. Did he indicate to you what it was she had  
21 said to him?

22 A. My recollection is that he told me that  
23 they had earlier in the evening, not in  
24 the room, but at some other location,  
25 discussed a clothing design business or

1 something like that, that Mr. Sharma was  
2 contemplating, and that she had some  
3 experience or interest in designing  
4 clothes, and so that some of their talk up  
5 in the bedroom, or in the hotel room, was  
6 a continuation of that discussion.

7 Q. Now, you indicated there's a point value  
8 system that you used in your test; is that  
9 accurate?

10 A. That's correct.

11 Q. Could you explain that?

12 A. Sure. By the way, Your Honor, if you'd  
13 like -- I found the list of questions I  
14 asked if you --

15 Q. I'm going to get to that, actually.

16 A. Are you?

17 Q. Yes.

18 A. Okay. We looked at -- we compare the size  
19 and the nature and the strength of the  
20 physiological responses people have to  
21 relevant questions and comparison  
22 questions.

23 At any given point on the test, as  
24 you can see each of the three relevant  
25 questions that are included on every chart



1 is preceded by a comparison question. So  
2 that pair of questions is evaluated  
3 channel by channel, the two respiration  
4 channels, the GSR, and the cardiovascular  
5 channel.

6 The response on each of those  
7 channels to the comparison question is  
8 compared to the response on the same  
9 channel of the relevant question, and so  
10 that is repeated four times for each pair.

11 If the response to the relevant  
12 question is bigger, or more dramatic, or  
13 stronger than the response to its paired  
14 comparison question, we award that  
15 comparison a negative one, two, or three  
16 points based on certain scoring criteria.

17 If the physiological response is  
18 stronger to the comparison question than  
19 it is to the relevant, we assign positive  
20 points to that comparison, one, two, or  
21 three.

22 Q. And I believe you had indicated that Sahil  
23 Sharma had a positive six?

24 A. Correct.

25 Q. And positive five to negative five would

- 1 be inconclusive?
- 2 A. That's right.
- 3 Q. So what would -- so positive six, would it  
4 be fair to say that starts where you pass  
5 -- where you're going to come and say  
6 you're truthful, you passed the polygraph?
- 7 A. That's the criteria for truthfulness, yes.
- 8 Q. So would it be -- am I understanding  
9 correctly a negative four --
- 10 A. Negative six.
- 11 Q. A negative six, okay, and down would be  
12 where you're saying you're being  
13 deceptive?
- 14 A. Correct.
- 15 Q. You fail?
- 16 A. Yes.
- 17 Q. Okay. Let's say just hypothetically I, or  
18 anyone, for that matter, you administer a  
19 polygraph test and I -- my score is a  
20 positive 13?
- 21 A. Uh-huh.
- 22 Q. What would that mean to you? How would  
23 you interpret that?
- 24 A. A positive 13? That you were truthful to  
25 the relative questions.

- 1 Q. Am I -- because that number's higher does  
2 that mean I'm being more truthful than  
3 someone who had a positive six?
- 4 A. No, you can't be more truthful. You can  
5 only be truthful.
- 6 Q. And have you ever had somebody who had,  
7 say, a positive 13 --
- 8 A. Yes.
- 9 Q. -- in your experience?
- 10 A. Yes.
- 11 Q. How would you compare -- why would that  
12 person have a positive 13 and Sahil Sharma  
13 have a positive six, what's the  
14 discrepancy there?
- 15 A. That's a good question.
- 16 Q. Thank you.
- 17 A. As human beings we are variable in the  
18 extent to our response to things, some  
19 people are less nervous, some people are  
20 more nervous. Some people are more  
21 talkative, some people are less.
- 22 And the extent or the strength of  
23 our physiological responses to these  
24 questions is just one example of a  
25 variability in the human race.

1                   That number six, plus or minus, is  
2                   not an arbitrary number. After looking at  
3                   the results of hundreds or thousands of  
4                   subjects in laboratory research, we looked  
5                   at -- we had different, in an experimental  
6                   way, or post-hoc way, we looked at cut  
7                   offs of plus one to minus one, plus two to  
8                   minus two, plus three to minus three and  
9                   so forth, and we found that plus six is  
10                  the optimal level.

11                  If you use a plus seven, or plus  
12                  eight, or plus nine, the accuracy rate  
13                  doesn't increase. The only thing that  
14                  increases is the number of inconclusive  
15                  outcomes.

16                  So the number six is not arbitrary.  
17                  There's an experimental basis to it so  
18                  that a person who scores a plus 13 is no  
19                  more likely to be truthful than somebody  
20                  who scores a plus six.

21        Q.        It's just they are having a stronger  
22                  physiological reaction?

23        A.        No, it may be that their personal  
24                  characteristics of response are different  
25                  from a person with a lower -- a positive

1 score.

2 It's almost like shoe size. Some  
3 people have bigger feet. It doesn't mean  
4 that they walk better or can run faster.  
5 They just have bigger feet.

6 Q. We spoke about -- or you spoke about the  
7 test questions, the three test questions.  
8 And there were some other questions that  
9 you had asked.

10 Could you go through what those  
11 questions were, and what the responses  
12 were, and what your conclusions were?

13 A. Sure. In any particular order?

14 Q. No.

15 A. Okay. These questions were set -- I'll  
16 read them in categories, but not -- unless  
17 you'd like the actual order they were  
18 asked in.

19 Q. That's up to the Judge. It might be  
20 easier for the record. I don't know. It  
21 might be easier to do it in the order they  
22 were asked.

23 A. Okay. The first question was what we call  
24 a neutral question. It's not considered  
25 in the evaluation of the test. And that

1 was: "Is today Friday?"

2 Mr. Sharma's answer was yes,  
3 because it was Friday.

4 The next question, number two, is  
5 what we call a sacrifice relevant. It  
6 approaches the relevant issue itself and  
7 is there to get any unrelated tension away  
8 from the person. It's not included in the  
9 evaluation process.

10 And that question is this, similar  
11 to ones you've heard before today:  
12 "Regarding Michelle Sacia's accusations,  
13 do you intend to answer truthfully each  
14 question about that?"

15 The third question was another  
16 neutral question: "Are we in California?"

17 Our viewpoint in Utah was that  
18 these three questions were not really  
19 important to us except in that they  
20 provided a buffer from initial responding  
21 when the subject knows, boy, the test is  
22 started now, the chips are down, this is  
23 important, people will always respond to  
24 the first question no matter what you ask  
25 them, and that's just what we call an

1 orienting response.

2 You want to get that out of the way  
3 so it doesn't obfuscate the real responses  
4 to the important questions that we need to  
5 have.

6 The fourth question was a  
7 comparison question that was: "Before  
8 2006, did you ever break a law, rule, or  
9 regulation and get away with it?"

10 I'll go through all the questions  
11 if you'd like and then I'd like to say a  
12 few words about comparison questions,  
13 okay?

14 Then question five was --

15 Q. I'm sorry to interrupt. What was his  
16 response?

17 A. I'm sorry.

18 Q. That's okay.

19 A. No.

20 Q. And then what was your -- I mean, did you  
21 -- did it appear he was being deceptive,  
22 truthful? Did you make a conclusion on  
23 that question?

24 A. What we do with comparison questions, and  
25 maybe I should take this opportunity to

1 tell you why we use comparison questions  
2 and what they do.

3 Q. Actually, I think the record is full of  
4 that. I understand.

5 A. Well, I can't really answer your question  
6 without giving that explanation, I'm  
7 sorry.

8 Q. Go ahead and give that explanation and you  
9 can answer my question.

10 A. Okay. Years, and years, and years ago  
11 when polygraph examiners gave tests they  
12 used the technique called  
13 relevant-irrelevant.

14 In a case like this, they would use  
15 questions like my questions to Mr. Sharma  
16 about Miss Sacia's accusations. These  
17 have an emotional psychological loading;  
18 particularly, to the innocent person  
19 because he didn't do it, he's shocked that  
20 he's been -- I'm not talking about him  
21 specifically, but any innocent person  
22 who's wrongly accused of something is  
23 going to have an emotional reaction to  
24 that, not only to what others think about  
25 him for having been accused, but to



1 possible consequences that could arise  
2 from being convicted of a crime that he  
3 didn't commit.

4 And that relevant-irrelevant  
5 technique they would have relevant  
6 questions like these and a lot of  
7 irrelevant questions, are you sitting  
8 down, is today Tuesday, are we in South  
9 Dakota, or whatever.

10 Well, what they found is that  
11 almost everybody failed these  
12 relevant-irrelevant tests because the big  
13 reactions to everybody's test were always  
14 to the relevant questions.

15 And after some years of that,  
16 somebody scratched his head, actually a  
17 fellow named Reid in Chicago, John Reid,  
18 who said, wait a minute, we have to give  
19 innocent people something to focus their  
20 emotion on, their stress.

21 And he came up with the concept of  
22 a control question, which we now call a  
23 comparison question, but it's exactly the  
24 same thing.

25 His feeling was, and it's been

1           borne out now by decades of research, was  
2           that if the person is asked a comparison  
3           question that we characterize as a  
4           possible lie comparison question, that he  
5           is almost certain to be lying about, and a  
6           question in the same general category as  
7           the relevant questions, that the innocent  
8           person should respond more strongly to the  
9           comparison questions if the examiner  
10          during the pre-test interview has  
11          established what we refer to as a  
12          psychological set.

13                   The technique is very simple.  When  
14                   we give tests like this, the subject is  
15                   told after the relevant questions are all  
16                   reviewed, I'll tell him, "I have some  
17                   other questions that are going to be on  
18                   this test.  I call them character  
19                   questions, and the reason these are in  
20                   there, these questions are on your test,  
21                   is to help me when I do my evaluation  
22                   later, to determine if you're the kind of  
23                   a person who would have committed this  
24                   crime."

25                   So, you know, if you've done a lot

1 of the things that I'm going to be asking  
2 you about, clearly, you know, it would  
3 sort of influence my decision at the end  
4 of the day and I can only come to one  
5 conclusion then. And I'll discuss this at  
6 length with him. And then I'll start  
7 reviewing the comparison questions.

8 The first one I asked Mr. Sharma  
9 for example was: "Before 2006 did you  
10 ever break a law, rule, or regulation and  
11 get away with it?"

12 I said to him something like,  
13 "Well, you know, you've been accused of  
14 breaking a law, clearly. And I'm asking  
15 you this question to determine if you've  
16 gone through life breaking a lot of laws  
17 and rules and regulations, because if you  
18 are, this -- you would certainly be the  
19 kind of guy who wouldn't have a lot of  
20 problems breaking laws and rules."

21 This is done purposely to have the  
22 person not make a lot of admissions so  
23 that he will probably be lying when he  
24 says no to this question.

25 Later on in the test or between

1 charts he may make an admission, or he may  
2 make one right then.

3 And in Mr. Sharma's case he did.  
4 And so I modified that question to read:  
5 "Other than what you told me before 2006,  
6 did you ever break a law, rule, or  
7 regulation and get away with it?"

8 We have found -- once again, I keep  
9 repeating myself -- by extensive repeated  
10 research that innocent examinees will  
11 respond physiologically far more strongly  
12 to those comparison questions than they do  
13 to the relevant questions, and the  
14 opposite is true for guilty people.

15 Q. Okay.

16 A. Would you like me to keep going?

17 Q. Well, I just want to go back to question  
18 number 4, the question number 4.

19 He had answered -- so if I'm  
20 understanding correctly, you said, "Before  
21 2006, have you ever committed a crime or  
22 broken a law, or broken a rule and gotten  
23 away with it," and he said, "No," and with  
24 you that was indicated as being deceptive,  
25 and you asked him to -- another question,

1 and he told you something, and then you  
2 said, "Well, except for what you just told  
3 me"?

4 A. We are -- okay. We are hoping or assuming  
5 that the person is lying to these  
6 comparison questions. Indeed we want them  
7 to be lying.

8 Q. I'm not judging whether -- I'm not saying  
9 he should have been lying or not. What  
10 I'm trying to get to on the first question  
11 you asked him about that, when he said no,  
12 he was being deceptive?

13 And I understand that's what you  
14 want, that that's what he's supposed to be  
15 --

16 A. I don't know if he was being deceptive or  
17 not.

18 Q. You were unable to tell?

19 A. That's why it's called a probable lie. We  
20 don't evaluate those questions  
21 individually. We don't evaluate any  
22 question individually.

23 Q. But you later found out that there was, in  
24 fact, something that he told you about  
25 that had happened prior to 2006?

1 A. Yes.

2 Q. So you revamped your question?

3 A. Correct. And that's standard practice, by  
4 the way, in any questioning in any format.

5 Q. Okay. What was the next question after  
6 that?

7 A. Let's see. That was -- number 5, I can't  
8 remember where we stopped. The first  
9 relevant.

10 Q. I believe number 5.

11 A. Okay. "Did Michelle Sacia talk to you in  
12 bed before your sexual activity with her,"  
13 to which Mr. Sharma answered yes. Keep  
14 going?

15 Q. Are we getting into the --

16 THE COURT: Yes.

17 BY MS. KANELLIS:

18 Q. Are questions one through four the only  
19 non-polygraph questions, the questions  
20 that are not in your report that were  
21 asked or were there more?

22 A. I'm going through the entire sequence of  
23 11 questions. I thought that's what you  
24 asked.

25 Q. We can probably skip the ones that we have

1 already talked about.

2 A. Oh, okay. We talked about the three  
3 relevant questions.

4 Q. Right.

5 A. Okay. Question -- okay. I'll just  
6 mention for the record that question five  
7 was one of those relevants. Question six  
8 was another neutral question: "Is this  
9 the month of March?"

10 His answer was yes.

11 Question 7, the modified version  
12 was, "Other than what you told me, did you  
13 ever do anything sexually that you were  
14 ashamed of, or embarrassed about before  
15 2006?"

16 Question --

17 Q. And what was the response to that?

18 A. Sorry; no.

19 Q. Okay.

20 A. Question 8 was another one of the relevant  
21 questions.

22 Question 9 was a neutral: "Are you  
23 sitting down," to which he answered yes.

24 Question 10 was a comparison  
25 question. "Other than what you told me

1 prior to last year, did you ever lie to  
2 anyone who loved or trusted you?"

3 He answered no.

4 And then question 11 was the third  
5 of the three relevant questions.

6 Q. Now, question 7, is that the same kind of  
7 question that question 4 was, where it's a  
8 probable lie?

9 A. Yes.

10 Q. Okay. What about question 10, same thing?

11 A. Yes, uh-huh.

12 Q. You talked a lot about at the beginning  
13 people's physiological response and how a  
14 polygraph works and all of that.

15 But what about someone, if I say  
16 someone's -- and I know this isn't the  
17 medical term -- but a compulsive liar or  
18 habitual liar, do you know what I mean  
19 when I say that, somebody that can just  
20 lie all the time and does it through the  
21 course of a period of years?

22 A. I understand what you're talking about, I  
23 think.

24 Q. If you're used to doing that, would that  
25 have any effect on the polygraph if you're



1           that type of person?

2    A.    No.  And actually there is pertinent  
3           scientific research addressing that.  
4           Shall I tell you about that?

5    Q.    Yes, please.

6    A.    The ultimate pathological liar or  
7           systematic liar is what we call the  
8           psychopath, or at least a psychopath --  
9           that's one of the behaviors that a  
10          psychopath will exhibit, but -- more  
11          strongly and routinely than anyone else.

12                 There have been several experiments  
13                 published about the rate of accuracy of  
14                 polygraph examinations when they're done  
15                 with psychopaths, as well as people who  
16                 are not as socialized as other people, who  
17                 score low on socialization scales, so  
18                 forth and so on.

19                 All of those show that there is  
20                 either -- well, that there's no  
21                 significant difference between the  
22                 accuracy rates of pathological liars or  
23                 psychopaths, or low-socialized individuals  
24                 than there is with normal people.

25    Q.    Now, in California are unstipulated

1 polygraphs admissible in court in a  
2 criminal trial, to your knowledge?

3 A. No.

4 Q. And just so that the record's clear, the  
5 polygraph that you administered to Sahil  
6 Sharma, that was not a stipulated  
7 polygraph, correct?

8 A. It was my understanding that it was not  
9 stipulated.

10 Q. You indicated in your testimony that you  
11 believed that the ultimate issue or the  
12 key issue here was, was Michelle Sacia  
13 awake or not awake; is that accurate?

14 A. Well, I understood that's what the  
15 criminal charge is.

16 Q. Okay.

17 A. And that's why I chose those questions.

18 Q. So do you agree or disagree -- I think  
19 Bill Evans indicated there was an issue as  
20 far as something being consensual or  
21 forced. Do you agree with that?

22 A. I'm not quite sure what the question is.

23 Q. Well, am I correct in saying you felt the  
24 -- your questions are geared toward was  
25 she awake or not awake?

- 1 A. Clearly.
- 2 Q. And based on the charges you feel that is  
3 the important issue here?
- 4 A. Yes.
- 5 Q. Okay. Did you hear Bill Evans testify  
6 that the issue in his mind was, was this  
7 consensual sex or did it involve force?
- 8 A. Okay.
- 9 Q. I mean, if you didn't hear him say that --
- 10 A. I heard him testify, yes.
- 11 Q. Do you recall him saying that part?
- 12 A. Not particularly, no. I'm sorry.
- 13 Q. Would you agree with that statement?
- 14 A. Only indirectly. I mean, certainly if  
15 someone is unconscious or sleeping what  
16 they do is not consensual at the moment.
- 17 But once again, that's a legal  
18 issue that I'm not qualified to comment  
19 on, I don't think.
- 20 Q. Was there anything that either Bill Evans  
21 or the polygraph examiner from BCI said  
22 that you disagree with?
- 23 A. Nothing I can recall.
- 24 Q. Do you -- in your opinion, would three or  
25 four -- of the fact that we have four

- 1 polygraphs here, is that cumulative?
- 2 A. What do you mean?
- 3 Q. Do you feel that would be cumulative? I  
4 mean, as Bill Evans said, he took one, he  
5 passed it, and I think Bill Evans used the  
6 term, I think the rest is just beating a  
7 dead horse. Do you feel these are  
8 cumulative?
- 9 A. Would you define "cumulative" for me,  
10 please?
- 11 Q. Well, we have one polygraph. He comes in  
12 and says, here's a polygraph, he passed  
13 this polygraph. What is your  
14 understanding what the purpose or reason  
15 behind having three more?
- 16 A. That wouldn't my decision and I don't  
17 recall why. I know why he was given the  
18 fourth, it was given at my suggestion and  
19 I explained why I suggested that. I don't  
20 know why more than one examiner ran tests  
21 on him and I -- personally, I wasn't all  
22 that concerned.
- 23 Q. Okay. When you administer a polygraph in  
24 general, is there ever a confidentiality  
25 agreement that is executed?

1 A. Yes.

2 Q. Was there one in this -- in Sahil Sharma's  
3 case?

4 A. Of sorts, yes.

5 Q. Of sorts. But you're here testifying  
6 today, and you've turned over some -- can  
7 you explain that, I guess?

8 A. Well, I can't remember the wording in the  
9 release form that I ask people to sign,  
10 but I pledge to them confidentiality  
11 unless they or their representative in the  
12 form of an attorney asks me to say  
13 something about it to someone else.

14 Q. So if he had -- if you had given him the  
15 polygraph exam and he had failed, no one  
16 would ever know about it because of the  
17 confidentiality agreement? You would  
18 certainly never disclose that information?

19 A. That's correct.

20 Q. Did you review the newspaper articles on  
21 this case prior to administering the  
22 polygraph exams?

23 A. No.

24 MS. KANELLIS: Thank you.

25 THE COURT: You're finished here?

1 I was deep in my own thoughts and I have  
2 some questions before we go to redirect.

3 You mentioned the pre-test?

4 THE WITNESS: Uh-huh.

5 THE COURT: I think you said it's  
6 the most important part of the  
7 examination?

8 THE WITNESS: Well, in a sense.  
9 And I realized when I said that I might  
10 have misspoken, but it's a part of the  
11 examination that I do feel is extremely  
12 important, because it -- it allows me to  
13 establish the ground rules, and I use that  
14 phrase loosely, the ground rules for the  
15 examination.

16 It allows me, or any good examiner,  
17 to establish a kind of a focus of  
18 attention on the person being tested that  
19 we refer to in the industry, or in the  
20 profession, as a psychological set.

21 It allows me to establish that  
22 focus, without which I don't think the  
23 results would be meaningful.

24 THE COURT: It's not more important  
25 than the actual question and answer part

1 of the polygraph, itself?

2 THE WITNESS: That's correct, yes.  
3 I misspoke there. It's not more  
4 important, but it is -- without it, the  
5 test is meaningless.

6 THE COURT: The pre-test becomes or  
7 is very subjective?

8 THE WITNESS: In what way?

9 THE COURT: In the sense that each  
10 tester would approach that differently.

11 THE WITNESS: In a way, but when I  
12 watch other professionals at their work,  
13 different surgeons approach the same  
14 operation differently, too, but tend to  
15 get the same results.

16 Different lawyers prepare cases in  
17 their own particular idioms, but they, you  
18 know, they can be equally effective.

19 As long as the examiner is  
20 knowledgeable and aware of the purpose of  
21 the pre-test interview and its component  
22 parts, his individual style shouldn't have  
23 that much of an effect on the validity of  
24 the test.

25 THE COURT: That's what I was

1 getting at.

2 THE WITNESS: Yeah.

3 THE COURT: That kind of subject --  
4 I'm calling it subjective. You didn't  
5 really let me get away with that, but  
6 doesn't impact the objective results of  
7 the polygraph?

8 THE WITNESS: Exactly. It doesn't.

9 THE COURT: Okay. Let me approach  
10 another question.

11 Suppose Mr. Migdal had come to you,  
12 or anyone for that matter, with different  
13 input.

14 It's hard for me to imagine a  
15 scenario right now, but it might come in  
16 in an employment context or something like  
17 that where someone from human resources  
18 says, for instance, we think this  
19 particular person to be tested is guilty.

20 THE WITNESS: Uh-huh.

21 THE COURT: And suppose you were  
22 approached with the scenario that the one  
23 to be tested was guilty, instead of  
24 innocent --

25 THE WITNESS: Uh-huh.



1 THE COURT: -- do you think that  
2 would affect your outcome at all?

3 THE WITNESS: I don't think so at  
4 all. When I personally do tests, I work  
5 very, very hard to maintain my own  
6 impartiality. I'm always paid well in  
7 advance of when I give the test. So --  
8 and I remind the subject of that, too,  
9 before we get started, that I've been paid  
10 and the outcome of the test is not going  
11 to be influenced by me worrying about my  
12 paycheck.

13 In a sense, tomorrow's another day.  
14 The outcome of this test is not that  
15 important to me. Whether the outcome of  
16 the test is truthful or deceptive.

17 The only thing that's truly  
18 important to me is that I do an impartial  
19 and professional job.

20 I can assume when a defense  
21 attorney calls me and asks me to test his  
22 client that he believes the -- he either  
23 believes that his client is innocent or  
24 he's not sure and he wants to know, or  
25 have more information.

1                   So I go into that knowing that he's  
2                   asked me a question, and it could be  
3                   construed as being biased in one  
4                   direction, and I have been contacted by  
5                   people who say the kind of thing that you  
6                   said, that we know who probably did it.

7                   I work very hard at not allowing  
8                   that to bias me. And, frankly, I do that  
9                   by following the same set of procedures in  
10                  every test.

11                 THE COURT: And so you don't think  
12                 the input provided can skew the outcome?  
13                 Has there been any scientific testing on  
14                 that?

15                 THE WITNESS: No, not if you're  
16                 diligent. No, there has not. But if  
17                 you're diligently following the rules and  
18                 don't have a personal stake in the  
19                 outcome, the fellow isn't your cousin or  
20                 something, then I don't particularly think  
21                 it matters.

22                 THE COURT: You know, I have to  
23                 confess, there's something mingling around  
24                 in the back of my mind about a show that I  
25                 saw on TV some time ago. It was either

1           Dateline or 60 Minutes, or something like  
2           that, where there was a scenario where  
3           that kind of input was tested in a series  
4           of polygraphs that in the end made the  
5           whole concept, or the whole testing  
6           procedure look bad.

7                         Are you aware of that show at all?

8                         THE WITNESS: No. I'm sorry.

9                         THE COURT: You missed that?

10                        THE WITNESS: I don't watch  
11           Dateline. I do know that shows that I  
12           have seen about polygraph, not dramatic  
13           shows, but I think I recall a 60 Minutes  
14           segment some years ago, they don't have  
15           enough time to portray polygraph  
16           accurately.

17                        If I wanted to stack the deck  
18           against polygraph, I'd know how to do it.  
19           I mean, you know, the way you cut and edit  
20           a piece of film can portray anything as  
21           anything.

22                        The fact is, we have got too much  
23           science behind this to let a TV show  
24           influence us in the other direction.

25                        Once again, I'd like to say that if

1 procedures that have been demonstrated in  
2 scientific research over decades and  
3 decades now are followed diligently, the  
4 results are going to be phenomenally  
5 accurate.

6 THE COURT: I'm thinking of the  
7 body of case law that we have here in Ohio  
8 when I ask this question, and you don't  
9 have to be a legal expert to answer this,  
10 but our key case, I think on this, was  
11 issued in the late '70s, okay?

12 Since that time frame, that general  
13 time frame, have polygraph examinations  
14 become more reliable?

15 THE WITNESS: Oh, far, far more.

16 THE COURT: Why so?

17 THE WITNESS: Well, there are two  
18 areas in which we have made tremendous  
19 advances.

20 One of those is the technical or  
21 the mechanical part of things. Polygraph  
22 instruments have become far better at  
23 measuring and recording physiological  
24 responses.

25 In fact, I was delighted to see in

1 the testimony here that both of the  
2 examiners use computerized polygraphs.  
3 They -- it's sort of like relating a word  
4 processor on your computer to the old  
5 manual typewriters we used to use 50 years  
6 ago. It's just a far better way, and  
7 records of polygraph tests can be  
8 maintained forever, where paper, charts,  
9 used to get lost, burned, or destroyed  
10 accidentally.

11 Most of us have backup copies of  
12 the exams on other disks, or other drives,  
13 and so it's a far safer way to do it.

14 These new computerized polygraphs  
15 measure each response hundreds of times a  
16 second, so the quality of the tracings is  
17 really, really accurate, and they allow  
18 you to make pinpoint measurements from one  
19 part of a response to another. Something  
20 we could only eyeball or use rulers in the  
21 old days when we were working with paper  
22 and ink.

23 So the technology from the hardware  
24 is far, far more -- far better than it  
25 used to be in 1978.

1                   As far as procedures and  
2                   technology, there was really a scarcity of  
3                   high quality scientific research in 1978.  
4                   There were a handful of good studies, but  
5                   it was -- the real important research was  
6                   in its infancy around 1969 or '70. And  
7                   there were only a handful of people even  
8                   doing it in the early '70s.

9                   Since 1978 there's been an  
10                  explosion of polygraph research around the  
11                  world. Institutions, both research and  
12                  universities in the United States, have  
13                  conducted and published serious scientific  
14                  research, in Canada, in Israel, Japan,  
15                  Germany, Russia, Singapore, and I'm  
16                  forgetting some other countries.

17                 Our knowledge of how to structure  
18                 and conduct a polygraph test, our  
19                 knowledge of how to evaluate the results  
20                 of a polygraph test, and our knowledge of  
21                 how to estimate accuracy is light years  
22                 beyond what it was in 1978.

23                 THE COURT: When you drafted the  
24                 test questions for Mr. Sharma, did you  
25                 know the questions that the other

1 polygraphers asked him?

2 THE WITNESS: No. Wait a minute.  
3 Actually, I think Mr. Migdal had read them  
4 to me over the phone, yeah.

5 THE COURT: So maybe you had it  
6 somewhere in your psyche?

7 THE WITNESS: Except there's only  
8 so many questions you can ask about this  
9 issue.

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

12 MR. MIGDAL: I have no other  
13 questions, Judge.

14 MS. KANELLIS: Nothing, Your Honor.  
15 Thank you.

16 THE COURT: I do have one other  
17 question.

18 If Miss Sacia, the alleged victim  
19 in this case, were in a drunken stupor, as  
20 opposed to being either conscious or  
21 unconscious, awake or asleep, does that  
22 affect your test results here, or would  
23 the questions be essentially the same?

24 THE WITNESS: They would be exactly  
25 the same.

1 THE COURT: And it wouldn't affect  
2 your test results then, do you think?

3 THE WITNESS: No. No effect.

4 THE COURT: I don't have anything  
5 further. I've enjoyed hearing this  
6 discussion on this topic.

7 THE WITNESS: Thank you.

8 THE COURT: Counsel, do you wish to  
9 make any wrap-up remarks or briefs to the  
10 Court? How are we going to wrap this up?

11 By the way, sir, you're excused.  
12 Your testimony is concluded. You may step  
13 down.

14 THE WITNESS: Thank you very much.

15 (Witness excused.)

16 THE COURT: Do you wish to make any  
17 wrap-up remarks?

18 MR. MIGDAL: I would, Judge, and I  
19 request rebuttal, also.

20 THE COURT: All right. In wrap-up  
21 then.

22 MR. MIGDAL: As I put in my brief,  
23 Judge, and I know the law and I know  
24 everybody knows the law in here regarding  
25 the polygraph, but when you read Souel and



1 I think it's Levert, in those cases, and I  
2 think that's probably, frankly, why you  
3 asked that last question, and I'm glad you  
4 did, has there been a change, significant  
5 scientific change since 1978, because the  
6 language I put in my brief in Souel and  
7 Levert contemplate that we may revisit it  
8 at another time regarding the effect on a  
9 jury and whether the science has changed.

10 I think clearly it has. I think  
11 after Evans and Stechschulte and,  
12 especially, Dr. Rovner because he talked  
13 about polygraph in general, the research,  
14 because he, in addition to being a  
15 polygrapher, is a researcher, the  
16 cross-examination did not question the  
17 results of either of the three polygraphs.

18 There was no cross-examination  
19 regarding questioning Dr. Rovner's opinion  
20 regarding the validity of polygraphs,  
21 whether it qualifies under 702 as I went  
22 through each criteria under 702, his own  
23 test that he did, his 96 or the mid-90  
24 percent reliable.

25 Again, and I think the key legal

1 question is why does polygraph require a  
2 stipulation, as opposed to any other piece  
3 of science?

4 It frankly makes no legal sense  
5 whatsoever. I can't think of a legal  
6 reason why, if it meets 702, which the  
7 testimony in front of you clearly shows it  
8 does, why one side in a criminal case can  
9 stipulate away the results just by saying  
10 we're not going to agree.

11 Imagine DNA, fingerprints, any  
12 other piece of science. One side could  
13 say, "I don't agree," even though it's  
14 reliable, it doesn't come in. There is no  
15 difference with polygraphs. It makes  
16 absolutely no sense.

17 The prosecutor has argued in its  
18 brief, and I think very disingenuously,  
19 "We weren't there for the stipulated  
20 polygraph; therefore, we don't know what  
21 happened."

22 As with any other piece of science,  
23 if we do that test privately, they're not  
24 there. That is grounds for  
25 cross-examination, or a motion in limine

1 under 702 to see whether the procedure was  
2 done correctly. And they will have the  
3 right to cross-examine.

4 Why is this different than any  
5 other science? There's no reason.

6 Judge, the reason they weren't  
7 there is because they wouldn't agree.  
8 That's why.

9 I asked, as you know in my other  
10 motions, and as an officer of the Court,  
11 we had an examination set for December  
12 12th with Mike LoPresti. Connie  
13 Lewandowski and I had that appointment.  
14 It was cancelled.

15 They had every right in the world  
16 to ask any question they wanted, to  
17 formulate the test any way they want, to  
18 be there, and they wouldn't agree.

19 And now they say, "Well, we weren't  
20 there."

21 That's why I had these other tests  
22 done. So I find that quite disingenuous.

23 They cite the case, I think it's  
24 Roper, and they're right, in Roper there  
25 was a stipulation. And the Court said

1 even though with the stipulation I'm not  
2 going to let it in, which says to me, what  
3 value is a stipulation if a Court won't  
4 let it?

5 The Court did its own 702 analysis,  
6 which exactly says the stipulation means  
7 nothing.

8 Each expert that got up there said  
9 the stipulation makes no difference. If  
10 we agree or if we don't agree we get the  
11 same results. There is no legal basis for  
12 keeping this out.

13 Any question they have about  
14 whether people are licensed, whether  
15 you're certified, whether the test was  
16 done right, is grounds for  
17 cross-examination.

18 Whether Rovner agrees with Evans,  
19 who agrees with Stechschulte, or doesn't  
20 is cross-examination. As in any other  
21 piece of science.

22 Why do we treat this so  
23 differently? New Mexico understands that,  
24 and the case I attached and the article I  
25 attached talks about -- it's repugnant --

1 State v. Dorsey, New Mexico Supreme Court  
2 says that it's repugnant to the rules of  
3 evidence and particularly incompatible  
4 with the purpose and scope of the rules of  
5 evidence.

6 It is. It's repugnant that  
7 somebody who took four separate exams that  
8 the State -- and they know polygraphs are  
9 reliable. I heard no questioning that  
10 it's not reliable. They can't argue that  
11 it's unreliable when, how many times do  
12 they dismiss cases because somebody  
13 passed? How many times? In the two or  
14 the three they responded to the discovery  
15 motion, what about in murder cases?

16 I have a murder case right now.  
17 They questioned a witness, he passed the  
18 polygraph, end of the case.

19 In this very courthouse, as you  
20 probably know, Judge Cosgrove, to deal  
21 with some missing evidence, had questioned  
22 on polygraphs the court reporters. They  
23 passed. End of story.

24 Everybody uses it. Everybody knows  
25 it's reliable. The prosecutor is telling

1           you, we use it. We use it all the time.  
2           But it's for investigative purposes, and  
3           we rely upon the results.

4                     Does somebody -- I find that  
5           incredulous that they don't consider it  
6           reliable. Who cares why you're using it,  
7           you're doing it for very important  
8           reasons. It's determining the outcome of  
9           investigations.

10                    When Bill Evans testified that he  
11           has testified on behalf of the Summit  
12           County Prosecutor's Office on stipulated  
13           polygraphs, and the defendant is  
14           deceptive, do they really want to argue  
15           that we put up knowingly unreliable  
16           evidence because the defense lawyer  
17           agreed?

18                    I think that borders on unethical,  
19           and they didn't do that because they rely  
20           on it. I can't believe they're going to  
21           the argue that. They agree simply by  
22           utilizing and spending money on polygraphs  
23           for whatever reason. Their actions tell  
24           you it's reliable.

25                    So the only question really would

1           be does the stipulation make a bit of  
2           difference. And it doesn't, as testified  
3           to by three people.

4                        So now he's passed four polygraphs  
5           and we're supposed to go to trial. And  
6           maybe the jury will never hear about  
7           reliable, scientific evidence because one  
8           side can say, uh-uh. That makes no sense  
9           as opposed to any other piece of  
10          scientific evidence.

11                       What if I had a some sort of  
12          forensic examiner, fingerprint, gunshot  
13          residue who tested Sahil Sharma if that  
14          was the critical issue in the trial and it  
15          meets 702, and the expert is qualified,  
16          and he did test correctly, can you imagine  
17          if one side, the prosecutor, said, "Oh,  
18          that doesn't come in because we don't  
19          agree."

20                       It is the only piece of evidence  
21          like that. It is an anachronism to the  
22          rules of evidence. It is repugnant to the  
23          rules of evidence, to the purpose of the  
24          rules of evidence.

25                       Judge, you should let it in, and I

1 think you do it and you don't deny  
2 precedent, because the wording in Souel  
3 and the wording in Levert talked about at  
4 some future date we will revisit it.

5 As what happened in State versus  
6 Thomas and Koss, as I put in my brief, one  
7 day Battered Women's Syndrome didn't meet  
8 the qualifications, then there was more  
9 research on it and more testing and the  
10 Supreme Court simply said, at this point  
11 we're going to let it in. That was too  
12 bad for Mr. Thomas who spent time in  
13 prison until the Supreme Court realized  
14 it, or Mr. Koss, I don't remember which  
15 way it was, and he sits in prison, you  
16 know, you're right.

17 But it was interesting, when you  
18 look at that case, the assignment of  
19 error, the trial court erred by not  
20 letting it in. That was the assignment of  
21 error.

22 You are the trial court. Judge,  
23 you should let this in because at some  
24 point this Supreme Court and, frankly, all  
25 the supreme courts are going to let this



1 stuff in because it meets 702.

2 It's scientifically reliable, it's  
3 gone through the scientific method. It is  
4 replicated and can be tested. They have  
5 research.

6 The Department of Defense, the NAS,  
7 the Summit County Prosecutor's Office,  
8 police departments, everybody uses it.

9 Judge, you should let this stuff in  
10 in this case and let the trier of fact  
11 determine whether to believe these guys,  
12 to give it what weight it wants.

13 It's not going to supplant the jury  
14 as New Mexico has said time and time  
15 again.

16 Thank you, Judge.

17 THE COURT: All right. Thank you.

18 And, Miss Kanellis, please.

19 MS. KANELLIS: Your Honor, the  
20 State would request that this Court follow  
21 the well-established law in this state and  
22 many others.

23 This is not something as Attorney  
24 Migdal portrays it, at any minute the  
25 floodgates are going to open and

1 polygraphs are going to be admissible in  
2 every state. That's not the case.  
3 There's one state. One state.

4 No other state allows unstipulated  
5 polygraphs in, and I've provided an  
6 enormous amount of case law, both state  
7 and federal that states why.

8 Your Honor, this is character  
9 evidence. By allowing a polygraph  
10 examiner to come in and testify, you are  
11 allowing character evidence, someone to  
12 talk about the defendant's character  
13 without having the defendant take the  
14 stand or subjecting him to  
15 cross-examination, which, as we all know,  
16 would be the case.

17 If this defendant wanted to take  
18 the stand and say, "Well, I'm being  
19 truthful. I'm a truthful person," he  
20 would subject himself to cross-examination  
21 by the State.

22 What the defense wants is to allow  
23 people to come in and testify that this  
24 defendant is truthful and he's being  
25 truthful, and there's no

1 cross-examination.

2 I can cross-examine the  
3 polygrapher's credentials, but that's not  
4 what the issue is. The issue isn't  
5 attacking the people necessarily who  
6 conducted the polygraph exam, it's that  
7 they're being allowed to come in and make  
8 -- and testify to otherwise inadmissible  
9 character evidence.

10 And, certainly, the defense wants  
11 this to come in, but, Your Honor, there's  
12 lots of evidence that doesn't come in.

13 Had this defendant confessed and  
14 not been read his Miranda warnings, it's  
15 entirely possible that that key piece of  
16 evidence wouldn't come in.

17 There are rules of evidence, and  
18 they are very strict, and they are very  
19 specific, and they should be enforced.

20 There's lots of evidence, both  
21 favorable and unfavorable to the defense  
22 and the State that doesn't come in because  
23 of the case law, because of the rules of  
24 evidence. This is not some novelty.

25 And, yes, the fact of the matter is

1 the State is not stipulating to a  
2 polygraph. We have that ability. Just --  
3 that's what the case law says, that's the  
4 way it has been for years, and that's the  
5 way it is in every state except New  
6 Mexico. The fact of the matter is  
7 polygraphs aren't admissible.

8 Now, in certain instances, if the  
9 parties choose to agree and the Judge was  
10 willing to go along with it, then it would  
11 come in. But that is not the case here,  
12 and I think that is significant.

13 Does it change the results? Well,  
14 certainly not, but it certainly does  
15 change the fact that the State was not  
16 present, has been denied any effective  
17 cross-examination, and you would be  
18 allowed, not only for the defendant to  
19 comment on his good truthful character,  
20 but you're also going to allow him to  
21 testify to facts that occurred.

22 The polygraph examiners weren't  
23 present at the Sheraton hotel when this  
24 happened, but you're going to allow facts  
25 to be testified to without any

1 cross-examination.

2 And polygraphs are used for  
3 investigative purposes. Our office uses  
4 them. They're used for a variety of  
5 things.

6 Also, hearsay is relied on for  
7 investigative purposes, but that doesn't  
8 mean that it is admissible at trial.

9 Your Honor, we would ask that you  
10 not allow this evidence to be put forth at  
11 the trial.

12 MR. MIGDAL: Judge, in rebuttal.

13 THE COURT: All right.

14 MR. MIGDAL: The prosecutor's  
15 argument, frankly, makes our case because  
16 she's not talking about the 702 issues.  
17 She is not talking about 702 issues. It's  
18 not admissible because it's not  
19 admissible.

20 I said when I argued to you any  
21 other science, if he has the money we can  
22 conduct it on our own.

23 What do the rules say? If I intend  
24 to call that witness at trial I give the  
25 other side the report.

1                   They're saying they were denied  
2                   effective cross-examination. So I assume,  
3                   based on that argument, if I would get a  
4                   separate fingerprint examiner, any other  
5                   science, we do that test alone, when I  
6                   share it with them, do I ever hear, "Oh,  
7                   we don't get to cross-examine because we  
8                   weren't there when your expert did the  
9                   test"?

10                   Based on that argument, the defense  
11                   could never conduct its own experiments or  
12                   investigation, ever. Because they're not  
13                   there. That makes no sense.

14                   They will get the reports as they  
15                   have. And if they want to cross-examine  
16                   as, again, any other piece of science.

17                   It is character evidence, and the  
18                   prosecutor keeps saying -- and I don't  
19                   know where this comes from -- this will  
20                   come in without the defendant testifying.

21                   THE COURT: I want you to develop  
22                   that thought for me more. How does it  
23                   implicate or not implicate the Fifth  
24                   Amendment right? This evidence here that  
25                   we're talking about.

1 MR. MIGDAL: Uh-huh.

2 THE COURT: Go on.

3 MR. MIGDAL: I'm not sure of the  
4 Court's question, because the State keeps  
5 arguing that comes in without the  
6 defendant testifying, because --

7 THE COURT: Do you think that's the  
8 case?

9 MR. MIGDAL: That's an interesting  
10 issue, Judge. Whoever said he's not  
11 testifying?

12 If you're going to limit that it  
13 comes in if he testifies, that's a  
14 different issue, because all the polygraph  
15 is, I put in my brief on a particular date  
16 in response to particular tests, he was  
17 telling the truth. That's character  
18 evidence. It's no different.

19 Can I come in and say, in my  
20 opinion this person has led a truthful  
21 life and is a truthful person. Character  
22 evidence comes in all the time.

23 I can come in and say I've known  
24 John Doe for ten years, and in my opinion  
25 John Doe's a truthful person.

1                   What's the implication? When they  
2 testified they're telling the truth. It  
3 happens all the time. All the time it  
4 happens.

5                   THE COURT: It happens with certain  
6 prerequisites having occurred. I guess  
7 that's something I need to look at.

8                   MR. MIGDAL: Of course. Under, I  
9 believe, 608 or 609, I can't remember, but  
10 I knew the person. I have some  
11 longstanding relationship, but in my  
12 opinion they're truthful. We do it all  
13 the time.

14                   Again, why do we treat this  
15 evidence as so different? What is the  
16 syndrome evidence that will come? It may  
17 even come in in this case.

18                   They may, as Connie Lewandowski  
19 told you, want to bring in rape trauma  
20 syndrome.

21                   All that is, is anybody can say  
22 whatever they want, and I know what the  
23 case law is. They're saying they're  
24 telling the truth when they're raped.  
25 That's why the syndrome evidence comes in.



1                   Why are you bringing an expert?  
2                   She told me this happened, and this  
3                   happened, and this happened; therefore, my  
4                   opinion -- and it happens all the time in  
5                   child sex abuse cases, too, Judge, and you  
6                   let it in.

7                   And what do the Courts always say?  
8                   Doesn't go to the admissibility, goes to  
9                   the weight the jury gives it.

10                  It's the same thing. Why do we put  
11                  that they exhibit these symptoms,  
12                  therefore what they're telling is the  
13                  truth. It happens all the time. The jury  
14                  gives it the weight it wants to give it.

15                  The prosecutor told you, Judge,  
16                  again, without any argument, this is in  
17                  violation of the rules of evidence.

18                  Uh-uh. This is exactly what the  
19                  rules of evidence talk about. It's meets  
20                  all the qualifications of 702.

21                  Where in 702 does it say, by the  
22                  way, you got to have a stipulation  
23                  regarding any other evidence? Nowhere.  
24                  It meets 702.

25                  It doesn't violate the rules of

1 evidence. It complies with the rules of  
2 evidence. It's just not true.

3 They -- again, the prosecutor never  
4 questioned its reliability because they  
5 can't, because it makes no sense, they've  
6 never questioned the reliability, and,  
7 frankly, they've never questioned the  
8 qualifications of the particular people  
9 that testified.

10 All they're saying is, that is the  
11 law. And follow what is precedent on --  
12 as far as the law, but they're not -- they  
13 can't question and they haven't in any of  
14 the arguments that it qualifies under 702.  
15 They have simply said it requires  
16 stipulation.

17 And I thought I would hear that the  
18 stipulation affects the results and it  
19 doesn't. There's no evidence of any of  
20 that. They called no experts to tell you  
21 otherwise, anybody who disagrees with  
22 Rovner, because they can't.

23 You can't use polygraphs and then  
24 say they're not reliable. You just can't  
25 do it.

1 All they can say is follow old law  
2 because that's the way it is. Well, you  
3 know, DNA, you know, what's Pierce? I  
4 don't remember what year Pierce is, I  
5 think 1990.

6 Imagine if you were a defendant in  
7 1988 before DNA and you have DNA that  
8 exonerates you.

9 That's just the way the law is,  
10 sorry, Judge, sorry, Mr. Defendant, it  
11 doesn't come in. That doesn't make any  
12 sense.

13 You know, just because that's the  
14 way something was doesn't make it right.  
15 And at some point, and I'm hoping it's  
16 you, Judge, some judge will stand up and  
17 say that law is frankly baseless and  
18 repugnant to the rules of evidence.

19 And, Judge, you had a Fifth  
20 Amendment question, and I'm not sure --

21 THE COURT: Well, I think you've  
22 touched on it somewhat about the fact that  
23 this man may want to admit this evidence,  
24 yet not take the stand.

25 MR. MIGDAL: That's a different

1 issue.

2 Now, if the Court's saying -- and I  
3 know there was a case that talked about  
4 that, whether that implicates the Fifth  
5 Amendment, I don't think it implicates the  
6 Fifth Amendment whatsoever. Frankly, he  
7 has the right not to testify.

8 But if the Court is saying that I  
9 will let it in if he testifies, that's a  
10 different legal issue. But that's  
11 separate and apart from, does it meet 702?  
12 That's a completely different issue.

13 But you have to -- can somebody --  
14 it wouldn't make sense, frankly, to do it  
15 otherwise, just off the top of my head,  
16 I'm not committing to that, but that's  
17 like putting somebody on to give opinion  
18 testimony about the truthfulness of the  
19 defendant who doesn't testify. It doesn't  
20 make any sense.

21 So chances are, again, off the top  
22 of my head, it would only make sense if he  
23 does testify. But that's a different  
24 issue.

25 I don't think it implicates the

1 Fifth Amendment necessarily. And I know  
2 there was a case, and I can't remember  
3 which one talks about it, but the  
4 prosecutor keeps saying he's not going to  
5 testify; therefore -- I mean, who said  
6 that? I never said that.

7 MS. KANELIS: You're missing my  
8 point, but that's not what I said.

9 MR. MIGDAL: I don't know what the  
10 point is. If the point is it can only  
11 come in with his testimony, that may be a  
12 different legal issue. That may be a  
13 different legal issue. And maybe you're  
14 right. I don't agree with you but I don't  
15 disagree with you. That may be a correct  
16 issue.

17 But if you're saying, you know, it  
18 meets 702 but he's got to testify, that's  
19 a different question.

20 THE COURT: I guess first things  
21 first.

22 MR. MIGDAL: Right.

23 THE COURT: You know, that's the  
24 question we have today.

25 What I'm saying to you, I think, is

1 that if this Court should agree to admit  
2 this testimony that may raise other issues  
3 we have to work through.

4 And so we have had a good  
5 discussion of the issues today, and let me  
6 suggest maybe a unique one. I don't know  
7 whether this kind of discussion has ever  
8 occurred in -- as it relates to polygraphs  
9 in the State of Ohio.

10 MR. MIGDAL: Judge, I didn't move  
11 to admit my Exhibits A through D.

12 THE COURT: All right. Is there  
13 any objection to those?

14 MS. KANELLIS: No objection, Your  
15 Honor.

16 THE COURT: All right. Well, the  
17 Court must deliberate on this. There's no  
18 fast pronouncement from the bench. So  
19 I'll do that as soon as practical.

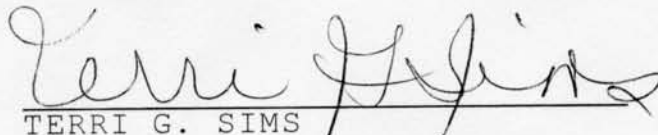
20 MR. MIGDAL: Thank you, Judge.

21 THE COURT: We're concluded. Have  
22 a good day, everyone.

23 \* \* \*  
24  
25

C E R T I F I C A T E

I, Terri G. Sims, Official Shorthand Reporter, Court of Common Pleas, Summit County, Ohio, do hereby certify that I reported in Stenotypy the proceedings had and testimony taken in the foregoing-entitled matter, and I do further certify that the foregoing-entitled TRANSCRIPT OF PROCEEDINGS, consisting of 272 typewritten pages, is a complete, true, and accurate record of said matter and TRANSCRIPT OF PROCEEDINGS.

  
TERRI G. SIMS  
Official Court Reporter

Dated: AKRON, OHIO  
April 4, 2007

Terri G. Sims - Official Court Reporter