

WEINSTEIN

Court Reporters

BEFORE THE CIVIL SERVICE COMMISSION
OF THE COUNTY OF LOS ANGELES
SARA ADLER, HEARING OFFICER

ORIGINAL

IN THE MATTER OF THE DISCHARGE,
EFFECTIVE DECEMBER 29, 2005, OF:

BENJAMIN HOLLEY,

FROM THE POSITION OF
POWER EQUIPMENT OPERATOR,
DEPARTMENT OF PUBLIC WORKS,

APPELLANT.

CASE NO. 06-018

PARTIAL TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

FRIDAY, FEBRUARY 16, 2007

REPORTED BY:

ARCY M. DROPULIC,
HEARING REPORTER

JOB NO.: 07-0043

BEFORE THE CIVIL SERVICE COMMISSION
OF THE COUNTY OF LOS ANGELES
SARA ADLER, HEARING OFFICER

IN THE MATTER OF THE DISCHARGE,)
EFFECTIVE DECEMBER 29, 2005, OF:)
BENJAMIN HOLLEY,) CASE NO. 06-018
FROM THE POSITION OF)
POWER EQUIPMENT OPERATOR,)
DEPARTMENT OF PUBLIC WORKS,)
APPELLANT.)
_____)

PARTIAL TRANSCRIPT OF PROCEEDINGS, TAKEN AT
222 NORTH GRAND AVENUE, ROOM 522-B, LOS ANGELES,
CALIFORNIA, COMMENCING AT 9:15 A.M., ON FRIDAY,
FEBRUARY 16, 2007, HEARD BEFORE SARA ADLER,
HEARING OFFICER, REPORTED BY ARCY M. DROPULIC,
HEARING REPORTER.

APPEARANCES:

FOR THE DEPARTMENT:

LAW OFFICES OF HAUSMAN & SOSA,
LLP
ATTORNEYS AT LAW
BY: JEFFREY HAUSMAN
18757 BURBANK BOULEVARD,
SUITE 305
TARZANA, CA 91356
818-654-9000

FOR THE APPELLANT:

FRED WILLIAMS
THE WILLIAMS GROUP
14115 MOORPARK STREET, SUITE 309
SHERMAN OAKS, CA 91423
818-981-4516

ALSO PRESENT:

CHERYL WILLIAMS

I N D E X

<u>DEPARTMENT'S WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
JOHN TRIMARCO	5	65	131	141
(CONTINUED)	21	97		
(CONTINUED)	63			

E X H I B I T S

<u>DEPARTMENT'S EXHIBITS:</u>	<u>MARKED FOR IDENTIFICATION</u>	<u>RECEIVED IN EVIDENCE</u>
14 - J. TRIMARCO'S CURRICULUM VITAE	10	11
15 - J. TRIMARCO'S REPORT	31	61
16 - VIDEOTAPE OF B. HOLLEY'S POLYGRAPH EXAMINATION	34	
17 - POLYGRAPH EXAMINATION WORKSHEET, DATED 11/17/05	41	
18 - POLYGRAPH CHART	52	59

<u>APPELLANT'S EXHIBITS:</u>	<u>MARKED FOR IDENTIFICATION</u>	<u>RECEIVED IN EVIDENCE</u>
A - INTERNET POSTINGS	77	
B - CRITIQUE OF J. TRIMARCO'S POLYGRAPH EXAMINATION OF B. HOLLEY	89	
C - CERTIFICATE VERIFYING PASSING OF POLYGRAPH EXAMINATION OF B. HOLLEY	90	
D - J. DAMPIER'S POLYGRAPH EXAMINATION WORKSHEET	120	

1 LOS ANGELES, CALIFORNIA; FRIDAY, FEBRUARY 16, 2007

2 (PARTIAL TRANSCRIPT)

3
4
5 JOHN TRIMARCO,

6 PRODUCED AS A WITNESS BY AND ON BEHALF OF THE DEPARTMENT AND
7 HAVING BEEN FIRST DULY SWORN BY THE HEARING OFFICER, WAS
8 EXAMINED AND TESTIFIED AS FOLLOWS:

9
10 HEARING OFFICER ADLER: STATE AND SPELL YOUR NAME FOR
11 THE RECORD, PLEASE.

12 THE WITNESS: JOHN; J-O-H-N, RICHARD, TRIMARCO; "T" AS
13 IN "TOM," R-I-M-A-R-C-O. ALSO KNOWN AS JACK.

14 HEARING OFFICER ADLER: OKAY.

15 MR. MC GOWAN: THANK YOU

16
17 DIRECT EXAMINATION

18
19 BY MR. MC GOWAN:

20 Q. WHAT IS YOUR OCCUPATION?

21 A. I'M A POLYGRAPH EXAMINER AND A PRIVATE
22 INVESTIGATOR.

23 Q. AND WHAT PERCENTAGE OF YOUR WORK IS AS A
24 POLYGRAPH EXAMINER, AND WHAT PERCENTAGE AS AN INVESTIGATOR?

25 A. I WOULD SAY 95 PERCENT AS A POLYGRAPH EXAMINER.

1 Q. WHAT IS A POLYGRAPH EXAMINER?

2 A. IT'S SOMEONE WHO HAS SPECIALIZED TRAINING IN THE
3 TECHNOLOGY, THE SCIENCE, AND THE ART OF DETERMINING TRUTH FROM
4 DECEPTION.

5 Q. AND HOW IS THAT DONE?

6 A. IT'S DONE THROUGH A SCIENTIFIC PROCEDURE
7 INVOLVING A POLYGRAPH INSTRUMENT, WHICH IS ASSIGNED TO DETECT
8 DEVIATIONS IN PHYSIOLOGY, WHICH ARE KNOWN TO BE REPRESENTATIVE
9 OF WHEN A PERSON IS TELLING A LIE VERSUS WHEN THEY'RE TELLING
10 THE TRUTH.

11 Q. NOW, COULD YOU PLEASE OUTLINE FOR US YOUR
12 BACKGROUND, EDUCATION, TRAINING, AND EXPERIENCE.

13 A. YES. I WAS A DEPUTY SHERIFF IN BILLINGS,
14 MONTANA FROM APPROXIMATELY 1970 TO 1978, DURING WHICH TIME I
15 ACHIEVED MY DEGREE IN PSYCHOLOGY FROM EASTERN MONTANA COLLEGE.
16 I APPLIED TO BE A SPECIAL AGENT WITH THE F.B.I. IN 1977 AND WAS
17 ACCEPTED AS A SPECIAL AGENT IN 1978.

18 MY FIRST OFFICE WAS SACRAMENTO, CALIFORNIA,
19 WHERE I SPENT THREE YEARS, AND THE REMAINDER OF MY CAREER WAS
20 SPENT IN LOS ANGELES FIELD OFFICE, AND I RETIRED IN 1998.

21 Q. I'M SORRY, WHEN DID YOU FIRST BECOME A SPECIAL
22 AGENT?

23 A. IN 1978.

24 Q. OH, '78. OKAY. SO WERE YOU A SPECIAL AGENT
25 WITH THE F.B.I. FOR 20 YEARS?

1 A. ALMOST 21, YES.

2 Q. PLEASE CONTINUE.

3 A. MY SPECIALIZED TRAINING IN THE FIELD OF
4 POLYGRAPH BEGAN WITH THE F.B.I. IN 1990 WHEN I ATTENDED THE
5 DEPARTMENT OF DEFENSE POLYGRAPH INSTITUTE IN ANNISTON, ALABAMA,
6 FORT MC LELLAN, SPECIFICALLY, WHERE I UNDERWENT A
7 THREE-AND-A-HALF MONTH COURSE.

8 UPON MY RETIREMENT FROM THE F.B.I. AFTER BEING
9 IN CHARGE OF THE POLYGRAPH UNIT FROM 1991 UNTIL MY RETIREMENT
10 IN '98, I WAS THEN APPOINTED INSPECTOR GENERAL FOR THE
11 DEPARTMENT OF ENERGY'S POLYGRAPH PROGRAM AND SERVED IN THAT
12 CAPACITY FROM 2000 TO 2002.

13 Q. WHEN YOU SAY, "DEPARTMENT OF ENERGY," ARE YOU
14 REFERRING TO STATE OR FEDERAL?

15 A. FEDERAL. U.S. DEPARTMENT OF ENERGY.

16 Q. WHAT WAS THE NATURE OF YOUR ASSIGNMENT AS AN
17 INSPECTOR GENERAL IN THE DEPARTMENT OF ENERGY?

18 A. I WAS ORIGINALLY HIRED TO MAKE SURE THAT
19 EVERYTHING WAS BEING DONE WITHIN THE STANDARDS AND POLICIES
20 WITH POLYGRAPH IN GENERAL AND, MORE SPECIFICALLY, FINE TUNE THE
21 REQUIREMENTS AND NEEDS OF THE DEPARTMENT OF ENERGY AS IT
22 APPLIED TO POLYGRAPH TESTING AND NUCLEAR CLASSIFIED
23 INFORMATION.

24 Q. COULD YOU PLEASE CONTINUE WITH DISCLOSING YOUR
25 BACKGROUND, EDUCATION, TRAINING, AND EXPERIENCE.

1 A. I'VE ATTENDED NUMEROUS POLYGRAPH SEMINARS AND
2 ACTUALLY INSTRUCTED IN SOME OF THOSE SEMINARS OVER THE YEARS TO
3 HAVE COMPILED MORE HOURS THAN WAS NECESSARY TO CONTINUE WITH MY
4 CERTIFICATION.

5 Q. IS THERE AN HOURLY REQUIREMENT?

6 A. THERE IS.

7 Q. COULD YOU PLEASE EXPLAIN?

8 MR. WILLIAMS: EXCUSE ME, COULD YOU READ THE QUESTION
9 READ BACK?

10 THE REPORTER: (RECORD READ.)

11 THE WITNESS: THERE ARE HOURLY REQUIREMENTS FOR
12 CONTINUING EDUCATION, AND THEY ALL VARY WITH THE VARIOUS
13 PROFESSIONAL ORGANIZATIONS THAT THE MEMBER MIGHT BELONG TO.
14 BY MR. MC GOWAN:

15 Q. ARE YOU A MEMBER OF ANY ORGANIZATIONS OR BODIES
16 THAT DEAL SPECIFICALLY WITH POLYGRAPHS?

17 A. YES.

18 Q. PLEASE EXPLAIN.

19 A. I'M CURRENTLY ON THE BOARD OF DIRECTORS FOR THE
20 CALIFORNIA POLYGRAPH EXAMINERS AND CHAIRMAN OF THE ETHICS
21 COMMITTEE. I'M A MEMBER OF THE AMERICAN POLYGRAPH ASSOCIATION
22 AND HAVE BEEN SINCE 1990.

23 I'M A MEMBER OF THE AMERICAN ASSOCIATION OF
24 POLICE POLYGRAPHISTS SINCE 1990, AND I'M ALSO A MEMBER OF
25 A.S.T.M., WHICH IS A NATIONALLY RECOGNIZED ORGANIZATION OF

1 MEASUREMENTS AND STANDARDS.

2 Q. AND WHAT DO YOU DO IN YOUR CAPACITY AS CHAIRMAN
3 OF THE ETHICS COMMITTEE?

4 A. I, ALONG WITH MY BOARD, WOULD HEAR ANY
5 COMPLAINTS REGARDING ANY POLYGRAPH EXAMINER WHO IS A MEMBER AND
6 THEN PRESENT THE FINDINGS OF OUR INVESTIGATION TO THE BOARD AND
7 THE PRESIDENT HIMSELF FOR ANY ACTION THEY DEEM NECESSARY.

8 Q. COULD YOU EXPLAIN WHAT DID YOU HAVE TO DO IN
9 ORDER TO BE QUALIFIED TO TAKE POLYGRAPHS AND CONDUCT POLYGRAPH
10 TESTING?

11 A. WELL, TYPICALLY, DUE TO THE SENSITIVE NATURE AND
12 THE RESPONSIBILITY OF THE POSITION, THE SPECIAL AGENT IN CHARGE
13 OF EACH F.B.I. DIVISION, I'M PROUD TO SAY, CHOOSES ONE OF THEIR
14 BETTER AGENTS WHO THEY HAVE FAITH IN AND WHO HAS A PROVEN
15 RECORD AS BEING A GOOD F.B.I. AGENT, AND GIVING THAT PERSON AN
16 OPPORTUNITY TO FUNCTION IN THE POSITION OF A POLYGRAPH
17 EXAMINER.

18 AS IT WAS EXPLAINED TO ME, IF I WAS TO TAKE THE
19 POSITION, I WOULD GET INVOLVED IN EVERYBODY'S BIG CASE IF I WAS
20 AS GOOD AS I'M SUPPOSED TO BE, WHEREAS IF I JUST STAYED ON THE
21 SQUAD I WAS ON, I WOULD GET MY OCCASIONAL BIG CASE.

22 AND SO I DID GO BACK AND ACCEPTED THE POSITION
23 ONLY UNDER THE PROVISIO THAT IF I DIDN'T BELIEVE IN IT, I WOULD
24 HAVE THE OPTION TO COME BACK.

25 YOUR HONOR, MAY I SHUT THIS OFF? I THOUGHT IT

1 WAS OFF.

2 HEARING OFFICER ADLER: CERTAINLY.

3 BY MR. MC GOWAN:

4 Q. LET ME ASK YOU, WHEN YOU WERE ORIGINALLY BEING
5 TRAINED TO BE ABLE TO CONDUCT THESE POLYGRAPH TESTS, WHAT DID
6 YOU HAVE TO DO IN ORDER TO LEARN HOW TO DO THIS?

7 MR. WILLIAMS: YOUR HONOR, IS ALL THIS REALLY
8 NECESSARY?

9 WE'LL STIPULATE THAT MR. TRIMARCO IS A QUALIFIED
10 EXPERT WITNESS.

11 MR. MC GOWAN: OKAY. WE'LL ACCEPT THAT STIPULATION.

12 I WOULD LIKE TO MARK AS, I BELIEVE IT WOULD BE
13 DEPARTMENT'S 14, MR. TRIMARCO'S RESUME.

14 HEARING OFFICER ADLER: OKAY.

15 MR. MC GOWAN: AND UNLESS THERE'S ANY OBJECTION, I'D
16 LIKE TO MOVE THAT INTO EVIDENCE.

17 HEARING OFFICER ADLER: IS THAT A DOCUMENT YOU HAVE
18 PREVIOUSLY PROVIDED TO --

19 MR. MC GOWAN: YES.

20 HEARING OFFICER ADLER: OKAY. THEN 14 IT IS.

21
22 (DEPARTMENT'S EXHIBIT 14 WAS MARKED FOR
23 IDENTIFICATION BY THE HEARING OFFICER.)

24 ///

25 ///

1 BY MR. MC GOWAN:

2 Q. AND I WOULD JUST ASK THE WITNESS, IS THIS UP TO
3 DATE AND ACCURATE, TO THE BEST OF YOUR KNOWLEDGE?

4 A. YES. EXCEPT FOR THE RECENT APPOINTMENT OF THE
5 BOARD OF CALIFORNIA POLYGRAPH EXAMINERS AND THE CHAIRMAN OF THE
6 ETHICS COMMITTEE.

7 MR. WILLIAMS: I DON'T HAVE A COPY OF THAT.

8 MR. MC GOWAN: IT SHOULD BE IN THERE.

9 HEARING OFFICER ADLER: IT'S ENTITLED "RESUME FOR JACK
10 TRIMARCO." I'M GOING TO ADMIT IT INTO EVIDENCE.

11
12 (DEPARTMENT'S EXHIBIT 14 WAS RECEIVED IN
13 EVIDENCE BY THE HEARING OFFICER.)
14

15 BY MR. MC GOWAN:

16 Q.. CAN YOU TELL US, MR. TRIMARCO, HOW MANY
17 POLYGRAPHS HAVE YOU PERFORMED IN TOTAL?

18 A. I WOULD ESTIMATE ABOUT 2,500.

19 Q.. CAN YOU BREAK THAT DOWN IN TERMS OF HOW MANY FOR
20 THE F.B.I. AS DISTINCT FROM NOW IN PRIVATE PRACTICE?

21 A. APPROXIMATELY 1100 FOR THE F.B.I., AND THE
22 REMAINDER IN PRIVATE PRACTICE.

23 Q.. NOW, CAN YOU PLEASE EXPLAIN TO US WHY DO YOU
24 HAVE AN OPINION AS TO WHETHER OR NOT, IT MAY BE AN OBVIOUS
25 QUESTION. BUT LET ME ASK IT ANYWAY, CAN YOU GIVE ME -- STRIKE

1 THAT.

2 DO YOU HAVE AN OPINION AS TO WHETHER OR NOT
3 POLYGRAPH TESTING IS A RELIABLE SCIENCE?

4 A. YES, I DO.

5 Q. WHY?

6 A. WELL, BASED ON THE SCIENCE -- IT'S GENERALLY
7 ACCEPTED IN THE SCIENTIFIC COMMUNITY, AND THERE HAVE BEEN
8 VALIDITY STUDIES THAT HAVE VERIFIED THAT IT IS A VALID TESTING
9 TECHNIQUE TO GET TO THE TRUTH.

10 Q. COULD YOU PLEASE EXPLAIN THE BASIS FOR THAT
11 STATEMENT.

12 A. WELL, THE UNITED STATES GOVERNMENT USES
13 POLYGRAPH TESTS AND ONLY POLYGRAPH TESTING TO DETERMINE -- TO
14 INVESTIGATE AND TO PROTECT AGAINST ANY DISCLOSURES OR ANY
15 VIOLATIONS OF CLASSIFIED INFORMATION.

16 SO THE MOST SENSITIVE SECRETS THAT THE UNITED
17 STATES GOVERNMENT HOLDS DEAR ARE PROTECTED THROUGH POLICY
18 TESTING OF PEOPLE WHO HAVE ACCESS TO THOSE SECRETS.

19 Q. APART FROM THE UNITED STATES GOVERNMENT, ARE
20 THERE ANY OTHER ENTITIES THAT USE POLYGRAPH TESTING AND RELY ON
21 IT?

22 A. TYPICALLY, POLICE DEPARTMENTS, SHERIFF'S
23 DEPARTMENTS, LAW ENFORCEMENT IN GENERAL.

24 Q. OKAY. APART FROM THE U.S. GOVERNMENT AND LAW
25 ENFORCEMENT AGENCIES, ARE THERE ANY OTHER THINGS YOU WOULD

1 POINT TO TO SUPPORT YOUR OPINION THAT THIS IS A VALID TESTING
2 TECHNIQUE TO GET AT THE TRUTH?

3 A. JUST THE OPINION OF THE SCIENTIFIC COMMUNITY.

4 Q. COULD YOU PLEASE EXPLAIN WHAT YOU MEAN BY THAT.

5 A. WELL, THERE HAVE BEEN STUDIES DONE OVER THE
6 YEARS THAT HAVE VERIFIED THAT WHEN A POLYGRAPH EXAMINATION IS
7 CONDUCTED BY A QUALIFIED, EXPERIENCED, HONEST POLYGRAPH
8 EXAMINER WITH SOME RESPONSE --

9 MR. WILLIAMS: YOUR HONOR, I REALLY THINK THE RECORD
10 IS QUITE FILLED UP WITH THE SELF-SERVING RESPONSES OF THE
11 WITNESS ABOUT HIS QUALIFICATIONS AND HIS HONESTY, AND I THINK
12 YOU'LL MAKE THOSE DETERMINATIONS AFTER HE FINISHES HIS
13 TESTIMONY.

14 I WOULD REALLY LIKE TO GET SOME MEAT INTO HIS
15 TESTIMONY. I'D LIKE TO MOVE ON TO WHERE WE'RE GOING. I'VE
16 STIPULATED TO HIS QUALIFICATIONS.

17 HEARING OFFICER ADLER: I'M SURE YOU'RE STIPULATING
18 THAT HE'S EXPERIENCED.

19 MR. MC GOWAN: I'M NOT ASKING --

20 HEARING OFFICER ADLER: IF THAT'S AN OBJECTION, FRED,
21 I'M OVERRULING IT. HE COULD TESTIFY TO WHATEVER VINCE WANTS
22 HIM TO TESTIFY TO.

23 MR. MC GOWAN: THANK YOU.

24 BY MR. MC GOWAN:

25 Q. NOW, WOULD YOU PLEASE CONTINUE WITH YOUR ANSWER.

1 A. CAN YOU REPEAT THAT, PLEASE.

2 MR. MC GOWAN: COULD YOU READ BACK THE QUESTION,
3 PLEASE.

4 THE REPORTER: (RECORD READ.)

5 BY MR. MC GOWAN:

6 Q. I'M SETTING ASIDE WHAT YOU TESTIFIED TO ABOUT
7 THAT THE GOVERNMENT USES IT AND LAW ENFORCEMENT AGENCIES --

8 HEARING OFFICER ADLER: THE ANSWER GOT AS FAR AS THE
9 WITNESS SAYING THAT IF THE POLYGRAPH EXAMINATION IS COMPLETED
10 BY A QUALIFIED AND HONEST EXAMINER, AT WHICH POINT FRED
11 INTERRUPTED.

12 BY MR. MC GOWAN:

13 Q. COULD YOU PLEASE EXPLAIN WHAT YOU MEAN WHEN YOU
14 REFER TO THESE SCIENTIFIC STUDIES IN THE COMMITTEE, WHAT KIND
15 OF STUDIES ARE YOU REFERRING TO?

16 A. WELL, LET ME SAY I'M NOT A SCIENTIST. I'M A
17 POLYGRAPH EXAMINER. AND SO THE STUDIES ARE PUT FORTH TO ALL
18 POLYGRAPH EXAMINERS TO CONVINCE US THAT THE POLYGRAPH ACTUALLY
19 WORKS. SO IT'S PART OF A CURRICULUM WHERE THE STUDIES ARE
20 PRESENTED, AND THEY'RE DONE BY SCIENTISTS IN THAT SCIENTIFIC
21 COMMUNITY.

22 AND IF THE VALIDITY STUDIES ARE TO BE BELIEVED,
23 POLYGRAPH, WHEN DONE BY A QUALIFIED, EXPERIENCED, AND HONEST
24 POLYGRAPH EXAMINER, ARE UPWARDS OF 90 PERCENT.

25 Q. IS IT POSSIBLE FOR SOMEBODY TO CHEAT IN A

1 POLYGRAPH TEST IN ORDER TO EITHER -- WELL, IN ORDER TO PASS?

2 A. WELL, THERE'S A TERM WHICH IS KNOWN AS
3 "COUNTERMEASURES," OR KNOWN ON THE STREET AS "BEAT THE BOX" OR
4 "BEAT THE EXAMINER," AND THAT'S REALLY WHAT IT IS. IT'S VERY
5 DIFFICULT TO MANIPULATE A POLYGRAPH EXAMINATION WITH AN
6 EXPERIENCED POLYGRAPH EXAMINER.

7 HOWEVER, THE TERM "BEAT THE POLYGRAPH" IS REALLY
8 NOT ACCURATE. IF ANYONE IS BEATEN IN THE TEST, IT WOULD BE THE
9 EXAMINER. IT WOULD BE TANTAMOUNT TO SAYING I BEAT THE
10 ELECTROCARDIOGRAM.

11 IF YOU'RE GOING TO A CARDIOLOGIST TO HAVE YOUR
12 HEART EXAMINED AND YOUR HEALTH STATUS DETERMINED, IT WOULD BE
13 FOOLISH TO TRY TO INTERFERE WITH THAT PROCESS. AND IT'S THE
14 SAME WITH POLYGRAPH. THEY'RE BOTH BIOFEEDBACK DETERMINATES.

15 AND THE PERSON COMING IN TO TELL THE TRUTH, IF
16 THEY WERE TO TRY TO MANIPULATE THE RESULTS OF THE TEST, AND IT
17 WERE APPARENT TO ME, THEY WOULD FAIL BY VIRTUE OF
18 COUNTERMEASURES.

19 Q. WHAT DOES THE POLYGRAPH TEST ACTUALLY TEST?

20 A. IT MEASURES PHYSIOLOGICAL RESPONSE. DURING THAT
21 TEST, I'M LOOKING FOR CONSISTENT SIGNIFICANT REACTION OR LACK
22 THEREOF. CONSISTENCY CAN ONLY BE GOT THROUGH REPETITION, AND
23 SO THE QUESTIONS ON THE POLYGRAPH ARE ASKED MORE THAN ONE TIME,
24 OFTEN THREE, PERHAPS EVEN FOUR.

25 SIGNIFICANT REACTION IS ANYTHING I DEEM IT TO BE

1 AS THE EXPERT. AND WHENEVER I RUN A POLYGRAPH TEST, I ALWAYS
2 USE ANOTHER QUALIFIED EXAMINER TO REVIEW MY TEST, AND HOPEFULLY
3 HE'LL COME TO THE SAME CONCLUSION.

4 Q. YOU JUST TESTIFIED THAT IT MEASURES A
5 PHYSIOLOGICAL RESPONSE. CAN YOU PLEASE EXPLAIN WHAT EXACTLY IT
6 MEASURES.

7 A. YES. THE LAYPERSON'S EXPLANATION IS THAT WE ALL
8 HAVE A LITTLE VOICE IN OUR HEAD, AND THAT LITTLE VOICE GUIDES
9 US THROUGH THE DAY BY DOING THE RIGHT THING OR ALLOWING THE
10 WRONG THING TO HAPPEN. IF WE DO THE WRONG THING, DESPITE OUR
11 LITTLE VOICE TELLING US TO DO THE RIGHT THING, OR IN THIS CASE,
12 TELL THE TRUTH NO MATTER WHAT, IF THAT HAPPENS, THE VOICE SENDS
13 A MESSAGE TO THE AUTONOMIC NERVOUS SYSTEM.

14 "AUTONOMIC" MEANING AUTOMATIC. THOSE ARE THE
15 PHYSIOLOGICAL FUNCTIONS THAT WE DON'T HAVE TO THINK ABOUT, THAT
16 WE CAN'T CONTROL, NOR SHOULD WE BE ABLE TO CONTROL. THOSE
17 THINGS ARE SPECIFICALLY THE RESPIRATORY FUNCTION, THE SWEAT
18 GLAND ACTIVITY, OR ELECTRO-DERMAL ACTIVITY, AND THE CARDIO
19 FUNCTION.

20 THESE ARE ALL THINGS THAT FUNCTION ON THEIR OWN
21 WITHOUT ANY HELP FROM US.

22 Q. I'M SORRY, CAN YOU LIST THOSE AGAIN?

23 A. RESPIRATORY FUNCTION, ELECTRO-DERMAL OR SWEAT
24 GLAND ACTIVITY, ALSO KNOWN AS GALVANIC SKIN RESPONSE, AND THE
25 CARDIO FUNCTION, THE PULSE RATE AND DEVIATIONS IN THE NORMAL

1 BLOOD PRESSURE.

2 Q. SO IS THAT A TOTAL OF THREE?

3 A. YES.

4 Q. NOW, CAN YOU TELL US, MR. TRIMARCO, DO YOU HAVE
5 A STANDARD PROTOCOL IN TERMS OF HOW YOU CONDUCT A POLYGRAPH
6 TEST?

7 A. YES.

8 Q. CAN YOU PLEASE TELL US WHAT IS YOUR PROTOCOL.

9 A. WELL, POLYGRAPH TESTS ARE CONSISTENT OF THREE
10 STAGES. THE FIRST STAGE IS CALLED THE PRETEST, WHICH IS WHEN I
11 FIRST MEET THE EXAMINEE. I EXPLAIN THE PROCESS.

12 IT'S A GIVE AND TAKE OF SOMETIMES JUST BANTER
13 ABOUT BOTH OF OUR LIVES. SOMETIMES IT'S REALLY QUITE INTIMATE.
14 THE PROCESS IS EXPLAINED IN DETAIL.

15 THE QUESTIONS ARE REVIEWED, AND A SYNOPSIS OR
16 RENDITION OF THE EXAMINEE'S DESCRIPTION OF THE EVENT. IT'S
17 ALSO A TIME TO BE SPECIFIC REGARDING THE QUESTIONS THAT ARE
18 GOING TO BE ASKED.

19 IN OTHER WORDS, ONE OF MY JOBS IN THAT POLYGRAPH
20 IS TO MAKE SURE I'M ASKING THE RIGHT QUESTION. AND IF THE
21 EXAMINEE CANNOT ANSWER THAT QUESTION TRUTHFULLY, THEN THAT'S
22 NOT THE QUESTION THAT SHOULD BE ASKED.

23 Q. CAN YOU PLEASE EXPLAIN WHAT YOU MEAN BY THAT.

24 A. IN OTHER WORDS, I WILL SAY TO EVERY EXAMINEE,
25 "DON'T TAKE THIS TEST UNLESS YOU COULD PASS IT."

1 BECAUSE OFTEN TIMES PEOPLE FEEL THAT THEY HAVE
2 TO ACT AS THOUGH THEY'RE INNOCENT IN ORDER TO TAKE A POLYGRAPH
3 TEST, AND THEY THINK THE INNOCENT PERSON WOULD SAY YES.

4 AND SO THE MORE PEOPLE THAT SUGGEST THEY TAKE A
5 POLYGRAPH OR, IN FACT, IF THEY MAKE A PUBLIC STATEMENT, HEY
6 I'LL TAKE A POLYGRAPH TEST, THEY'RE SOMETIMES PUT IN A CORNER
7 WHERE THEY HAVE TO TAKE IT IN ORDER TO EITHER SAVE FACE OR TO
8 GO ALONG WITH THEIR ORIGINAL STORY.

9 AND OF COURSE, IN A PERFECT WORLD THE INNOCENT
10 PERSON IS TAKING THAT TEST TO ELIMINATE THEMSELVES FROM
11 SUSPICION.

12 Q. YOU JUST SAID A FEW MOMENTS AGO ABOUT A QUESTION
13 OF REVIEW, WHICH QUESTIONS ARE YOU REFERRING TO?

14 A. ALL QUESTIONS THAT ARE ASKED ON THE EXAMINATION.

15 Q. WELL, ARE THERE ANY ADDITIONAL QUESTIONS, ANY
16 SURPRISE QUESTIONS ASKED IN THE ACTUAL POLYGRAPH THAT ARE
17 DISTINCT FROM THE QUESTIONS THAT ARE GONE OVER IN THE PRETEST?

18 A. NO. ALL QUESTIONS THAT ARE ASKED IN THE
19 POLYGRAPH TEST ARE REVIEWED BEFORE THEY'RE EVER ASKED. NO
20 TRICKS, NO SURPRISES.

21 Q. I ALSO ASKED YOU EARLIER ABOUT THE LEVEL OF
22 CERTAINTY AND WHETHER SOMEONE COULD BEAT THE TEST. BASED ON
23 YOUR BACKGROUND, TRAINING, AND EXPERIENCE, ARE THERE EVER
24 INSTANCES WHERE SOMEONE IS TELLING THE TRUTH AND THE TEST COMES
25 BACK AS THEY'RE DECEPTIVE?

1 A. WELL, AGAIN, THE POLYGRAPH IS 90-SOMETHING
2 PERCENT ACCURATE, 90, PERHAPS 93 PERCENT, DEPENDING ON WHICH
3 STUDIES ARE QUOTED, BUT THAT ALL DEPENDS ON THE POLYGRAPH
4 EXAMINER. THE ACCURACY OF A POLYGRAPH TEST DECLINES SHARPLY
5 DEPENDING ON THE EXPERIENCE AND THE BACKGROUND OF THE PERSON
6 WHO IS ADMINISTERING IT.

7 AND NOT TO CONFUSE COUNTERMEASURES WITH FALSE
8 POSITIVES OR FALSE NEGATIVES. FALSE POSITIVES OR FALSE
9 NEGATIVES ARE NATURALLY OCCURRING STANDARDS OF ERROR, AND THEY
10 HAVE NOTHING TO DO WITH COUNTERMEASURES. A COUNTERMEASURE IS A
11 DELIBERATE ATTEMPT BY THE EXAMINEE TO MANIPULATE THE RESULTS OF
12 THE TEST.

13 MR. WILLIAMS: YOUR HONOR, COULD WE GET AN ANSWER TO
14 THE QUESTION?

15 THE QUESTION WAS, ARE THERE EVER ANY EXAMINATION
16 RESULTS THAT COME BACK THAT SHOW THAT THE EXAMINATION WAS
17 FAULTY, OR THAT IT WAS NOT WHAT HE THOUGHT IT WAS?

18 WE COULD HAVE THE QUESTION READ BACK. I DON'T
19 THINK HE ANSWERED THE QUESTION. IT SHOULD HAVE BEEN "YES" OR
20 "NO."

21 HEARING OFFICER ADLER: I UNDERSTAND HIM TO SAY THERE
22 WERE FALSE POSITIVES AND FALSE NEGATIVES.

23 MR. MC GOWAN: MR. WILLIAMS CAN, OF COURSE, FOLLOW UP
24 ON CROSS-EXAMINATION.

25 MR. WILLIAMS: COULD WE HAVE THE QUESTION READ BACK,

1 YOUR HONOR?

2 HEARING OFFICER ADLER: NO. YOU HAVE THE QUESTION
3 RIGHT. THE ANSWER WAS A LITTLE MORE EXPANSIVE THAN THAT, BUT I
4 UNDERSTOOD THE CRUX TO SAY THAT THERE WERE SUCH A THING AS A
5 FALSE POSITIVE AND A FALSE NEGATIVE.

6 MR. WILLIAMS: I'D LIKE TO HAVE THE QUESTION READ
7 BACK. I UNDERSTAND WHAT YOU'RE SAYING.

8 HEARING OFFICER ADLER: CAN YOU GO BACK?

9 THE REPORTER: (RECORD READ.)

10 MR. WILLIAMS: YOUR HONOR, COULD WE HAVE THE ANSWER TO
11 THAT QUESTION?

12 I DON'T THINK HE ANSWERED IT.

13 HEARING OFFICER ADLER: IS THERE A "YES" OR "NO"
14 ANSWER TO THAT QUESTION?

15 THE WITNESS: I CAN'T ANSWER THAT WITH A "YES" OR
16 "NO."

17 MR. WILLIAMS: YOUR HONOR, CAN I HAVE A RECESS?

18 HEARING OFFICER ADLER: WE NEED A BREAK?

19 MR. WILLIAMS: YES, I DO.

20 HEARING OFFICER ADLER: OKAY. LET'S TAKE FIVE.

21 MR. WILLIAMS: THANK YOU. CAN YOU ASK HIM NOT TO TALK
22 TO -- THE WITNESS --

23 HEARING OFFICER ADLER: WE'LL TAKE FIVE, AND I WILL
24 ASK YOU NOT TO DISCUSS YOUR TESTIMONY DURING THE BREAK.

25 THE WITNESS: OKAY.

1 (RECESS.)

2
3 HEARING OFFICER ADLER: BACK ON THE RECORD.

4 MR. MC GOWAN: THANK YOU.

5
6 DIRECT EXAMINATION CONTINUED

7
8 BY MR. MC GOWAN:

9 Q. MR. TRIMARCO, LET ME ASK YOU THIS AS A FOLLOW UP
10 TO YOUR TESTIMONY, AND LET'S FOCUS ON YOUR PRACTICE OF
11 POLYGRAPH TESTING OVER THE YEARS, BASED ON YOUR BACKGROUND,
12 EDUCATION, AND EXPERIENCE, DO YOU HAVE AN OPINION AS TO THE
13 INCIDENTS, IF ANY, OF FALSE POSITIVES IN YOUR PRACTICE?

14 A. YES, I DO.

15 Q. WHAT IS YOUR OPINION?

16 A. WELL, WHEN I WAS WITH THE F.B.I. ON THREE
17 DIFFERENT OCCASIONS, I WAS ADVISED THAT THE OPINION THAT I HAD
18 COME TO WAS WRONG.

19 Q. OKAY. AND THAT'S THREE OUT OF HOW MANY?

20 A. ELEVEN HUNDRED.

21 Q. OKAY. AND WHAT ABOUT IN PRIVATE PRACTICE?

22 A. NONE.

23 Q. WHAT'S THAT BASED ON?

24 A. IT'S JUST BASED ON THE FACT THAT THERE HAVE
25 NEVER BEEN ANY FACTS PRESENTED TO ME THAT WOULD CAUSE ME

1 CONCERN REGARDING THE RESULTS OF THE TEST. HOWEVER, I SHOULD
2 SAY I'M NOT ARROGANT ENOUGH TO BELIEVE THAT THERE AREN'T FALSE
3 POSITIVES OR FALSE NEGATIVES OUT THERE THAT JUST HAD NOT COME
4 TO MY ATTENTION.

5 Q. WITH RESPECT TO THOSE THREE INSTANCES FOR THE
6 F.B.I., HOW WOULD IT BE ESTABLISHED THAT SOMETHING WAS, INDEED,
7 A FALSE POSITIVE?

8 A. IT WOULD BE ESTABLISHED THROUGH A CONFESSION OR
9 MY SAYING EITHER THE FELLOW ROBBED THE BANK OR HE DIDN'T ROB
10 THE BANK, AND THEN GROUND TRUTH WOULD BE A CONFESSION OR A JURY
11 DECISION.

12 Q. NOW, LET ME ASK YOU TO CONTINUE WITH YOUR
13 TESTIMONY ABOUT THE PROTOCOL, THE STANDARD PROTOCOL YOU USE FOR
14 POLYGRAPH TESTING.

15 HAVE YOU COMPLETED YOUR TESTIMONY ABOUT THE
16 PRETEST PROCESS?

17 A. NO.

18 Q. OKAY. PLEASE CONTINUE.

19 A. I ALSO HAVE TO DETERMINE DURING THE PRETEST IF
20 THE EXAMINEE IS SUITABLE, A SUITABLE SUBJECT FOR POLYGRAPH
21 TESTING. IN OTHER WORDS, THE EXAMINEE SHOULD BE WELL RESTED,
22 HE SHOULD NOT BE ILL, HE SHOULD NOT BE HAMPERED BY ANY
23 EMOTIONAL CONDITIONS THAT MIGHT REQUIRE THE ASSISTANCE OF A
24 PSYCHOLOGIST OR PSYCHIATRIST. HE SHOULD NOT BE FATIGUED, WHICH
25 WOULD INCLUDE A GOOD NIGHT'S SLEEP.

1 Q. ANYTHING ELSE AS PART OF THE PRETEST THAT YOU
2 HAVEN'T ALREADY TESTIFIED ABOUT?

3 A. I WOULD NEED TO KNOW WHAT MEDICATIONS, IF ANY,
4 THAT THE EXAMINEE HAS CONSUMED IN THE LAST 48 HOURS, AND I
5 WOULD NEED TO KNOW IF HE WAS IN ANY PAIN OR DISCOMFORT AT THE
6 TIME OF THE EXAMINATION.

7 Q. ANYTHING ELSE?

8 A. WELL, THE PROPERLY CONDUCTED PRETEST, AS I SAID,
9 INCLUDES A REVIEW OF ALL THE QUESTIONS THAT ARE GOING TO BE
10 ANSWERED AND ANY ANTICIPATED ANSWERS THAT WOULD BE GIVEN ON THE
11 TEST. IN OTHER WORDS, DURING THAT REVIEW, THE EXAMINEE IS
12 GOING TO ANSWER "YES" OR "NO" TO ME TO THE QUESTIONS THAT
13 COMPRISE THAT REVIEW.

14 Q. ANYTHING ELSE AS PART OF THE PRETEST THAT YOU
15 HAVEN'T ALREADY TESTIFIED ABOUT?

16 A. NO.

17 Q. WHAT'S THE NEXT STAGE?

18 A. THE NEXT STAGE IS THE ASKING OF THE QUESTIONS
19 AND THE RUNNING OF THE CHARTS.

20 Q. COULD YOU PLEASE EXPLAIN THAT PROCESS.

21 A. YES. THE QUESTIONS THAT WERE REVIEWED WITH THE
22 EXAMINEE WOULD BE PRESENTED AS THEY WERE IN THE REVIEW, AND
23 THEN THEY WOULD BE ANSWERED AS THEY WERE IN THE REVIEW.
24 HOWEVER, BEFORE THAT'S DONE, AN ACQUAINTANCE TEST IS CONDUCTED
25 WITH THE EXAMINEE TO DETERMINE IF HE OR SHE HAS THE

1 PHYSIOLOGICAL REACTIVITY THAT'S NECESSARY IN ORDER TO COME TO A
2 CONCLUSION.

3 Q. HOW IS THAT DETERMINED?

4 A. TYPICALLY, THE EXAMINEE IS ASKED TO CHOOSE A
5 NUMBER BETWEEN THREE AND EIGHT, NOT THREE AND NOT EIGHT. THEY
6 WILL WRITE THAT NUMBER DOWN ON A PAD OR PIECE OF PAPER, AND
7 THEN THEY'RE INSTRUCTED BY THE EXAMINER TO LIE ABOUT THAT
8 NUMBER.

9 AND SO TYPICALLY, I WOULD SAY LIE TO ME ANY
10 QUESTION I ASK YOU ABOUT THAT NUMBER, FIVE, FOR EXAMPLE, I WANT
11 YOU TO LIE TO ME ABOUT IT. SO I WOULD ASK, DID YOU WRITE THE
12 NUMBER FIVE, AND THE EXAMINEE WOULD ANSWER NO.

13 THEY KNOW IT'S A LIE. I KNOW IT'S A LIE. I
14 THEN WRITE NUMBERS, WHICH SURROUND THE NUMBER FIVE, MEANING SIX
15 AND SEVEN, FOUR, THREE, AND TWO. AND I'LL ASK THEM IF THEY
16 WROTE THE NUMBER TWO, AND THEY'LL SAY NO BECAUSE THEY DIDN'T.

17 NUMBER THREE, NO BECAUSE THEY DIDN'T. NUMBER
18 FOUR, NO BECAUSE THEY DIDN'T. NUMBER FIVE, I WANT THEM TO BE
19 CONSISTENT IN THE LIE THEY TOLD ME AND SAY NO TO THE NUMBER
20 FIVE, AND NO TO SIX, AND NO TO SEVEN.

21 AND OF COURSE, THERE'S APPROXIMATELY 15 TO 20
22 SECONDS IN BETWEEN ASKING OF THOSE QUESTIONS. IF I SEE
23 SUFFICIENT PHYSIOLOGICAL REACTION TO THE LIE THAT WAS TOLD TO
24 THE NUMBER FIVE, THE TEST CAN PROCEED.

25 Q. OKAY. ANYTHING ELSE AS PART OF YOUR PROTOCOL

1 WITH RESPECT TO THIS PART OF THE TESTING?

2 A. THE ASKING OF THE CHARTS, THE ASKING OF THE
3 QUESTIONS, AS I SAID, AT A MINIMUM TWO CHARTS, AT A MAXIMUM
4 FOUR CHARTS, MOST NORMALLY THREE CHARTS. THE TEST -- THE
5 CHARTS ARE THEN SCORED.

6 SOME EXAMINERS SCORE THEM GLOBALLY. MOST GOOD
7 EXAMINERS, PROFESSIONAL EXAMINERS SCORE THEM NUMERICALLY.

8 Q. WHAT DO YOU DO?

9 A. NUMERICALLY.

10 Q. AND CAN YOU EXPLAIN HOW THAT PROCESS IS DONE?

11 A. YES. THERE ARE TWO WAYS TO NUMERICALLY SCORE
12 POLYGRAPH CHARTS. ONE IS A THREE-POINT SCALE AND MORE
13 SURGICALLY, A SEVEN-POINT SCALE.

14 Q. WHICH DO YOU USE?

15 A. THREE-POINT SCALE.

16 Q. CAN YOU PLEASE EXPLAIN HOW THAT IS DONE.

17 A. YES. EACH QUESTION FROM NUMBER FOUR TO NUMBER
18 EIGHT IN THE FORMAT THAT I USED IS GRADED REGARDING THE AMOUNT
19 OF PHYSIOLOGICAL ACTIVITY SURROUNDING THE ASKING OF THAT
20 QUESTION AND THE ANSWER ATTACHED TO IT.

21 Q. IF YOU COULD PLEASE CONTINUE WITH YOUR TESTIMONY
22 AND TELL ME IF THERE'S ANY OTHER PARTS OF THIS SECOND STAGE
23 WHICH IS PART OF YOUR PROTOCOL FOR POLYGRAPH TESTING?

24 A. WELL, THE FINALITY IS COMING TO A CONCLUSION
25 WHETHER THE EXAMINEE HAS BEEN TRUTHFUL OR NOT TO THE RELEVANT

1 QUESTIONS.

2 Q. HOW IS THAT DETERMINATION MADE?

3 A. THROUGH A NUMERICAL SCORE.

4 Q. PLEASE EXPLAIN.

5 A. YES. A MINUS THREE AT EITHER OF THE TWO
6 RELEVANT QUESTIONS IS CONSIDERED DECEPTIVE OR ANYTHING HIGHER,
7 MEANING MINUS FOUR, MINUS FIVE, MINUS SIX, ET CETERA.

8 Q. HOW HIGH DOES IT GO TO?

9 A. WELL, IT DEPENDS ON THE FORMAT YOU'RE USING AND
10 THE NUMBER OF RELEVANT QUESTIONS ASKED.

11 Q. OKAY. WHAT'S YOUR STANDARD PROTOCOL IN TERMS OF
12 THE NUMBER OF QUESTIONS THAT YOU ASK?

13 A. STANDARD FOR ME IN THIS TYPE OF A TEST THAT WAS
14 RUN AS A U-PHASE ZONE OF COMPARISON TEST, WHICH IS VALIDATED BY
15 THE DEPARTMENT OF DEFENSE POLYGRAPH INSTITUTE.

16 Q. HOW MANY QUESTIONS WOULD THAT BE?

17 A. TWO RELEVANT QUESTIONS.

18 Q. HOW MANY OTHER QUESTIONS?

19 A. SEVEN OTHER QUESTIONS.

20 Q. AND COULD YOU PLEASE EXPLAIN IN TERMS OF THE
21 NUMBER IF SOMEONE WAS DETERMINED BY YOU TO BE COMPLETELY HONEST
22 AND NONDECEPTIVE, WHAT WOULD BE THEIR SCORE?

23 A. WELL, ANYTHING IN EXCESS OF FOUR -- I SHOULD SAY
24 IN EXCESS OF THREE TO INCLUDE PLUS FOUR OR ABOVE, PLUS FIVE,
25 PLUS SIX, PLUS SEVEN, IS CONSIDERED TO BE NONDECEPTIVE TO THE

1 RELEVANT ISSUE.

2 Q. IF YOU MADE THE DETERMINATION THAT SOMEONE WAS
3 BEING CONSISTENTLY DECEPTIVE, WHAT WOULD YOU SEE?

4 A. YOU WOULD EITHER SEE A MINUS THREE AT EITHER OF
5 THOSE QUESTIONS OR A CUMULATIVE OF MINUS FOUR OR HIGHER,
6 MEANING MINUS FIVE, MINUS SIX, MINUS SEVEN.

7 Q. OKAY. ANYTHING ELSE AS PART OF YOUR PROTOCOL
8 CONCERNING THIS SECOND STAGE OF THE POLYGRAPH?

9 A. NO.

10 Q. IS THIS -- IS IT PART OF YOUR POLYGRAPH PROTOCOL
11 TO RECORD YOUR TESTING OR ANY STAGE OF YOUR TESTING IN ANY WAY?

12 A. YES. I RECORD THE POLYGRAPH EXAMINATIONS.

13 Q. HOW DO YOU RECORD IT?

14 A. WITH A VIDEO RECORDER.

15 Q. WHY DO YOU DO THAT?

16 A. FOR TWO REASONS: NUMBER ONE, TO HAVE A BEST
17 EVIDENCE RECORDING OF WHAT ACTUALLY WENT ON IN THAT ROOM.

18 AND NUMBER TWO, TO SHOW THAT I ABIDED BY THE
19 STANDARDS AND PRACTICES OF ALL THE PROFESSIONAL ORGANIZATIONS.

20 Q. ANYTHING ELSE THAT YOU HAVEN'T ALREADY TESTIFIED
21 ABOUT CONCERNING THIS SECOND STAGE OF YOUR PROTOCOL FOR
22 POLYGRAPH TESTING?

23 A. NO, SIR.

24 Q. WHAT IS THE THIRD STAGE?

25 A. THE ADVISEMENT TO THE EXAMINEE WHETHER THEY

1 FAILED OR PASSED.

2 Q. OKAY. WHAT -- HOW IS THAT CONDUCTED?

3 A. QUITE DIRECTLY.

4 Q. APART FROM SIMPLY TELLING THE PERSON WHETHER
5 THEY PASSED OR FAILED, IS THERE ANYTHING ELSE THAT'S DONE IN
6 THIS PROCESS?

7 A. OF COURSE, IT DEPENDS ON THE PERSON AND THE
8 PERSONALITIES, BUT THE THIRD PART OF A POLYGRAPH TEST IS CALLED
9 THE POST-TEST. AND IN A NON-LAW ENFORCEMENT SETTING, THAT
10 WOULD SIMPLY CONSIST OF TELLING THE EXAMINEE WHETHER THEY
11 PASSED OR FAILED.

12 Q. NOW, IS IT EVER PART OF YOUR PROTOCOL TO SHARE
13 THIS ANALYSIS ONCE YOU DO A POLYGRAPH TEST AND YOU'VE GONE
14 THROUGH THE THREE STAGES WITH ANYONE ELSE?

15 A. YES, IT IS.

16 Q. WHAT DO YOU DO?

17 A. I FAX THE CHARTS TO ONE OF THE ASSOCIATES WHO
18 ARE LISTED ON MY LETTERHEAD ON THE BORDER. ANY ONE OF THEM ARE
19 QUALIFIED TO DO A BLIND QUALITY CONTROL REVIEW. MOSTLY LIKELY
20 IT WOULD BE RON HOMER OR RON HILLEY UP IN THE BAY AREA.

21 Q. IS IT RON HOMER?

22 A. H-O-M-E-R.

23 Q. AND RON --

24 A. HILLEY; H-I-L-L-E-Y.

25 Q. AND WHAT ARE THEIR QUALIFICATIONS?

1 A. THEY BOTH HAVE SIMILAR QUALIFICATIONS TO MINE.
2 BOTH WERE, AT TIMES, HEAD OF THE POLYGRAPH UNIT FOR THE F.B.I.,
3 THE SAN FRANCISCO DIVISION.

4 Q. AND WHAT'S THE OBJECTIVE, IF ANY, CONCERNING
5 FAXING THESE CHARTS?

6 A. WELL, THE SCORING PROCESS ITSELF IS A SUBJECTIVE
7 ONE. AND SO FAXING THE CHARTS IS TO ALLOW ANOTHER EXPERT WITH
8 SIMILAR QUALIFICATIONS TO EXAMINE THEM AND LOOK FOR ANY
9 WEAKNESSES AND TO COME TO A SEPARATE AND APART CONCLUSION.

10 IN OTHER WORDS, WE CALL IT A "QUALITY CONTROL
11 REVIEW IN THE BLIND."

12 Q. DO YOU ALWAYS DO THAT?

13 A. YES.

14 Q. WHEN YOU SAY IT'S A "BLIND," WHAT DO YOU MEAN BY
15 THAT?

16 A. I MEAN THAT WHEN I SEND THE CHARTS OR SPEAK TO
17 THEM ON THE PHONE, THEY HAVE NO IDEA WHAT THE RESULTS OF THE
18 TEST WERE PRELIMINARILY.

19 Q. AND HOW OFTEN DO YOU USE MR. HOMER AS YOUR
20 QUALITY CONTROL PERSON?

21 A. I WOULD SAY ABOUT 90 PERCENT OF THE TIME.

22 Q. AND HOW MANY TIMES WOULD YOU ESTIMATE YOU USED
23 HIM OVER THE YEARS?

24 A. SINCE MY RETIREMENT FROM THE F.B.I., 90 PERCENT
25 OF THE NUMBER OF TESTS THAT I'VE DONE.

1 Q. AND HAS HE EVER COME BACK AND INDICATED THAT HIS
2 CONCLUSIONS WHETHER SOMEBODY WAS TRUTHFUL OR DECEPTIVE ARE
3 DIFFERENT FROM YOURS?

4 A. YES.

5 Q. TELL US THE INCIDENTS WHERE MR. HOMER'S ANALYSIS
6 WOULD DEVIATE FROM YOURS.

7 A. WELL, TYPICALLY, TWO QUALIFIED EXPERTS WITH
8 SIMILAR BACKGROUNDS ARE NOT GOING TO DEVIATE BETWEEN DECEPTIVE
9 AND NONDECEPTIVE. HOWEVER, THERE IS AN AREA CALLED
10 "INCONCLUSIVE" OR "NO OPINION," WHICH IS IN BETWEEN ON THE
11 SPECTRUM OF MINUS THREE TO PLUS FOUR. ANYTHING IN BETWEEN
12 THOSE TWO EXTREMES IS CONSIDERED NO OPINION OR INCONCLUSIVE.

13 WE HAVE, ON OCCASION, RARELY, HOWEVER ON
14 OCCASION, DISAGREED AND DISCUSSED OUR SCORING IN DETAIL. AND
15 WHEN IN DOUBT, THE TEST IS REDONE.

16 Q. OKAY. COULD YOU ESTIMATE FOR US HOW MANY TIMES
17 OVER THE YEARS THAT YOU'VE BEEN WORKING WITH MR. HOMER HAS THAT
18 BEEN NECESSARY?

19 A. THREE OR FOUR.

20 Q. OUT OF HOW MANY TIMES?

21 A. ROUGHLY A THOUSAND.

22 Q. OKAY. IS THAT YOUR BEST ESTIMATE?

23 A. IT'S MY BEST GUESS.

24 Q. WELL, I DON'T WANT YOU TO GUESS.

25 A. IT'S MY BEST ESTIMATE.

1 Q. OKAY. ARE WE TALKING ABOUT HAVE YOU USED
2 MR. HOMER AT LEAST SEVERAL HUNDRED TIMES?

3 A. YES.

4 Q. OKAY. NOW, LET ME ASK YOU THIS, MR. TRIMARCO,
5 DID YOU PERFORM A POLYGRAPH TEST ON AN INDIVIDUAL BY THE NAME
6 OF BENJAMIN HOLLEY?

7 A. YES, I DID.

8 Q. WHEN DID YOU PERFORM THAT TEST?

9 A. IT WAS IN 2005, NOVEMBER 17, I BELIEVE.

10 Q. OKAY. AND DID YOU GENERATE ANY KIND OF REPORT
11 CONCERNING THIS PARTICULAR TEST?

12 A. YES, I DID.

13 Q. AND WOULD THAT REFLECT THE DATE OF THE TEST?

14 A. IT WOULD.

15 MR. MC GOWAN: AT THIS TIME, WE WOULD LIKE TO MARK AND
16 IDENTIFY AS NEXT IN ORDER, I BELIEVE IT WOULD BE DEPARTMENT'S
17 15, MR. TRIMARCO'S REPORT.

18
19 (DEPARTMENT'S EXHIBIT 15 WAS MARKED FOR
20 IDENTIFICATION BY THE HEARING OFFICER.)

21
22 MR. MC GOWAN: IF I MAY APPROACH.

23 HEARING OFFICER ADLER: OKAY.

24 BY MR. MC GOWAN:

25 Q. DO YOU RECOGNIZE THIS DOCUMENT?

1 A. YES.

2 MR. WILLIAMS: EXCUSE ME, MAY I LOOK AT WHAT HE'S
3 LOOKING AT?

4 BY MR. MC GOWAN:

5 Q. IT'S UNDER A LETTER TO JANE MATSUZAKI, DATED
6 NOVEMBER 18, 2005. AND DOES THAT REFLECT THE DATE OF THIS
7 EXAMINATION?

8 A. YES, IT DOES.

9 Q.. WHICH DATE IS THAT?

10 A. NOVEMBER 17, 2005.

11 Q. NOW, LET ME ASK YOU THIS, WITH RESPECT TO THIS
12 PARTICULAR TEST WITH MR. HOLLEY, CAN YOU TELL US WHETHER OR NOT
13 THE PROTOCOL THAT YOU TESTIFIED TO THIS MORNING, WAS THIS
14 FOLLOWED CONCERNING MR. HOLLEY?

15 A. YES.

16 Q. WAS THERE ANY DEVIATION FROM THE PROTOCOL THAT
17 YOU TESTIFIED IN DETAIL ABOUT AS IT RELATES TO THIS PARTICULAR
18 EXAMINATION ON NOVEMBER 17, 2005, CONCERNING MR. HOLLEY?

19 A. NUANCES, YES. PROTOCOL, NO.

20 Q. WHAT DO YOU MEAN BY "NUANCE"?

21 A. WELL, THERE WERE CHANGES TO, FOR EXAMPLE, SOME
22 WORDS IN THE RELEVANT QUESTION THAT HE WASN'T COMPLETELY
23 COMFORTABLE WITH, AND SO WE CHANGED A WORD HERE OR THERE.

24 Q.. OKAY. APART FROM THAT, ANYTHING ELSE IN TERMS
25 OF THE THREE STAGES THAT YOU TESTIFIED ABOUT, WAS THAT PROTOCOL

1 FOLLOWED CONCERNING MR. HOLLEY'S POLYGRAPH TESTING?

2 A. NO. THE THIRD STAGE, THERE WAS SOME DEVIATION.

3 Q.. HOW SO?

4 A. WELL, I EXPANDED UPON TELLING HIM THAT HE HAD
5 FAILED THE TEST.

6 Q.. OKAY.

7 A. I WAS QUITE EMOTIONAL ABOUT IT AND TOLD HIM THAT
8 IT RUINED MY DAY.

9 Q. ANYTHING ELSE APART FROM THAT?

10 A. NO.

11 Q.. CAN YOU TELL US TOTAL FROM THE BEGINNING OF THIS
12 PARTICULAR TESTING, AND I WOULD WANT TO GLOBALLY DEFINE THAT AS
13 FROM THE MOMENT THE PROCESS STARTED FROM THE FIRST STAGE UNTIL
14 THE VERY END OF THE PROCESS AS IT RELATES TO MR. HOLLEY'S
15 INVOLVEMENT, HOW LONG DID THAT ENTIRE PROCESS LAST ON
16 NOVEMBER 17, 2005?

17 A. BETWEEN AN HOUR-AND-A-HALF, TWO HOURS.

18 Q. AND HOW MUCH OF THAT, IF ANY, WAS VIDEOTAPED?

19 A. NINETY-FIVE PERCENT.

20 Q.. AND WHAT WAS VIDEOTAPED?

21 A. FROM THE BEGINNING, THERE WERE COMMENTS MADE TO
22 ME OR MADE BY ME TO MR. HOLLEY BEFORE WE PUT ON THE VIDEOTAPE.
23 FOR EXAMPLE, IF YOU CAN'T PASS THE TEST, DON'T TAKE IT. YOU
24 KNOW, IF YOU MADE THOSE REMARKS, IT DOESN'T MAKE YOU A BAD GUY.
25 HOWEVER, IF YOU DID NOT MAKE THOSE REMARKS,

1 YOU'RE IN GOOD HANDS, AND I'LL GET YOU THROUGH THIS TEST.

2 Q. ANYTHING ELSE APART FROM THAT CONVERSATION WITH
3 MR. HOLLEY THAT WAS NOT PART OF THE VIDEOTAPE?

4 A. NOT THAT I RECALL.

5 MR. MC GOWAN: OKAY. AT THIS TIME, I WOULD LIKE TO
6 MARK NEXT IN ORDER AS DEPARTMENT'S 16, A VIDEOTAPE OF
7 MR. HOLLEY'S POLYGRAPH TEST.

8 WE CAN PLAY IT AND THE WITNESS CAN IDENTIFY IT,
9 OR ELSE I WOULD JUST MOVE IT INTO EVIDENCE.

10 HEARING OFFICER ADLER: AT SOME POINT I WILL WATCH IT.

11 IS THERE ANY REASON TO WATCH IT NOW?

12 MR. WILLIAMS: NO. THERE' NO POINT, YOUR HONOR. YOU
13 MAY DO IT THE WAY YOU SUGGESTED.

14 HEARING OFFICER ADLER: OKAY. MARK IT AS DEPARTMENT'S
15 16.

16
17 (DEPARTMENT'S EXHIBIT 16 WAS MARKED FOR
18 IDENTIFICATION BY THE HEARING OFFICER.)

19
20 BY MR. MC GOWAN:

21 Q. NOW, CAN YOU TELL US, MR. TRIMARCO, HOW -- DO
22 YOU HAVE AN UNDERSTANDING AS TO HOW YOU CAME TO CONDUCT THIS
23 POLYGRAPH TEST ON MR. HOLLEY?

24 A. YES.

25 Q. HOW SO?

1 A. WELL, INITIALLY I WAS CONTACTED BY MR. CHUCK
2 ADAMS, WHO I UNDERSTAND TO BE ASSOCIATED WITH THE DEPARTMENT OF
3 WATER AND POWER.

4 Q. WELL --

5 HEARING OFFICER ADLER: THAT'S NOT QUITE THE RIGHT
6 NAME FOR IT, BUT WE UNDERSTAND.

7 THE WITNESS: WELL, THAT'S MY UNDERSTANDING AS I SIT
8 HERE EVEN NOW.

9 BY MR. MC GOWAN:

10 Q. HANG ON SECOND. I THINK JUST SO THAT THE RECORD
11 IS CLEAR, IT'S -- I DON'T THINK THERE'S ANY DISPUTE THAT
12 MR. ADAMS IS WITH THE DEPARTMENT OF PUBLIC WORKS, D.P.W.

13 A. OKAY.

14 Q. ALL RIGHT.

15 HEARING OFFICER ADLER: IT'S VERY CONFUSING.

16 BY MR. MC GOWAN:

17 Q. IF YOU CAN CONTINUE, PLEASE.

18 A. SINCE I NEVER WORKED WITH L.A. COUNTY BEFORE IN
19 THIS CAPACITY, I REALLY WASN'T CLEAR ON WHO THE PLAYERS WERE.
20 SOME TIME AFTER I TALKED TO MR. ADAMS, I WAS CONTACTED BY -- I
21 KNOW FRED. FRED WILLIAMS, WILLIAMSON.

22 AND WE PROBABLY HAD THREE PHONE CONVERSATIONS
23 REGARDING MY BACKGROUND AND WHO I WAS. AND REALLY THE ONLY
24 THING I REMEMBER CLEARLY ABOUT OUR CONVERSATIONS WAS THAT HE
25 SOUNDED LIKE MORGAN FREEMAN, AND WE CHUCKLED ABOUT THAT.

1 Q. OKAY.

2 A. BUT AT THAT TIME, I DON'T KNOW THAT I EVER KNEW
3 THAT THERE WERE TWO SIDES TO THIS. I ASSUMED THAT CHUCK AND
4 FRED WORKED TOGETHER.

5 Q. OKAY. LET'S JUST SEPARATE IT OUT, HOW MANY
6 TIMES IN TOTAL DID YOU SPEAK WITH MR. ADAMS?

7 A. PERHAPS THREE.

8 Q. AND CAN YOU JUST SUM UP FOR US IN SUBSTANCE WHAT
9 YOU AND MR. ADAMS DISCUSSED?

10 A. HE TOLD ME THAT THERE WAS AN ISSUE, ALLEGATIONS
11 THAT TWO OF HIS EMPLOYEES HAD BEEN UNPROFESSIONAL AND MADE SOME
12 REMARKS TO PLAINCLOTHES POLICE OFFICERS, AND THAT THE OFFICERS'
13 RENDITION DIFFERED DRASTICALLY FROM WHAT THE TWO EMPLOYEES
14 SAID.

15 Q. ANYTHING ELSE DISCUSSED BETWEEN YOU AND
16 MR. ADAMS?

17 A. WHAT MY FEE WAS.

18 Q. OKAY.

19 A. THE NUMBER OF TESTS.

20 Q. DID YOU PROVIDE ANY DOCUMENTATION TO YOUR RESUME
21 OR ANYTHING ELSE TO MR. ADAMS?

22 A. I DON'T RECALL, BUT I PROBABLY DID.

23 Q. OKAY. WHAT WAS THE ULTIMATE OUTCOME OF YOUR
24 DISCUSSIONS JUST WITH MR. ADAMS?

25 A. ON ONE OF THE PHONE CALLS, HE SAID THAT THE

1 DISCUSSION HAD BEEN MADE THAT I WOULD BE DOING THE
2 EXAMINATIONS.

3 Q.. WHEN YOU SAY, "EXAMINATIONS," WHO WERE THE
4 EXAMINATIONS FOR?

5 A. MR. HOLLEY AND MR. DAMPIER.

6 Q. AND DID MR. DAMPIER UNDERGO THIS POLYGRAPH
7 TESTING?

8 A. NOT COMPLETELY.

9 Q.. WHY NOT?

10 A. HE DECIDED TO NOT CONTINUE DUE TO A MEDICAL
11 CONDITION.

12 Q. WAS MR. DAMPIER'S TEST -- YOU SAID IT WAS
13 CONTINUED, BUT DID IT START?

14 A. YES.

15 Q.. AND TO WHAT STAGE DID IT GET TO?

16 A. IT WAS IN THE PRETEST, AND WE WERE PROBABLY
17 ABOUT 20 MINUTES INTO IT, AND I TOLD HIM DON'T TAKE THE TEST IF
18 YOU CAN'T PASS IT. IN THE BEGINNING OF THE EXAM, HIS NECK WAS
19 OKAY. BUT AS WE CONTINUED, HIS NECK GOT PROGRESSIVELY MORE
20 PAINFUL.

21 Q. NOW, WAS MR. DAMPIER ON THE SAME DAY OR A
22 DIFFERENT DAY THAN MR. HOLLEY?

23 A. SAME DAY.

24 Q. AND WAS MR. HOLLEY BEFORE OR AFTER MR. DAMPIER'S
25 TEST?

1 A. MR. HOLLEY WAS BEFORE.

2 Q. WERE THE RESULTS OF MR. HOLLEY'S TEST KNOWN
3 BEFORE MR. DAMPIER'S TEST COMMENCED?

4 A. YES.

5 Q. WERE THEY COMMUNICATED TO ANYONE?

6 A. YES.

7 Q. WHO?

8 A. TO FRED.

9 Q. ARE YOU REFERRING TO MR. WILLIAMS?

10 A. YES.

11 Q. ANYONE ELSE?

12 A. I DON'T THINK SO.

13 Q. AND WHAT DID YOU TELL MR. WILLIAMS?

14 A. I TOLD HIM THAT MR. HOLLEY HAD FAILED THE
15 POLYGRAPH TEST.

16 Q. NOW, YOU ALSO TESTIFIED THAT YOU HAD A NUMBER OF
17 CONVERSATIONS WITH MR. WILLIAMS. WAS THAT BEFORE THE DATE OF
18 MR. HOLLEY'S TEST?

19 A. YES.

20 Q. CAN YOU TELL US ABOUT THE SUBSTANCE OF THOSE
21 CONVERSATIONS?

22 A. I GOT THE FEELING THAT MR. WILLIAMS WAS A FRIEND
23 OF MR. DAMPIER AND MR. HOLLEY, AND THAT HE WANTED TO BE SURE
24 THAT IF HE WERE GOING TO ALLOW THEM TO BE POLYGRAPHED THAT IT
25 WAS GOING TO BE WITH SOMEONE THAT HE AGREED WAS PROFESSIONAL

1 AND QUALIFIED.

2 Q. DID MR. WILLIAMS ASK YOU QUESTIONS ABOUT YOUR
3 CREDENTIALING AND BACKGROUND?

4 A. MANY QUESTIONS.

5 Q. DID YOU ANSWER?

6 A. YES.

7 Q. DID HE EVER INDICATE HE HAD ANY DISSATISFACTION
8 WITH YOUR CREDENTIALS OR BACKGROUND?

9 A. QUITE THE CONTRARY.

10 Q. ANYTHING ELSE, APART FROM QUESTIONS ABOUT YOUR
11 BACKGROUND, TRAINING, EDUCATION, AND EXPERIENCE, ANY OTHER
12 THINGS YOU AND MR. WILLIAMS TALKED ABOUT?

13 A. NO.

14 Q. WHAT WAS THE ULTIMATE RESULT, IF ANY, FROM YOUR
15 CONVERSATIONS WITH MR. WILLIAMS?

16 A. ON ONE OF THE CONVERSATIONS, MR. WILLIAMS TOLD
17 ME THAT I WOULD BE DOING THE POLYGRAPH TEST ON MR. DAMPIER AND
18 MR. HOLLEY.

19 Q. NOW, GOING BACK TO MR. HOLLEY'S POLYGRAPH TEST,
20 CAN YOU JUST GIVE US AN OVERVIEW HOW THIS PARTICULAR POLYGRAPH
21 TEST WAS CONDUCTED?

22 HEARING OFFICER ADLER: YOU MEAN IF IT DIFFERS?

23 I DON'T WANT TO GO THROUGH EVERY STEP OF IT.

24 BY MR. MC GOWAN:

25 Q. I DON'T WANT TO BE REPETITIOUS BECAUSE I'VE

1 ALREADY ASKED THE WITNESS TO GO OVER IN DETAIL ABOUT THE
2 PROTOCOL, BUT TRYING TO -- I'M TRYING TO AVOID ANY REPETITION,
3 MR. TRIMARCO, BUT CAN YOU TELL US, IN EFFECT, WAS THERE
4 ANYTHING SPECIFICALLY ABOUT THIS CASE YOU DISCUSSED WITH
5 MR. HOLLEY BEFORE THE ACTUAL POLYGRAPH TEST WAS CONDUCTED?

6 A. YEAH. AS I EXPLAINED, PART OF THE PRETEST IS TO
7 HAVE THE EXAMINEE EXPLAIN HIS RENDITION OF THE EVENT.

8 Q. OKAY. DID YOU HAVE AN UNDERSTANDING AS TO WHAT
9 THIS CASE INVOLVED BEFORE YOU ACTUALLY COMMENCED THIS PRETEST
10 WITH MR. HOLLEY?

11 A. YES.

12 MR. WILLIAMS: THE QUESTION IS ASKED AND ANSWERED.

13 HE SAID HE TALKED TO MR. ADDAMS WHO TOLD HIM.
14 HE SAID HE SPOKE TO ME.

15 HEARING OFFICER ADLER: LET'S MOVE ON.

16 BY MR. MC GOWAN:

17 Q. OKAY. WHAT DID YOU AND MR. HOLLEY SPECIFICALLY
18 TALK ABOUT?

19 A. I ASKED HIM TO EXPLAIN TO ME WHAT HAPPENED AT
20 TELLIES RESTAURANT ON MARCH 23, 2005.

21 Q. WHAT DID HE TELL YOU?

22 A. HE TOLD ME THEY WENT IN THERE TO GET SOME FOOD.
23 THERE WERE SOME POLICE OFFICERS THERE. THERE WAS -- I DON'T
24 REMEMBER THE NUMBER THAT HE TOLD ME WERE THERE, BUT THEY WERE
25 AT A TABLE, AND HE AND MR. DAMPIER WERE STANDING. HE TOLD ME

1 THAT THERE WAS NEVER ANY CONVERSATION ABOUT THE OFFICERS OR TO
2 THE OFFICERS.

3 Q. NOW, DID YOU GO OVER ANY SPECIFIC QUESTIONS WITH
4 MR. HOLLEY?

5 A. YES, I DID.

6 Q. WHICH QUESTIONS?

7 A. ALL QUESTIONS THAT WERE ASKED IN THE POLYGRAPH
8 TEST.

9 Q. ARE THEY REFLECTED IN ANY DOCUMENTATION?

10 A. TWO OF THEM ARE.

11 MR. MC GOWAN: OKAY. I WOULD LIKE TO MARK AS NEXT IN
12 ORDER DEPARTMENT'S 17. IT'S GOING TO BE THE POLYGRAPH
13 EXAMINATION WORKSHEET CONCERNING MR. HOLLEY FROM
14 NOVEMBER 17, 2005.

15
16 (DEPARTMENT'S EXHIBIT 17 WAS MARKED FOR
17 IDENTIFICATION BY THE HEARING OFFICER.)

18
19 MR. MC GOWAN: IF I MAY APPROACH.

20 HEARING OFFICER ADLER: SURE.

21 MR. WILLIAMS: YOU'RE GOING TO SHOW ME A DOCUMENT?

22 BY MR. MC GOWAN:

23 Q. DO YOU RECOGNIZE THIS DOCUMENT?

24 A. THERE ARE SEVERAL DOCUMENTS HERE. I DO
25 RECOGNIZE THEM.

1 Q. LET'S TAKE THEM ONE PAGE AT A TIME. WHAT IS THE
2 FIRST PAGE?

3 A. THE FIRST PAGE IS A BIOGRAPHICAL SHEET, AND IT
4 INDICATES THAT I INTERVIEWED MR. HOLLEY ON THE 17TH, 2005 OF
5 NOVEMBER, AND THAT HE TOLD ME SOME BIOGRAPHICAL INFORMATION
6 ABOUT HIMSELF.

7 Q. WHOSE HANDWRITING APPEARS ON THIS DOCUMENT?

8 A. MY HANDWRITING.

9 Q. IS ANY OF IT MR. HOLLEY'S?

10 A. NO.

11 Q. OKAY.

12 A. IT ALSO HAS DOWN AT THE BOTTOM SOME RATHER
13 OBSCENE PHRASES, AND THOSE PHRASES WERE REVIEWED WITH
14 MR. HOLLEY REGARDING OFFENSIVE COMMENTS OR OFFENSIVE REMARKS
15 AND WHETHER THESE PARTICULAR PROFANITIES QUALIFIED UNDER THAT
16 DEFINITION.

17 Q. WHERE DO THESE PHRASES AND PROFANITIES COME
18 FROM?

19 A. POLICE REPORT.

20 Q. YOU HAD BEEN PROVIDED THAT BEFORE THE POLYGRAPH?

21 A. YES, I HAD.

22 Q. WHO PROVIDED THAT?

23 A. I DON'T RECALL.

24 Q. OKAY. TURNING TO THE SECOND PAGE, TELL US WHAT
25 THAT REPRESENTS.

1 A. YEAH. THIS IS THE CONSENT TO INTERVIEW AND
2 POLYGRAPH.

3 Q. WHOSE HANDWRITING APPEARS ON THIS DOCUMENT?

4 A. MINE AND MR. HOLLEY.

5 Q. IS THAT MR. HOLLEY'S SIGNATURE?

6 A. I BELIEVE IT IS.

7 Q. AND WHY IS THIS DOCUMENT EXECUTED?

8 A. WELL, IT'S A NOTIFICATION THAT THIS TEST MIGHT
9 NOT TURN OUT THE WAY YOU WANT IT TO. AND IF DID DOESN'T, THEN
10 I'M NOT TO BE HELD RESPONSIBLE. IT'S A VOLUNTARILY PROCEDURE,
11 AND THEY DON'T HAVE TO TAKE THE TEST UNLESS THEY WANT TO.

12 AND IF THEY CHANGE THEIR MIND, THEY CAN STOP THE
13 TEST AT ANY TIME. AND THEY HAVE THE RIGHT TO REFUSE TO ANSWER
14 ANY INDIVIDUAL QUESTIONS.

15 Q. DURING THE APPROXIMATE TWO-HOUR PERIOD YOU
16 TESTIFIED YOU WERE WITH MR. HOLLEY ON THIS PARTICULAR DAY, DID
17 MR. HOLLEY AT ANY TIME EXPRESS AN UNWILLINGNESS TO UNDERGO THIS
18 EXAMINATION?

19 A. NO.

20 Q. OR EXPRESS ANY DISSATISFACTION OR ANYTHING TO
21 THE EFFECT THAT THIS WAS ANYTHING OTHER THAN VOLUNTARY?

22 A. NO.

23 Q. WAS HIS REPRESENTATIVE, MR. WILLIAMS, PRESENT
24 THAT DAY?

25 A. HE WAS OUT IN THE RECEPTION AREA.

1 MR. WILLIAMS: WHO ARE YOU TALKING ABOUT?

2 THE WITNESS: YOU.

3 MR. WILLIAMS: WHAT PERSON ARE YOU SPEAKING OF AS
4 BEING EXAMINED?

5 MR. MC GOWAN: MY QUESTION IS FOCUSED ON HOLLEY'S
6 EXAMINATION.

7 MR. WILLIAMS: THEN YOU SHOULD EXPLAIN THAT TO THE
8 WITNESS.

9 MR. MC GOWAN: WELL, I THINK IT WAS CLEAR, ACTUALLY.

10 MR. WILLIAMS: HE MAY BE SOMEWHAT CONFUSED.

11 MR. MC GOWAN: WELL, I'M NOT CONFUSED.

12 MR. WILLIAMS: FINE. GO AHEAD.

13 BY MR. MC GOWAN:

14 Q. FOCUSING IN AGAIN ON MR. HOLLEY'S EXAMINATION,
15 DID MR. WILLIAMS, FRED WILLIAMS, AT ANY TIME DURING THE PROCESS
16 INVOLVING MR. HOLLEY ON THAT DATE THAT HE DIDN'T WANT THIS TO
17 GO FORWARD OR THAT THIS WAS IN ANY WAY BEING COERCED OR
18 INVOLUNTARY?

19 A. NO.

20 Q. NOW, MR. HOLLEY, DID HE SIGN THIS DOCUMENT IN
21 YOUR PRESENCE?

22 A. YES.

23 Q. DID HE INDICATE HE WAS UNCLEAR ABOUT ANYTHING?

24 A. NO.

25 Q. DID HE EXPRESS ANY KIND OF RESERVATIONS ABOUT

1 ANY PORTION OF THE TEST?

2 A. NO.

3 Q. CAN YOU TELL US THE THIRD PAGE, WHAT THIS
4 REPRESENTS?

5 A. THESE ARE THE ACTUAL QUESTIONS THAT WERE
6 REVIEWED WITH MR. HOLLEY PRIOR TO THE ASKING OF THE QUESTIONS,
7 AND THEY'RE ACCOMPANIED BY HIS RESPONSES TO THOSE QUESTIONS.

8 Q. AND WHO PREPARED THESE QUESTIONS?

9 A. I DID.

10 Q. AND HOW DID YOU COME UP WITH THESE PARTICULAR
11 QUESTIONS?

12 A. WELL, THE TWO RELEVANT QUESTIONS, AGAIN, WERE
13 DISCUSSED WITH MR. WILLIAMS AND MR. ADAMS, BUT MORE
14 IMPORTANTLY, THEY WERE DISCUSSED WITH MR. HOLLEY DURING THE
15 PRETEST. AND AS I SAID, WE SURGICALLY REVIEWED EACH OF THOSE
16 TWO QUESTIONS TO MAKE SURE THAT THE QUESTIONS COULD BE ANSWERED
17 ONE HUNDRED PERCENT TRUTHFULLY AND THAT THERE WAS NO PROBLEMS
18 WITH VERBIAGE OR CONTENT.

19 Q. AND WAS ANY OF THE VERBIAGE CHANGED?

20 A. YES, THERE WAS.

21 Q. PLEASE IDENTIFY THAT.

22 A. ONE OF THE QUESTIONS THAT WAS TO BE ASKED WAS,
23 DID YOU UTTER THE OFFENSIVE COMMENTS IN QUOTES REGARDING THE
24 SHERIFF DEPUTIES WHILE AT TELLIES ON MARCH 23, 2005?

25 AND AS I RECALL, MR. HOLLEY WASN'T COMFORTABLE

1 WITH THE WORD "UTTER," AND SO I SUGGESTED THE WORD "SAY," AND
2 HE AGREED WITH THAT, AND WE CHANGED IT TO "DID YOU SAY
3 OFFENSIVE COMMENTS?"

4 Q. ANY OTHER CHANGES?

5 A. NOT THAT I RECALL.

6 Q. NOW, YOU'VE USED THE TERM "RELEVANT QUESTIONS,"
7 HOW DO YOU DEFINE THAT?

8 A. I'M SORRY, THERE WAS A QUESTION IN REVIEWING
9 THIS. I HAD BEEN CALLING HIM BEN, AND WE AGREED TO BE
10 INFORMAL. HE WAS TO CALL ME JACK, AND HE GOES BY CHIP.

11 Q. OKAY. NOW, YOU USE THE TERM "RELEVANT
12 QUESTIONS," HOW DO YOU DEFINE THAT?

13 A. "RELEVANT QUESTIONS" ARE THE REASON THAT THE
14 POLYGRAPH TEST WAS BEING GIVEN. IN OTHER WORDS, IF A PERSON IS
15 SUSPECTED OF A BANK ROBBERY, THE RELEVANT QUESTION WOULD BE,
16 DID YOU ROB THE BANK OF AMERICA?

17 Q. OKAY. WHICH RELEVANT QUESTIONS, IF ANY, APPEAR
18 ON PAGE 3 OF THIS DOCUMENT?

19 A. NUMBER FIVE AND NUMBER SEVEN ARE RELEVANT
20 QUESTIONS.

21 Q. NOW, WHOSE HANDWRITING APPEARS ON THIS DOCUMENT?

22 A. MY HANDWRITING.

23 Q. WHOSE INFORMATION, WHOSE ANSWERS WERE THESE?

24 A. THEY WERE MR. HOLLEY'S ANSWERS TO THOSE
25 QUESTIONS.

1 Q. WERE THOSE ANSWERS PROVIDED DURING THE PRETEST?

2 A. YES.

3 Q. AND WHAT IS PAGE 4?

4 A. PAGE 4 IS MY STANDARD SCORING SHEET.

5 Q. WHEN WAS THIS GENERATED?

6 A. IMMEDIATELY AFTER THE TEST.

7 Q. IS THIS THE ACTUAL TEST?

8 A. PARDON?

9 Q. THE ACTUAL TEST --

10 HEARING OFFICER ADLER: THE ACTUAL SCORING?

11 BY MR. MC GOWAN:

12 Q. LET ME CLARIFY THAT, I UNDERSTAND THERE'S A
13 PRETEST AND THEN YOU ACTUALLY HAVE THE ACTUAL POLYGRAPH TEST.

14 WHAT DOES THIS SCORING RELATE TO?

15 A. THIS SCORING RELATES TO THE TEST I JUST
16 CONDUCTED.

17 Q. SO THE RECORD IS CLEAR, IS THAT THE PRETEST OR
18 THE ACTUAL POLYGRAPH ITSELF?

19 A. WELL, THE POLYGRAPH ITSELF IS COMPRISED OF THE
20 PRETEST, THE TEST, AND THE POST-TEST. AND THIS WOULD BE
21 CONSIDERED PART OF THE POST-TEST.

22 Q. OKAY. WHOSE RESULTS ARE THESE?

23 A. THESE ARE THE RESULTS OF THE TEST I CONDUCTED
24 WITH MR. HOLLEY.

25 Q. AND WHAT WAS YOUR CONCLUSION?

1 A. DECEPTIVE TO THE RELEVANT ISSUE.

2 Q. DID YOU MAKE A DETERMINATION OR REACH A
3 CONCLUSION AS TO HOW DECEPTIVE?

4 A. I DID A NUMERICAL SCORING ON THE THREE-POINT
5 SCALE. HE WAS MINUS SIX, MINUS TWO, FOR A CUMULATIVE MINUS
6 EIGHT.

7 Q. WHAT DOES THAT MEAN?

8 A. IT MEANS HE FAILED THE POLYGRAPH TEST.

9 Q. BUT HOW -- TO WHAT DEGREE DID HE FAIL?

10 A. WE DON'T DEGREE IT. YOU EITHER PASS IT OR YOU
11 FAIL IT.

12 Q. WHAT WOULD HAVE BEEN A PASSING SCORE?

13 A. PLUS FOUR.

14 Q. AND WHAT WOULD HAVE BEEN INCONCLUSIVE?

15 A. ANYTHING BELOW PLUS FOUR TO MINUS THREE.

16 Q. OKAY. BUT IS THERE A GRADE ON HOW DECEPTIVE
17 SOMEBODY IS IF SOMEBODY ENDS UP, FOR EXAMPLE, A MINUS EIGHT
18 CUMULATIVE SCORE AS DISTINCT FROM MINUS FOUR OR MINUS FIVE?

19 A. OBVIOUSLY, IF A PERSON IS MINUS TWO, THEN
20 THEY'RE INCONCLUSIVE BORDERING ON DECEPTIVE. BUT IF THEY'RE
21 MINUS EIGHT, THEN THEY'RE CLEARLY DECEPTIVE.

22 Q. DO YOU USE THOSE TERMS "CLEARLY DECEPTIVE"?

23 A. ON OCCASION.

24 Q. IS THERE SOMETHING BEYOND CLEARLY DECEPTIVE, OR
25 IS THAT THE END POINT?

1 A. NO.

2 Q. IS THERE A LOWER SCORE THAN MINUS EIGHT USING
3 THIS PARTICULAR NUMBER OF QUESTIONS?

4 A. A LOWER SCORE MEANING --

5 Q. WELL, THERE BEING A --

6 MR. WILLIAMS: ALLOW HIM TO COMPLETE HIS ANSWER.

7 BY MR. MC GOWAN:

8 Q. I'M SORRY. LET ME WITHDRAW THE QUESTION. I'LL
9 TRY AND CLARIFY.

10 USING THIS NUMBER OF QUESTIONS, COULD THERE HAVE
11 BEEN A MINUS NINE, FOR EXAMPLE?

12 A. YES.

13 Q. OKAY. HOW FAR COULD IT HAVE GONE?

14 A. WELL, MATHEMATICALLY IF THERE WERE MINUSES,
15 MINUS 9, 18, THAT'S HIGHLY UNLIKELY.

16 Q. WHY SO?

17 A. BECAUSE PHYSIOLOGY IS A SUBSTANTIVE GRADING AT
18 THIS THREE-POINT SCALE, AND THE MIND IS A WONDERFUL THING.

19 Q. NOW, AFTER THIS PRETEST, CAN YOU EXPLAIN WHAT
20 WAS DONE WITH MR. HOLLEY IN ORDER TO MEASURE HIM
21 PHYSIOLOGICALLY FOR THIS TEST?

22 A. THERE WAS AN ACQUAINTANCE TEST REGARDING A
23 NUMBER AS I EXPLAINED EARLIER, AND HE LIED TO ME ABOUT THAT
24 NUMBER AT MY BEQUEST. THERE WAS SUFFICIENT PHYSIOLOGICAL
25 REACTION TO ALLOW ME TO GO FORWARD WITH THE TEST.

1 IN OTHER WORDS, IT BOTHERED HIM TO LIE.

2 Q. OKAY. WITHOUT GOING INTO OVERALL THE SAME
3 GROUND ABOUT YOUR PROTOCOL, WAS THERE ANYTHING ABOUT EITHER HIS
4 STATE OF HEALTH, TAKING MEDICATION, HIS STATE OF REST THAT
5 WOULD CONTRAINDICATE HIM GOING FORWARD ON THIS PARTICULAR TEST
6 ON THIS PARTICULAR DAY?

7 A. NO.

8 Q. LET ME ASK YOU THIS, IN TERMS OF ACTUALLY
9 CONDUCTING THE POLYGRAPH TEST, WAS THERE ANY APPARATUS OR OTHER
10 DEVICES USED IN ORDER TO MEASURE HIM PHYSIOLOGICALLY FOR THIS
11 TEST?

12 A. YOU MEAN BESIDES THE POLYGRAPH INSTRUMENT?

13 Q. YES. WHAT KIND OF INSTRUMENTATION IS USED?

14 MR. WILLIAMS: THE QUESTION PENDING, WAS THERE ANY
15 OTHER APPARATUS OTHER THAN -- HE'S TRYING TO ANSWER, AND THEN
16 HE SHOOTS ANOTHER QUESTION.

17 HEARING OFFICER ADLER: I THINK THE SECOND WAS AN
18 ATTEMPT TO CLARIFY THE FIRST.

19 MR. WILLIAMS: I DON'T KNOW, BUT IF WE CAN GET AN
20 ANSWER TO THE QUESTION TO BE CLARIFIED.

21 BY MR. MC GOWAN:

22 Q. I CAN MAKE THE RECORD CLEAR. I'LL WITHDRAW THE
23 LAST QUESTION, AND I'LL ASK ANOTHER QUESTION.

24 MR. WILLIAMS: WHAT ABOUT THE QUESTION THAT WASN'T
25 ANSWERED?

1 MR. MC GOWAN: I'VE WITHDRAWN THAT, SO IT'S
2 IRRELEVANT.

3 MR. WILLIAMS: THE FIRST ONE?

4 MR. MC GOWAN: IF I MAY CONTINUE?

5 HEARING OFFICER ADLER: THEY'RE BOTH WITHDRAWN.

6 START OVER.

7 BY MR. MC GOWAN:

8 Q. CAN YOU PLEASE EXPLAIN TO US WHEN YOU'RE
9 ACTUALLY CONDUCTING THE POLYGRAPH TEST, WHAT DO YOU DO IN ORDER
10 TO MEASURE WHAT YOU DID FOR MR. HOLLEY TO MEASURE HIS
11 PHYSIOLOGICAL REACTION?

12 A. I EXPLAINED TO HIM THE FUNCTIONING OF THE
13 POLYGRAPH INSTRUMENT ITSELF, HOW IT WORKED. I EXPLAINED THE
14 COMPONENTS, WHICH, AS I SAID, ARE RESPIRATORY, THAT THERE WERE
15 TWO CORRUGATED TUBES, BOTH OF WHICH BECOME VACUUMS WHEN LOCKED
16 IN. ONE WOULD GO AROUND HIS STOMACH, AND THE OTHER TUBE WOULD
17 GO ABOVE THAT ONE. THEY WOULD TELL ME ABOUT PREDICTABLE
18 CHANGES IN BREATHING.

19 THE SECOND COMPONENT IS THE ELECTRO-DERMAL, AND
20 IT CONSISTS OF TWO FINGER PLATES WHICH ARE PLACED ON THE LEFT
21 HAND INDEX AND RING FINGER, AND THAT WOULD TELL ME ABOUT
22 DEVIATIONS FROM SWEAT GLAND ACTIVITY, ANTICIPATED INCREASE IN
23 SWEAT GLAND ACTIVITY AT THE SPOT OF NUMBER FIVE.

24 AND LASTLY, THE CARDIO, WHICH IS DEPENDENT UPON
25 THE STANDARD CARDIO CUFF, MEDICAL CARDIO CUFF, WHICH WOULD GO

1 ON THE RIGHT ARM AND WOULD TELL ME ABOUT CHANGES IN PULSE RATE
2 AND, IMPORTANTLY, CHANGES IN BLOOD PRESSURE.

3 Q. AND ARE THESE MATTERS ACTUALLY DOCUMENTED AS THE
4 TEST PROCEEDS?

5 A. IN WHAT WAY?

6 Q. WELL, ARE THESE REFLECTED IN ANY KIND OF CHART
7 OR ANYTHING LIKE THAT?

8 HEARING OFFICER ADLER: WHAT ARE THESE CHARTS?

9 THE WITNESS: THOSE ARE CALLED "POLYGRAPH CHARTS,"
10 YOUR HONOR. AND EACH CHART, AS I SAID EARLIER, TWO, THREE OR
11 FOUR POLYGRAPH CHARTS COMPRISE THE POLYGRAPH TEST.

12 MR. MC GOWAN: IF I MAY APPROACH, I'D LIKE TO MARK
13 THIS POLYGRAPH CHART AS DEPARTMENT'S 18.

14
15 (DEPARTMENT'S EXHIBIT 18 WAS MARKED FOR
16 IDENTIFICATION BY THE HEARING OFFICER.)

17
18 MR. MC GOWAN: IF I MAY APPROACH.

19 HEARING OFFICER ADLER: MAKE SURE TO SHOW FRED.

20 MR. MC GOWAN: HE SHOULD HAVE AN IDENTICAL COPY.

21 HEARING OFFICER ADLER: OKAY.

22 BY MR. MC GOWAN:

23 Q. CAN YOU IDENTIFY WHAT I PUT BEFORE YOU?

24 A. YES.

25 Q. WHAT IS THIS?

1 A. THESE ARE THE THREE POLYGRAPHS THAT I RAN IN
2 MR. HOLLEY'S CASE.

3 Q. COULD YOU SHOW US, AND YOU NEED TO SHOW BOTH THE
4 HEARING OFFICER AND MR. WILLIAMS. IF YOU COULD STAND UP,
5 PERHAPS. YOU'LL NEED TO TAKE ONE OF THE STRIPS AND SHOW WHAT'S
6 REPRESENTED, AND IF YOU COULD EXPLAIN WHAT'S ON THESE CHARTS.

7 A. WELL, THE TOP TWO LINES ARE THE UPPER AND LOWER
8 TUBES THAT I SPOKE ABOUT BEFORE WHICH REFLECT THE BREATHING
9 PROCESS AND HIS RHYTHM.

10 THE NEXT LINE BELOW THE BREATHING IS THE SWEAT
11 GLAND ACTIVITY REFLECTING, IN THIS CASE, SOME RATHER DRAMATIC
12 ELECTRO-DERMAL ACTIVITY. AND THE BOTTOM IS THE CARDIO LINE
13 WHICH IS GIVING ME A PULSE RATE AND DEVIATIONS IN THAT NORMAL
14 BLOOD PRESSURE.

15 THE MARKINGS TO THE LEFT BORDER ARE SENSITIVITY
16 UNITS, WHICH ARE ELECTRONIC IN NATURE, AND THEY CORRESPOND TO
17 THE COMPONENTS THEY REPRESENT.

18 THE "60/" AT THE BEGINNING INDICATES THAT THE
19 COVER PRESSURE WAS INFLATED TO 60 MILLIMETERS, AND THAT LITTLE
20 "A" NEXT TO THAT INDICATES THAT THE CUFF WAS ATTACHED TO THE
21 ARM, AS OPPOSED TO SOME OTHER BODY PART.

22 MOVING ALONG, THE "X" IS WHERE I WOULD HAVE
23 ADVISED THE EXAMINEE THAT THE TEST WAS ABOUT TO BEGIN.
24 APPROXIMATELY 15 SECONDS AFTER THAT, YOU'LL SEE THE "NUMBER 1"
25 ANSWERED TO THE TWO STEM MARKS THAT GO STRAIGHT DOWN.

1 THE FIRST STEM MARK INDICATES THAT I BEGAN TO
2 ASK THE QUESTION THERE, AND THE SECOND STEM MARK IS WHERE I WAS
3 FINISHED ANSWERING THE QUESTION, AND THE "PLUS ONE" INDICATES
4 THAT MR. HOLLEY SAID "YES" TO NUMBER ONE.

5 IN OTHER WORDS, REGARDING THE NUMBER YOU WROTE,
6 DID YOU WRITE THE NUMBER 1, IF THIS WERE THE ACQUAINTANCE TEST.

7 IN THIS PARTICULAR CASE, AND TO BE SPECIFIC, THE
8 FIRST CHART AND THE FIRST QUESTION WOULD BE, ARE YOU SOMETIMES
9 KNOWN AS CHIP?

10 Q. TO MAKE SURE -- IF I MAY APPROACH, I WANT TO
11 MAKE SURE EVERYBODY IS ON THE SAME PAGE.

12 A. THIS IS NUMBER 1.

13 MR. MC GOWAN: JUST SO WE'RE LOOKING AT THE SAME
14 THING, 1-A ON THE CORNER.

15 HEARING OFFICER ADLER: I'M WITH YOU.

16 THE WITNESS: I GUESS I SHOULD EXPLAIN THE TITLE UP
17 THERE, THERE WOULD MR. HOLLEY'S NAME, WHICH BY THE WAY IS NOT
18 ON MY COPY. THAT WAS MISSED BY THE XEROX MACHINE.

19 THE "11/17/05" IS THE DATE OF THE EXAM. THE
20 TIME "10:28 A.M." REFLECTS THE TIME AT THE END OF THE CHART,
21 WHICH WOULD HAVE BEEN WHEN I SAID, THE TEST IS OVER. REMAIN
22 STILL. THAT GETS PUT UP IN THE HEADING.

23 "1-1" MEANS THIS FIRST POLYGRAPH, FIRST CHART.
24 AND "J.R.T." INDICATES THAT THAT'S MY IDENTIFIER AS THE
25 EXAMINER.

1 BY MR. MC GOWAN:

2 Q. BASED ON THIS FIRST CHART, ARE THERE ANY
3 SIGNIFICANT PORTIONS OF THIS CHART AS IT RELATES TO THE
4 QUESTIONS?

5 MR. WILLIAMS: THAT'S BROAD.

6
7 BY MR. MC GOWAN:

8 Q. I'D BE GLAD TO REPHRASE THE QUESTION.

9 BASED ON YOUR BACKGROUND, EDUCATION, TRAINING,
10 AND EXPERIENCE, DO YOU BELIEVE THAT THERE ARE ANY SIGNIFICANT
11 PORTIONS OF THIS CHART FOR THIS PARTICULAR EXAMINATION?

12 A. WELL, THERE'S SIGNIFICANT REACTION AT THE
13 RELEVANT QUESTION NUMBER 5. YOU CAN SEE THE MONSTROUS CARDIO
14 REACTION WHERE AS SOON AS I BEGAN TO ASK THE QUESTION, HIS
15 CARDIO DRAMATICALLY ROSE, AND ACTUALLY DID NOT COME DOWN.

16 YOU'LL NOTICE A LITTLE ARROW TO THE RIGHT OF THE
17 MINUS FIVE, AND THAT INDICATES THAT I INTERVENED AND BROUGHT
18 THAT CARDIO BACK DOWN INTO THE CHANNEL WHERE IT BELONGS. SO
19 THAT'S CONSIDERED A DRAMATIC REACTION IN THE CARDIO, AND
20 THERE'S A REACTION IN THE GALVANIC SKIN RESPONSE AND REACTION
21 IN THE NUMBER AND BOTH OF THOSE TWO UPPER RESPIRATORY CHANNELS.

22 Q. PLEASE RESUME YOUR SEAT.

23 ANY OTHER SIGNIFICANT PORTIONS OF THIS CHART?

24 A. NO, I WOULD SAY NO.

25 Q. NOW, WHY ARE THERE THREE CHARTS?

1 A. WHY ARE THERE THREE CHARTS?

2 Q. YES.

3 A. WELL, AS I EXPLAINED EARLIER, I AM LOOKING FOR
4 CONSISTENT SIGNIFICANT REACTION OR LACK THEREOF. IN ORDER FOR
5 MR. HOLLEY TO HAVE PASSED THIS TEST, I WOULD HAVE NEEDED LACK
6 THEREOF. IN OTHER WORDS, LITTLE OR NO PHYSIOLOGICAL REACTION
7 AS TO THOSE TWO RELEVANT QUESTION SPOTS.

8 CONSISTENCY IS GOTTEN BY REPETITION, THUS MY
9 ASKING OF THE QUESTIONS MORE THAN ONE TIME, AND IN THIS CASE,
10 THREE SEPARATE TIMES, THUS THREE SEPARATE CHARTS.

11 Q. AND WHAT WAS YOUR DETERMINATION WITH RESPECT TO
12 WHETHER OR NOT THERE WAS A SIGNIFICANT CONSISTENT REACTION
13 CONCERNING THE TWO RELEVANT QUESTIONS?

14 A. AS I SAID EARLIER, MY CUMULATIVE SCORE FOR THOSE
15 THREE CHARTS WAS MINUS SIX TO QUESTION NUMBER FIVE, WHICH BY
16 ITSELF IS ENOUGH TO FAIL THE POLYGRAPH. WE ALSO HAD MINUS TWO
17 TO THE RELEVANT QUESTION NUMBER SEVEN.

18 Q. IS THAT SUFFICIENT TO FAIL THE POLYGRAPH BY
19 ITSELF?

20 A. NO. MINUS TWO BY ITSELF WOULD NOT BE. IT WOULD
21 BE AN INCONCLUSIVE TEST IF IT JUST WERE A MINUS TWO.

22 Q. OKAY.

23 A. BUT IN TOTAL, MINUS EIGHT, AS I SAID, IS CLEARLY
24 DECEPTIVE.

25 Q. AND THEN TURNING TO THE SECOND CHART, ANY

1 SIGNIFICANT PORTION OF THAT PARTICULAR CHART BASED ON YOUR
2 BACKGROUND, TRAINING, EDUCATION, AND EXPERIENCE?

3 MR. WILLIAMS: WE'LL STIPULATE THAT EVERY QUESTION IS
4 BASED ON HIS BACKGROUND AND EDUCATION AND HONESTY. HE WILL SAY
5 THAT.

6 MR. MC GOWAN: THAT'S FINE.

7 BY MR. MC GOWAN:

8 Q. ANY SIGNIFICANT PORTIONS OF THAT CHART, THE
9 SECOND CHART?

10 A. WELL, AGAIN, THERE WAS SIGNIFICANT REACTION TO
11 THE RELEVANT QUESTIONS NUMBER FIVE AND SEVEN.

12 Q. SO WE'RE NOT GOING OVER THE SAME GROUND, IS
13 THERE ANYTHING SIGNIFICANTLY DIFFERENT CONCERNING THIS
14 PARTICULAR CHART THAN WHAT YOU TESTIFIED CONCERNING THE FIRST
15 CHART?

16 A. SIGNIFICANT REACTION IN THE GALVANIC SKIN
17 RESPONSE AND IN THE CARDIO CHANNELS. HIS PNEUMOGRAPH IS RATHER
18 BLASÉ, AND I DIDN'T CONSIDER THAT IN THE SCORING OF THE SECOND
19 CHART.

20 Q. WHAT ABOUT THE THIRD CHART, ANY SIGNIFICANT
21 PORTIONS OF THAT?

22 A. YOU KNOW, I'M -- I DON'T KNOW WHO PUT THESE
23 TOGETHER, BUT THEY'RE NOT RIGHT ON THIS THIRD.

24 Q. HOW SO?

25 A. WELL, I'M MISSING SOME QUESTIONS HERE. NOTHING

1 IS IN SYNC.

2 HEARING OFFICER ADLER: LOOK AT THE BACK, THEY'VE BEEN
3 TAPED IN A WAY THAT SOMEBODY THOUGHT MADE A CONTINUOUS LINE.

4 THE WITNESS: YOUR HONOR, I HAVE THE ORIGINALS WITH
5 ME. THAT WOULD BE A LITTLE LESS CONFUSING TO ME. I'VE GOT TWO
6 THREE'S, AN EIGHT, AND NO SEVEN ON THIS ONE. AND THIS IS CHART
7 NUMBER ONE, AND THIS IS CHART NUMBER THREE, AND I HAVE NO SEVEN
8 ON IT.

9 HEARING OFFICER ADLER: WELL, WHY DON'T YOU GET THE
10 ORIGINALS THEN?

11 THE WITNESS: MUCH BETTER.

12 MR. MC GOWAN: WE CAN HAVE ANOTHER COPY MADE.

13 HEARING OFFICER ADLER: I THINK WE'RE GOING TO NEED
14 TO.

15 THE WITNESS: ON CHART NUMBER THREE, SIGNIFICANT
16 CARDIO REACTION TO NUMBER FIVE AND NUMBER SEVEN, SIGNIFICANT
17 REACTION AT NUMBER FIVE IN THE GALVANIC SKIN RESPONSE,
18 SIGNIFICANT REACTION TO NUMBER SEVEN IN THE PNEUMOGRAPHS, BOTH
19 CHANNELS. AND IN TOTAL, IT'S A DECEPTIVE QUESTION.

20 MR. MC GOWAN: AT THIS TIME I WOULD LIKE TO MOVE
21 DEPARTMENT'S 18 INTO EVIDENCE.

22 HEARING OFFICER ADLER: ANY OBJECTION, FRED, ASSUMING
23 WE GET AN ACCURATE COPY?

24 MR. WILLIAMS: NO. I DON'T HAVE ANY OBJECTION TO IT.

25 I'M CERTAINLY NOT CONVINCED THAT THEY'RE

1 TRUTHFUL. AS LONG AS WE DON'T READ THAT INTO IT. IF HE'S
2 SAYING THOSE ARE HIS CHARTS THAT'S WHAT HE SAYS.

3 HEARING OFFICER ADLER: OKAY.

4 MR. WILLIAMS: I DON'T AGREE TO THEM GOING IN FOR THE
5 TRUTH OF THE MATTER THAT THESE ARE ACTUAL CHARTS GENERATED BY
6 THE MACHINE.

7 HEARING OFFICER ADLER: I UNDERSTAND YOU'RE NOT
8 STIPULATING TO HIS INTERPRETATION.

9
10 (DEPARTMENT'S EXHIBIT 18 WAS RECEIVED IN
11 EVIDENCE BY THE HEARING OFFICER.)

12
13 BY MR. MC GOWAN:

14 Q. NOW, AFTER YOU COMPLETED THIS TEST FOR
15 MR. HOLLEY AND YOU INTERPRETED THESE CHARTS, CAN YOU TELL US
16 DID YOU CALCULATE THE SCORES?

17 A. I DID.

18 Q.. WERE THOSE THE ONES WE ALREADY FOCUSED IN ON,
19 PAGE 4 OF DEPARTMENT'S 17?

20 A. YES.

21 Q. OKAY. NOW, DID YOU PROVIDE -- DID YOU CONDUCT
22 ANY SPECIFIC BLIND TEST OR BLIND FOLLOW UP WITH RESPECT TO THIS
23 PARTICULAR POLYGRAPH FOR MR. HOLLEY?

24 A. I CAUSED A BLIND REVIEW TO BE CONDUCTED BY
25 MR. RON HOMER OF SAN FRANCISCO.

1 Q. AND WHAT WERE THE RESULTS?

2 A. HE AGREED THEY WERE CLEARLY DECEPTIVE CHARTS.

3 MR. WILLIAMS: WHAT WAS THE NAME OF THE PERSON?

4 THE WITNESS: RON HOMER; H-O-M-E-R?

5 BY MR. MC GOWAN:

6 Q. WAS HIS SCORING ANY DIFFERENT THAN YOURS?

7 A. I DON'T KNOW.

8 Q. DID HE GIVE YOU ANY OTHER RESULTS OTHER THAN
9 WHETHER OR NOT HE AGREED THAT THIS WAS CLEARLY DECEPTIVE?

10 A. HE WOULD HAVE TOLD ME WHAT HIS SCORING WAS, BUT
11 THE ONLY THING THAT GOES FORWARD IS THE FACT THAT HE AGREES
12 WITH THE FACT THAT THEY'RE DECEPTIVE CHARTS.

13 Q. NOW, APART FROM YOUR SCORING CHART, IS YOUR --
14 THIS PARTICULAR TESTING CONCERNING MR. HOLLEY, WAS THAT
15 REFLECTED IN ANY REPORT?

16 A. YES.

17 Q. AND REFERRING YOU BACK TO DEPARTMENT'S 15, CAN
18 YOU TELL US WHETHER OR NOT THIS PARTICULAR REPORT TRUTHFULLY
19 AND ACCURATELY SETS FORTH THIS PARTICULAR TESTING PROCESS WITH
20 RESPECT TO BENJAMIN HOLLEY?

21 A. YES, IT DOES.

22 MR. MC GOWAN: AT THIS TIME I WOULD LIKE TO MOVE
23 DEPARTMENT'S 15 INTO EVIDENCE.

24 MR. WILLIAMS: YOUR HONOR, THE ONLY OBJECTION I HAVE
25 IS TO THE TESTIMONY REGARDING WHAT SOMEONE ELSE FOUND TO BE

1 DECEPTIVE, MR. HOMER. THAT'S STRICTLY HEARSAY. HE'S NOT HERE
2 TO TESTIFY. AND IF IT ISN'T SUFFICIENT FOR MR. TRIMARCO'S
3 TESTIMONY TO BE ACCEPTABLE, THEN IT MUST FALL.

4 I DO OBJECT TO THE HEARSAY TESTIMONY OF WHAT
5 SOMEONE ELSE SAID THEY DID, AND HE DOESN'T HAVE EVEN THE
6 EXAMINATION DONE BY MR. HOMER TO OFFER US AT THIS POINT IN
7 TIME.

8 HEARING OFFICER ADLER: ALL RIGHT. I'M GOING TO ADMIT
9 THE DOCUMENT WITH THE UNDERSTANDING THAT THERE IS SOME MATERIAL
10 IN THERE OF QUESTIONABLE VALUE.

11
12 (DEPARTMENT'S EXHIBIT 15 WAS RECEIVED IN
13 EVIDENCE BY THE HEARING OFFICER.)

14
15 MR. WILLIAMS: OKAY.

16 BY MR. MC GOWAN:

17 Q. NOW, IS THERE ANYTHING ELSE APART FROM YOUR
18 REPORT AND THE SCORING AND THE CHARTS, ANYTHING ELSE CONCERNING
19 THIS PARTICULAR TEST AND PROCESS CONCERNING MR. HOLLEY THAT YOU
20 HAVEN'T SHARED WITH US?

21 MR. WILLIAMS: YOUR HONOR, I DO OBJECT TO THESE BROAD
22 QUESTIONS THAT CALL FOR A NARRATIVE.

23 YOU SHOULD ASK AN EXPERT SPECIFIC THINGS. THE
24 MAN'S BEEN UP HERE FOR A COUPLE OF HOURS NOW, AND IT JUST LEADS
25 TO A LOT OF OTHER MATERIAL COMING INTO THE RECORD THAT MAY OR

1 MAY NOT BE RELEVANT.

2 HEARING OFFICER ADLER: WELL, THIS SOUNDS TO ME LIKE A
3 CLEAN-UP QUESTION. I'M GOING TO ALLOW IT.

4 BY MR. MC GOWAN:

5 Q. IS THERE ANYTHING ELSE THAT YOU CONSIDER TO BE
6 SIGNIFICANT OR MATERIAL IN TERMS OF THIS PARTICULAR POLYGRAPH
7 EXAMINATION ON THIS PARTICULAR PERSON THAT YOU HAVEN'T ALREADY
8 SHARED WITH US?

9 A. WELL, OF COURSE, THE VIDEOTAPE IS THE BEST
10 EVIDENCE OF WHAT HAPPENED IN THAT ROOM THAT DAY, AS FAR AS WHAT
11 WAS SAID AND WHAT WAS DONE. THAT IN CONJUNCTION WITH THE
12 CHARTS AND REPORT WILL ALLOW ANOTHER EXPERT TO LOOK AT THE WORK
13 AND COME TO A PROFESSIONAL CONCLUSION.

14 Q. ANYTHING ELSE?

15 A. NOT THAT I RECALL.

16 MR. MC GOWAN: COULD WE TAKE A MOMENT, I'D LIKE TO
17 HAVE A SIDEBAR, IF I MAY.

18 HEARING OFFICER ADLER: SURE.

19
20 (DISCUSSION OFF THE RECORD.)

21
22 MR. MC GOWAN: JUST AS A FOLLOW UP TO OUR SIDEBAR
23 DISCUSSION, I WOULD LIKE TO, JUST FOR THE RECORD, INDICATE THAT
24 WE WON'T BE WAIVING ANY OBJECTIONS.

25 HEARING OFFICER ADLER: NO. I UNDERSTAND.

1 MR. MC GOWAN: OKAY. THANK YOU.

2
3 DIRECT EXAMINATION CONTINUED

4
5 BY MR. MC GOWAN:

6 Q.. DO YOU KNOW AN INDIVIDUAL BY THE NAME OF JOHN
7 GROGAN?

8 A. NOT PERSONALLY.

9 Q. OKAY. BUT YOU KNOW HIM WITHIN THE AREA OF
10 POLYGRAPH TESTING?

11 A. I KNOW HIS REPUTATION.

12 Q.. WHAT DO YOU KNOW ABOUT HIS REPUTATION?

13 A. IT'S NOT GOOD.

14 Q.. WHY? WHAT'S THE BASIS FOR THAT?

15 A. I UNDERSTAND HE'S NOT A QUALIFIED POLYGRAPH
16 EXAMINER.

17 Q. HOW DO YOU KNOW THAT?

18 A. I KNOW THAT HE, ON SEVERAL OCCASIONS, TRIED TO
19 GAIN ADMITTANCE TO DIFFERENT PROFESSIONAL ORGANIZATIONS, AND
20 THEY WON'T HAVE HIM.

21 Q.. HOW DO YOU KNOW THAT?

22 A. IT'S BEEN TOLD TO ME.

23 Q.. WHO ADVISED YOU?

24 MR. WILLIAMS: I'M GOING TO MOVE TO STRIKE ANY
25 TESTIMONY THAT IS HEARSAY TESTIMONY THAT IS DISPARAGING ANOTHER

1 POLYGRAPH EXAMINER'S REPUTATION.

2 THAT'S THE SLEAZIEST TYPE OF TESTIMONY THAT I
3 COULD IMAGINE HE WOULD DO. NOW, IF HE WANTS TO CHALLENGE
4 MR. GROGAN, HE CAN DO THAT.

5 HEARING OFFICER ADLER: THIS IS PRETTY RANK HEARSAY.

6 MR. MC GOWAN: WELL, I BELIEVE THERE'S CASE LAW IN
7 CALIFORNIA, DESPITE MR. WILLIAMS' INVECTIVE, ABOUT REPUTATION
8 TESTIMONY ABOUT EXPERTS. THEY PUT THEIR EXPERTISE AND
9 REPUTATIONS ON THE LINE WHEN THEY COME IN TO TESTIFY --

10 HEARING OFFICER ADLER: I DON'T MIND THE FACT THAT
11 IT'S OBJECTIONABLE, BUT PERHAPS IT WAS DEFAMATORY BY SOMEBODY.
12 THAT'S REALLY NOT MY ISSUE. MY ISSUE IS THAT IT IS DOUBLE
13 HEARSAY.

14 MR. MC GOWAN: OKAY. I'LL TRY TO --

15 HEARING OFFICER ADLER: THAT'S AT IT'S VERY BEST. I
16 MEAN, HE WASN'T INVOLVED IN THE ADMISSIONS PROCESS. HE DOESN'T
17 KNOW ANYTHING. HE'S GETTING THAT FROM SOMEBODY WHO'S GETTING
18 IT FROM SOMEBODY ELSE.

19 I'M NOT GOING THERE, VINCE.

20 MR. MC GOWAN: I UNDERSTAND THAT. LET ME TRY TO BE
21 MORE SPECIFIC.

22 BY MR. MC GOWAN:

23 Q. DO YOU KNOW IF MR. GROGAN IS A MEMBER OF THE
24 ORGANIZATIONS, THE POLYGRAPH ORGANIZATIONS THAT YOU'VE
25 TESTIFIED THAT YOU'RE A MEMBER OF?

1 A. TO THE BEST OF MY KNOWLEDGE, HE'S NOT.

2 Q. LET ME ASK YOU THIS, ARE YOU CERTIFIED BY ANY
3 ORGANIZATION AS A POLYGRAPH EXPERT?

4 A. YES.

5 Q. WELL, BY WHOM?

6 A. AMERICAN POLYGRAPH ASSOCIATION.

7 MR. WILLIAMS: THE RECORD IS PREGNANT WITH THE MAN'S
8 STATEMENTS ABOUT HIS QUALIFICATIONS AND THE ORGANIZATIONS HE
9 BELONGS TO. HE'S GONE THROUGH THAT ONCE.

10 MR. MC GOWAN: IT'S FOUNDATIONAL TO SOMETHING ELSE.
11 BY MR. MC GOWAN:

12 Q. DO YOU KNOW IF MR. GROGAN IS CERTIFIED BY THE
13 AMERICAN POLYGRAPH ASSOCIATION?

14 A. NOT TO THE BEST OF MY KNOWLEDGE.

15 MR. MC GOWAN: THANK YOU. I HAVE NOTHING FURTHER.

16 HEARING OFFICER ADLER: WE'RE GOING TO TAKE A BREAK.

17

18 (LUNCH RECESS.)

19

20 HEARING OFFICER ADLER: BACK ON THE RECORD.

21

22 CROSS-EXAMINATION

23

24 BY MR. WILLIAMS:

25 Q. MR. TRIMARCO, LET ME ASK YOU A COUPLE QUESTIONS

1 REGARDS YOUR TESTIMONY SURROUNDING YOUR EXPERTISE, DO YOU
2 RECALL SPEAKING TO ME THE FIRST TIME I SPOKE TO YOU? DO YOU
3 RECALL THAT CONVERSATION?

4 A. NO, I DON'T.

5 Q. DO YOU RECALL YOU TOLD ME THAT YOU HAD ONLY
6 ASKED QUESTIONS THAT ARE CONTAINED IN THE LETTER OF DISCHARGE
7 WITH REGARD TO WHAT THE INDIVIDUALS WERE SUPPOSED TO HAVE SAID
8 IN THE RESTAURANT?

9 A. NO, I DON'T.

10 Q. DO YOU RECALL ME GOING OVER THE LETTER ON THE
11 TELEPHONE WITH REGARD TO ALLEGATIONS OF COMMENTS MADE THAT YOU
12 CHARACTERIZED AS BEING OFFENSIVE REMARKS SUCH AS --

13 A. I REMEMBER WE DISCUSSED THAT. I DIDN'T KNOW
14 THAT YOU WERE READING A LETTER.

15 Q. I DIDN'T TELL YOU I WAS READING FROM THE LETTER?

16 A. WELL, I DON'T REMEMBER.

17 Q. OKAY. DID I USE THE TERM "FUCKING PIGS" AS
18 BEING A TERM THAT THEY WERE ALLEGED TO HAVE USED?

19 A. NO, I DON'T THINK SO.

20 Q. DID I USE THE WORDS "WHITE MOTHER FUCKERS"?

21 A. I DON'T THINK SO.

22 Q. DID I USE THE WORDS "FUCKING COWARDS"?

23 A. I DON'T THINK SO.

24 Q. SO YOU DON'T THINK I SAID ANY OF THE WORDS THAT
25 WERE ON THE LETTER OF DISCHARGE; IS THAT CORRECT?

1 A. I'VE NEVER SEEN THE LETTER OF DISCHARGE.

2 Q. THAT'S MY NEXT QUESTION. YOU NEVER SAW THE
3 LETTER OF DISCHARGE?

4 A. NOT THAT I RECALL.

5 Q. DIDN'T YOU RECEIVE A PACKET FROM MS. MATSUZAKI
6 OF THE DEPARTMENT OF PUBLIC WORKS?

7 A. I DID, YES.

8 Q. AND WHAT DID THAT PACKET CONTAIN?

9 A. DOCUMENTS.

10 Q. WHAT DOCUMENTS?

11 A. DOCUMENTS THAT I -- A POLICE REPORT, PERHAPS,
12 MAYBE SOME OFFICIAL DEPARTMENT RENDITIONS. I DON'T REMEMBER
13 WHAT THEY WERE SPECIFICALLY.

14 Q. WHAT DO YOU CHARACTERIZE AS DEPARTMENT'S
15 RENDITION?

16 A. OF THE EVENT.

17 Q. OH. DID ANY OF THEM SAY, "LETTER OF DISCHARGE"?

18 A. I DON'T RECALL.

19 Q. DID ANY SAY, "LETTER OF INTENT TO DISCHARGE"?

20 A. I DON'T RECALL.

21 Q. IS THAT SOMETHING YOU WOULD HAVE BEEN INTERESTED
22 IN AS PERSON GIVING THE POLYGRAPH EXAM?

23 A. I MIGHT, I MIGHT NOT.

24 Q. LET ME ASK YOU THIS, SIR, I KNOW YOUR MEMORY IS
25 NOT TOO WELL, BUT ACCORDING TO WHAT YOU TESTIFYING TO NOW, ON

1 EXHIBIT 17, AT THE BOTTOM HALF OF THAT, YOU HAVE IT BEFORE YOU,
2 YOU HAVE THOSE VERY COMMENTS THAT I ASKED YOU ABOUT WRITTEN --

3 A. I SURE DID. I THINK THIS WAS ONE OF THE
4 DOCUMENTS THAT JANE SENT ME. PERHAPS IT WAS THE POLICE REPORT.

5 Q. OKAY. AND DO YOU RECALL TELLING ME ON THE
6 TELEPHONE THAT YOU WOULD ASK THE EMPLOYEES, MR. DAMPIER AND
7 MR. HOLLEY, IF THEY MADE THOSE COMMENTS?

8 DO YOU RECALL TELLING ME THAT?

9 A. NOT SPECIFICALLY.

10 Q. DO YOU RECALL TELLING ME THAT IF THEY DID NOT
11 MAKE THE COMMENTS ALLEGED ON THAT LETTER OF DISCHARGE, THEY
12 WOULD PASS THE EXAMINATION?

13 A. I'M ALMOST POSITIVE I SAID THAT.

14 Q. NOW, DID YOU ASK HIM THOSE QUESTIONS IN THE
15 POLYGRAPH?

16 A. YES, I DID.

17 Q. MR. HOLLEY?

18 A. YES, I DID.

19 Q. DID YOU ASK THEM THOSE SPECIFIC QUESTIONS?

20 A. WHICH SPECIFIC QUESTIONS?

21 Q. "FUCKING PIGS," DID YOU SAY THAT? DID YOU ASK
22 HIM IF HE SAID THAT?

23 A. WELL, IF YOU READ MY REPORT --

24 Q. MY QUESTION TO YOU IS --

25 MR. MC GOWAN: I'LL OBJECT TO INTERRUPTING THE

1 WITNESS. I'LL OBJECT TO THAT.

2 I WOULD REQUEST THAT THE HEARING OFFICER DIRECT
3 MR. WILLIAMS NOT TO INTERRUPT THE WITNESS WHILE HE'S ANSWERING
4 HIS QUESTION.

5 MR. WILLIAMS: ALONG WITH THE ADMONISHMENT TO THE
6 WITNESS TO ANSWER THE QUESTION ASKED.

7 HEARING OFFICER ADLER: MR. TRIMARCO, AS BEST YOU CAN,
8 WOULD YOU ANSWER PRECISELY THE QUESTION THAT'S ASKED.

9 THE WITNESS: PRECISELY, YOUR HONOR, I SPOKE WITH
10 MR. HOLLEY REGARDING OFFENSIVE COMMENTS AS IT IS DOCUMENTED IN
11 MY REPORT. THE TERMS "OFFENSIVE COMMENTS" AND "OFFENSIVE
12 REMARKS" WERE DEFINED BY THE EXAMINEE TO MY SATISFACTION.

13 FURTHER, THE SPECIFIC OBSCENITIES ALLEGED, WHICH
14 ARE THE WORDS YOU JUST MENTIONED, THE SPECIFIC OBSCENITIES
15 ALLEGED BY THE COMPLAINING DEPUTIES WERE DISCUSSED WITH THE
16 EXAMINEE, WHO AGREED THAT THE OBSCENITIES SATISFIED THE AGREED
17 DEFINITION OF "OFFENSIVE COMMENTS" OR "OFFENSIVE REMARKS."
18 BY MR. WILLIAMS:

19 Q. MAY I ASK THE QUESTION AGAIN?

20 A. PLEASE.

21 Q. DID YOU ASK MR. HOLLEY IF HE MADE THE COMMENT
22 "FUCKING PIGS" DURING THE EXAMINATION?

23 A. YES, I DID.

24 Q. AND WHAT WAS HIS RESPONSE?

25 A. HE SAID HE DID NOT.

1 Q. DID YOU ASK HIM SPECIFICALLY IF HE MADE THE
2 COMMENT "WHITE MOTHER FUCKERS" DURING THE EXAMINATION?

3 A. YES.

4 Q. AND WHAT WAS HIS RESPONSE TO THAT?

5 A. HE DENIED ALL OF THOSE WORDS. WE CAN SHORTEN
6 THAT.

7 Q. I'M ASKING YOU WHAT WAS HIS RESPONSE TO THAT
8 COMMENT?

9 A. NO.

10 Q. EXCUSE ME?

11 A. NO.

12 Q. AND DID YOU ASK HIM IF HE THE MADE THE COMMENT
13 "FUCKING COWARDS"?

14 A. I ASKED HIM.

15 Q. AND WHAT WAS HIS RESPONSE?

16 A. NO.

17 Q. AND DID YOU ASK HIM IF HE MADE THE COMMENT
18 "FUCKING COWARDS, THEY'RE LEAVING NOW"?

19 SPECIFICALLY, DID YOU ASK HIM THAT QUESTION?

20 A. YES.

21 Q. AND WHAT WAS HIS RESPONSE?

22 A. NO.

23 Q. AND DID YOU ASK HIM IF HE MADE THE COMMENT
24 "FUCKING WHITE COWARDS"?

25 I DIDN'T HEAR YOUR ANSWER.

1 A. I DIDN'T ANSWER YET.

2 Q. THINK ABOUT IT AND GIVE US AN ANSWER, IF YOU
3 CAN.

4 A. THE ANSWER IS "NO."

5 Q. YOU DIDN'T ASK HIM THAT?

6 A. I ASKED, AND HE ANSWERED, "NO."

7 Q. LET ME BACK UP. YOU DID ASK HIM OR DID YOU ASK
8 HIM TO MR. HOLLEY, DID YOU MAKE THE COMMENT "FUCKING WHITE
9 COWARDS" TO THE DEPUTIES?

10 A. YES.

11 Q. AND WHAT WAS HIS ANSWER?

12 A. "NO."

13 Q. NOW, I DON'T KNOW, CAN YOU READ WHAT THE LAST
14 ONE SAYS?

15 A. IT HAS TO DO WITH "CRACKER COPS," I THINK.

16 Q. DID YOU ASK HIM IF HE MADE AND REFERRED TO THE
17 COPS AS "CRACKER COPS"?

18 A. PROBABLY.

19 Q. YOU DON'T RECALL?

20 A. NO.

21 Q. WHAT DO YOU BELIEVE HE PROBABLY ANSWERED?

22 A. IF I ASKED IT, HE SAID, "NO."

23 Q. NOW, AND YOU BELIEVE THAT THESE COMMENTS WERE
24 CONTAINED ON THE -- ONE OF THE DOCUMENTS YOU RECEIVED FROM
25 MS. MATSUZAKI?

1 A. YES, THAT'S RIGHT.

2 Q. NOW, DID YOU REQUEST ALL DOCUMENTS PERTAINING TO
3 THE DISCIPLINE THAT WAS IMPOSED UPON THESE TWO INDIVIDUALS FROM
4 PUBLIC WORKS DEPARTMENT?

5 A. NO.

6 Q. THEY JUST SENT THEM ON THEIR OWN?

7 A. I HAVE NO IDEA.

8 Q. WELL, DIDN'T YOU ASK THEM?

9 A. LET ME ANSWER AGAIN, NO, I DIDN'T REQUEST IT.

10 Q. NOW, MY QUESTION IS THEY JUST SENT THEM TO YOU
11 WITHOUT YOU REQUESTING IT?

12 A. THEY JUST SENT THEM TO ME.

13 Q. HOW MUCH DID YOU CHARGE FOR EACH POLYGRAPH TEST?

14 A. I BELIEVE I TOLD YOU IN OUR TELEPHONE
15 CONVERSATION IT WOULD BE THE STANDARD PRICE, \$1700. I CHARGE
16 1700 FOR THE FIRST, AND 1000 FOR THE SECOND.

17 Q. SO IT WAS \$2700 FOR BOTH OF THEM; IS THAT
18 CORRECT?

19 A. TO THE BEST OF MY RECOLLECTION, YES.

20 Q. COULD IT HAVE BEEN MORE?

21 A. IT COULD HAVE BEEN, BUT I BELIEVE THAT'S WHAT I
22 QUOTED. I BELIEVE THAT'S WHAT I CHARGED.

23 Q. CHARGE THEM \$7,000?

24 A. NO.

25 Q. EXCUSE ME?

1 A. NO.

2 Q. WHAT DO YOU CHARGE FOR TESTIFYING HERE TODAY?

3 A. \$2,000 PER HALF DAY. ON THAT FEE SCHEDULE, IF
4 IT WERE CURRENT, IT WOULD BE \$2,500 FOR HALF DAY.

5 Q. WHAT'S YOUR NORMAL CHARGE?

6 A. TODAY, AS I SIT HERE, IT'S \$2,500 PER HALF DAY.
7 BACK WHEN I QUOTED TO JANE WHAT MY FEE SCHEDULE WAS, IT WAS
8 \$2,000 PER HALF DAY.

9 Q. HOW MUCH FOR A WHOLE DAY?

10 A. WELL, HALF AND HALF. SO TODAY IT'S \$4000.

11 Q. EXCUSE ME?

12 A. \$4,000.

13 Q. FOR THE WHOLE DAY?

14 A. FOR THE WHOLE DAY.

15 Q. IS THAT SOMETHING NEW THAT YOU JUST STARTED
16 CHARGING THEM? HOW LONG HAVE YOU HAD THOSE CHARGES?

17 A. SINCE I RETIRED IN '98.

18 Q. OKAY.

19 A. AND THEY'VE ADJUSTED PERIODICALLY.

20 Q. HOW HIGH HAVE YOU BEEN?

21 A. AS HIGH AS I AM TODAY.

22 Q. SO 4,000 FOR THE WHOLE DAY?

23 A. NO. NO. BACK WHEN I WAS HIRED, IT WAS \$2,000
24 PER HALF DAY. IN 2007, AS I SIT HERE, IT'S 2,500 A DAY. SO
25 I'M GOOD TO MY QUOTE WHEN I SPOKE TO YOU ON THE PHONE AND WHEN

1 I TOLD JANE I WOULD TESTIFY BACK THEN BEFORE THE TEST WAS
2 CONDUCTED.

3 Q. OKAY. ARE YOU FAMILIAR WITH A PERSON BY THE
4 NAME OF -- STRIKE THAT.

5 LET ME ASK YOU ANOTHER THING, YOU TESTIFIED IN
6 THE CASE OF MR. HOLLEY THAT I, THE SPEAKER, FRED WILLIAMS, WAS
7 PRESENT DURING THE POLYGRAPH TEST?

8 A. AT SOME TIME DURING THE TIME YOU WERE PRESENT.

9 Q. ISN'T IT A FACT THAT MR. HOLLEY CAME TO YOUR
10 OFFICE IN THE MORNING ON THE DAY HE TOOK THE TEST ALONE?

11 A. YES.

12 Q. AND ISN'T IT A FACT THAT FIRST TIME YOU MET ME
13 PERSONALLY WAS WHEN I BROUGHT MR. DAMPIER DOWN TO TESTIFY?

14 A. RIGHT.

15 Q. AND I MET YOU IN THE HALLWAY AS YOU WERE COMING
16 OUT OF THE MEN'S ROOM, BECAUSE I ASKED YOU WHERE THE MEN'S ROOM
17 WAS, AND YOU SHOWED ME. DO YOU RECALL THAT?

18 A. NO, I DON'T.

19 Q. AND YOU SAID, "I RECOGNIZE YOUR VOICE BECAUSE
20 YOU SOUND LIKE MORGAN FREEMAN."

21 A. I DO REMEMBER THAT.

22 Q. AND YOU DIRECTED ME TO THE MEN'S ROOM.

23 NOW, WASN'T THAT WHEN I FIRST MET YOU WHEN I
24 BROUGHT MR. DAMPIER TO THE OFFICE?

25 A. IT WAS, BUT WE WEREN'T DONE. OUR TEST HADN'T

1 CONCLUDED.

2 Q. SIR, ISN'T IT A FACT YOU TOLD ME IN THE HALLWAY
3 THAT MR. HOLLEY HAD FAILED THE TEST?

4 A. AND I HADN'T DISCHARGED HIM YET. I WENT BACK IN
5 THERE, IF YOU RECALL.

6 Q. I RECALL, SIR, THAT MR. HOLLEY WAS GONE.

7 AS A MATTER OF FACT, DIDN'T THE DEPARTMENT TELL
8 YOU THAT THEY WANTED TO BRING THESE INDIVIDUALS SEPARATELY TO
9 YOUR OFFICE, THEY DIDN'T WANT THEM TO GO TOGETHER?

10 DO YOU RECALL THAT?

11 A. I DON'T RECALL THAT.

12 Q. OKAY. DID I ENTER YOUR OFFICE AT ANY TIME WHILE
13 MR. HOLLEY WAS IN THERE?

14 A. NO.

15 Q. YOU TESTIFIED ABOUT THE ABORTION, THAT IS THE
16 ABORTED TEST OF MR. DAMPIER. ISN'T IT A FACT THAT YOU RECEIVED
17 A TELEPHONE CALL FROM ME WHILE YOU WERE EXAMINING MR. DAMPIER
18 IN THE PRETEST STAGE?

19 A. NO.

20 Q. YOU DIDN'T GET A TELEPHONE CALL FROM YOUR DESK?

21 A. NO.

22 Q. OKAY. WOULD YOU BE SURPRISED IF THE TAPE
23 RECORDING SHOWS THERE WAS A TELEPHONE CALL WHILE YOU WERE
24 SPEAKING TO MR. DAMPIER, AND YOU SAID, "I'M IN THE MIDDLE OF A
25 TEST," AND HUNG UP THE PHONE ON THE TAPE?

1 A. I'D BE SHOCKED.

2 Q. YOU'D BE SHOCKED?

3 A. I DON'T REMEMBER THAT AT ALL.

4 Q. OKAY. DO YOU RECALL ME TELLING YOU NOT TO
5 COMPLETE THE TEST?

6 A. YES.

7 Q. AND WHEN WAS THAT?

8 A. WHEN I WENT OUT INTO THE HALLWAY AND SAW YOU.

9 Q. YOU HAD STOPPED THE TEST?

10 A. YES.

11 Q. AND CAME OUT TO SPEAK TO ME?

12 A. WELL, ACTUALLY, MR. DAMPIER STOPPED THE TEST
13 UNBEKNOWNST TO YOU. HE SUDDENLY HAD A NECK PROBLEM AND SAID HE
14 DIDN'T WANT TO GO FORWARD WITH IT. SO AT THAT POINT, I STOPPED
15 THE TEST.

16 AND AS I WENT OUT TO ADVISE YOU ABOUT THAT, MY
17 SECRETARY, MY RECEPTIONIST SAID, "MR. WILLIAMS WANTS YOU TO
18 STOP THE TEST."

19 Q. YOU DIDN'T GET A PHONE CALL FROM ME?

20 A. I DON'T REMEMBER A PHONE CALL.

21 Q. OKAY. NOW, LET ME ASK YOU THIS, WHEN YOU TALKED
22 ABOUT THE FALSE POSITIVES AND FALSE NEGATIVES, YOU EVER HEARD
23 OF AN ANTIPOLYGRAPH ORGANIZATION?

24 A. THERE'S MANY OF THEM.

25 Q. WELL, THE ONE THAT -- LET'S SEE, INCIDENTALLY

1 YOU WERE ON DR. PHIL'S SHOW NOT LONG AGO, WEREN'T YOU, WHERE
2 YOU CONDUCTED A TEST FOR --

3 A. A MONTH AGO ABOUT, AND I'LL BE ON NEXT WEEK.

4 Q. YEAH. AND YOU KNOW WHO GEORGE MASCHKE IS?

5 A. YES.

6 Q. M-A-S-C-H-K-E?

7 A. I KNOW HIM WELL. I POLYGRAPHED HIM.

8 Q. YES. AND YOU FLUNKED HIM ON THE TEST; ISN'T
9 THAT CORRECT?

10 A. I ABSOLUTELY DID.

11 Q. YES. AND YOU EVER READ ANYTHING HE WROTE ABOUT
12 YOU IN YOUR HONESTY -- YOUR DISHONESTY?

13 A. ACTUALLY, NO. I'VE READ THINGS THAT ARE RATHER
14 SCATHING, BUT FOR THE MOST PART, MASCHKE, DEPENDING ON HIS MOOD
15 OR MAYBE WHICH DAY OF THE MONTH IT IS, HE ALTERNATES BETWEEN
16 TRYING TO BE FAIR AND BEING A COMPLETE JERK.

17 Q. LET ME ASK YOU TO MAKE SURE WE'RE TALKING ABOUT
18 THE SAME PERSON -- YOUR HONOR, I HAVE A DOCUMENT THAT APPEARS
19 TO BE -- AND THESE ARE EXTRAPOLATED FROM INTERNET POSTINGS
20 REGARDING MR. TRIMARCO AND HIS MANNER OF POLYGRAPH EXAMINING OF
21 PERSPECTIVE EMPLOYEES, AND I'D LIKE TO HAVE THIS MARKED AS THE
22 APPELLANT'S FIRST IN ORDER.

23

24 (APPELLANT'S EXHIBIT A WAS MARKED FOR
25 IDENTIFICATION BY THE HEARING OFFICER.)

1 MR. WILLIAMS: WHAT IS THAT NUMBER?

2 HEARING OFFICER ADLER: A.

3 MR. WILLIAMS: A?

4 HEARING OFFICER ADLER: WE MARKED IT FIRST IN ORDER.

5 MR. WILLIAMS: I'D LIKE TO SHOW A COPY TO THE WITNESS.

6 MR. MC GOWAN: THIS IS UNDER THE JESSE DAMPIER CASE.

7 MR. WILLIAMS: YOU'RE RIGHT. LET ME CHANGE THAT. I

8 WILL PUT A NEW COVER SHEET ON.

9 THANK YOU FOR THAT.

10 MR. MC GOWAN: I'M ALWAYS GLAD TO CORRECT THE RECORD.

11 MR. WILLIAMS: WHAT IS THAT CASE NUMBER?

12 HEARING OFFICER ADLER: IT'S APPELLANT'S A.

13 MR. WILLIAMS: THE CASE NUMBER.

14 HEARING OFFICER ADLER: THE NUMBER IS 06-018.

15 BY MR. WILLIAMS:

16 Q. WOULD YOU TAKE A LOOK AT THAT DOCUMENT, SIR, AND
17 TELL ME IF YOU'VE SEEN THAT BEFORE?

18 A. NO.

19 Q. NEVER SEEN IT BEFORE?

20 A. NO. I DON'T READ HIS STUFF.

21 Q. WELL, HOW WOULD YOU KNOW WHAT HIS STUFF IS IF
22 YOU DON'T READ IT?

23 A. I'M INFORMED ABOUT IT. PEOPLE CALL ME LAUGHING.

24 Q. HAVE YOU HAD MORE OR LESS --

25 A. THIS HAS BEEN ON THAT INTERNET FOR YEARS,

1 MR. WILLIAMS.

2 Q. HOW IS THAT?

3 A. WHY DID YOU HIRE ME IF YOU KNEW --

4 Q. I DIDN'T KNOW ABOUT YOU, SIR.

5 HEARING OFFICER ADLER: PLEASE, THIS IS NOT A PLACE
6 FOR COLLOQUY.

7 BY MR. WILLIAMS:

8 Q. SIR, IS THIS THE ONLY PUBLICATION THAT YOU'RE
9 AWARE OF THAT BESMIRCHES YOUR HONESTY AND CAPABILITY AS A
10 POLYGRAPH?

11 A. I WOULD IMAGINE ANY ANTIPOLYGRAPH ORGANIZATION
12 OUT THERE WOULD TAKE A SHOT AT ME AS ONE OF LEADERS IN THE
13 FIELD.

14 Q. THAT MAY BE SO, SIR, BUT THIS IS NOT AN
15 ANTIPOLYGRAPH ORGANIZATION AT THE TIME --

16 A. WELL --

17 Q. EXCUSE ME, THIS WAS NOT AN ANTI-POLYGRAPH
18 ORGANIZATION.

19 HEARING OFFICER ADLER: MR. WILLIAMS, UNLESS THERE'S A
20 QUESTION IN THIS --

21 MR. WILLIAMS: I'M SORRY?

22 HEARING OFFICER ADLER: UNLESS THERE'S A QUESTION IN
23 THIS.

24 MR. WILLIAMS: THERE IS A QUESTION.

25 HEARING OFFICER ADLER: OKAY.

1 MR. WILLIAMS: I'M RESPONDING TO WHAT HE SAID.

2 HEARING OFFICER ADLER: WELL, I STOPPED HIM FROM
3 ENGAGING IN A COLLOQUY, AND I PREFER THAT YOU DIDN'T.

4 MR. WILLIAMS: THANK YOU, YOUR HONOR.

5 THE WITNESS: AND THIS IS NOT ACCURATE, BY THE WAY.

6 BY MR. WILLIAMS:

7 Q. I'M SURE IT'S TRUE.

8 A. I MEAN, I'M JUST READING IT, AND FACTUALLY IT'S
9 NOT --

10 Q. THAT'S OKAY, SIR. BUT THERE'S NO QUESTION
11 PENDING ON THAT.

12 ARE YOU FAMILIAR WITH ANY STUDIES DONE AS TO THE
13 NUMBER OF FALSE POSITIVES THAT ARE PECULIAR TO CERTAIN ETHNIC
14 GROUPS?

15 A. NO.

16 Q. HAVE YOU -- YOU TALK ABOUT MR. GROGAN, BUT YOU
17 DON'T KNOW HIM PERSONALLY; IS THAT CORRECT?

18 A. I'VE NEVER MET HIM.

19 Q. DO YOU KNOW HIM PERSONALLY?

20 A. DEFINE "PERSONALLY."

21 Q. HAVE YOU EVER TALKED TO HIM?

22 A. NO.

23 Q. WERE YOU SHOWN DOCUMENTS CONCERNING MR. GROGAN'S
24 POLYGRAPH EXAMINATIONS OF THE SAME TWO PEOPLE THAT YOU
25 EXAMINED?

1 A. YES.

2 Q. WHEN WERE YOU SHOWN THOSE DOCUMENTS?

3 A. I DON'T RECALL.

4 Q. OKAY. NOW, CAN YOU TELL ME, SIR, WHAT IS THE
5 NAME OF THE POLYGRAPH MACHINE THAT YOU USE?

6 A. I HAVE TWO.

7 Q. TELL ME ABOUT THEM, THE ONE THAT YOU USED ON
8 MR. HOLLEY AND MR. DAMPIER.

9 A. AS REFLECTED IN MY REPORT, A LAFAYETTE DIPLOMAT
10 I.

11 Q. LAFAYETTE --

12 A. DIPLOMAT I.

13 Q. AND WHAT'S THE -- CAN YOU DESCRIBE THAT FOR ME?

14 A. IT'S GOT FOUR CHANNELS, TWO PNEUMOGRAPHS, A
15 SWEAT GLAND G.S.R.

16 Q. YOU'VE GOT TO GO SLOW BECAUSE THIS IS FOREIGN
17 LANGUAGE TO ME.

18 A. WELL, I'VE ALREADY SAID IT THIS MORNING.

19 Q. SAY IT AGAIN. FOUR CHANNELS AND WHAT ELSE?

20 A. TWO PNEUMOGRAPHS. THOSE ARE THE FIRST TWO
21 CHANNELS. THE G.S.R., WHICH IS THE THIRD CHANNEL.

22 Q. WHAT'S A "G.S.R."?

23 A. GALVANIC SKIN RESPONSE.

24 Q. GO SLOWLY AND SPELL EACH WORD.

25 A. GALVANIC; G-A-L-V-A-N-I-C, SKIN; S-K-I-N,

1 RESPONSE; R-E-S-P-O-N-S-E.

2 Q. OKAY. WHAT ELSE?

3 A. AND CARDIO COMPONENT. CARDIO; C-A-R-D-I-O.

4 Q. COMPONENT DID YOU SAY?

5 A. COMPONENT.

6 Q. IS THIS A -- HOW OLD IS YOUR MACHINE,

7 THIS MACHINE YOU'RE TALKING ABOUT? HOW LONG HAVE YOU HAD IT?

8 A. ABOUT FIVE YEARS.

9 Q. AND IS IT A MANUALLY-OPERATED MACHINE?

10 A. IT'S AN ANALOG INSTRUMENT.

11 Q. IS IT COMPUTERIZED?

12 A. NO, IT'S AN ANALOG. THERE'S ARE TWO TYPES:

13 THERE'S ANALOG AND THERE'S COMPUTERIZED.

14 I'VE ALSO GOT THE LAFAYETTE 4000 COMPUTERIZED

15 POLYGRAPH.

16 Q. AND WHEN YOU SAY, "IT'S ANALOG," DOES IT REQUIRE

17 ANY MANIPULATION BY YOU DURING THE COURSE OF YOUR INTERROGATION

18 OF THE --

19 A. INTERROGATION PLAYS NO PART IN THE POLYGRAPH

20 EXAM UNTIL THE POST-TEST, UNTIL AFTER THE TEST IS OVER.

21 Q. BUT DURING THE EXAM ITSELF --

22 A. NO INTERROGATION.

23 Q. -- YOU DON'T INTERROGATE?

24 A. NO.

25 Q. HOW DO YOU CHARACTERIZE "INTERROGATION"?

1 A. WELL, YOU CAN DO AN INTERROGATION -- YOU CAN DO
2 AN INTERVIEW WITHOUT AN INTERROGATION, BUT YOU CAN'T DO AN
3 INTERROGATION WITHOUT AND INTERVIEW. IT'S WHEN YOU GO FROM THE
4 INQUISITORY TO THE ACCUSATORY THAT IT BECOMES AN INTERROGATION.

5 Q. SO THE INTERROGATION WOULD BE AN ACCUSATORY
6 PORTION, AND THE -- YOU HAVE TO ANSWER ORALLY.

7 IS THAT "YES"?

8 A. SAY THAT AGAIN.

9 Q. THE INTERROGATION IS THE ACCUSATORY PORTION?

10 A. YES.

11 Q. AND THE INTERVIEW IS THE INQUISITIVE?

12 A. INQUISITORY.

13 Q. INQUISITORY.

14 NOW, WHEN YOU WERE INTERVIEWING MR. HOLLEY, WERE
15 YOU DOING ANY MANIPULATING ON THE MACHINE ITSELF?

16 A. NO.

17 Q. WHERE WAS MR. HOLLEY POSITIONED VIS-À-VIS YOUR
18 POSITION? IN OTHER WORDS, WHERE WAS HE FACING?

19 A. HE WAS FACING ME.

20 Q. HE WAS FACING YOU WHERE HE COULD SEE EVERYTHING
21 YOU'RE DOING?

22 A. ABSOLUTELY.

23 Q. SIR, ISN'T IT A FACT THAT YOU TURNED MR. HOLLEY
24 AROUND, AND HE FACED THE WALL BY YOUR --

25 A. THAT'S ABSOLUTELY TRUE.

1 Q. WELL, WHAT WERE YOU DOING WHEN HE WAS FACING THE
2 WALL?

3 A. WHEN HE WAS FACING THE WALL, I WAS ASKING HIM
4 THE QUESTIONS ON THE SECOND PART OF THE POLYGRAPH TEST.

5 Q. WHAT WAS THE PURPOSE OF HAVING HIM FACE THE
6 WALL?

7 A. SO THAT HE WOULDN'T BE DISTRACTED BY THE
8 MOVEMENTS OF THE PIN. STANDARD POLYGRAPH PROCEDURE.

9 Q. FINE. BUT WERE YOU -- ARE THESE PINS -- CAN YOU
10 DESCRIBE THAT FOR ME, WHAT THE PINS ARE?

11 A. SURE. THEY'RE ABOUT SEVEN INCHES LONG AND
12 THEY'RE ATTACHED TO A CALIBER, WHICH ENTERS INTO A PLASTIC
13 BOTTLE THAT CONTAINS PRINTER'S INK.

14 Q. IS IT POSSIBLE FOR YOU TO MANUALLY MOVE THOSE
15 PINS?

16 A. ABSOLUTELY.

17 Q. AND WOULD THAT AFFECT THE OUTCOME OF THE EXAM?

18 A. ANYTHING COULD BE DONE WITH THOSE PINS TO TRY TO
19 MAKE IT LOOK LIKE A PASS TEST OR A FAILED TEST.

20 Q. OKAY. NOW --

21 A. HOWEVER, WHEN THOSE PINS ARE MOVED --

22 Q. YOU ANSWERED MY QUESTION.

23 NOW, YOU SAID YOU HAVE A COMPUTERIZED MACHINE.
24 HOW DOES THAT WORK? WHAT DOES A COMPUTERIZED MACHINE DO?

25 A. IT'S A LAPTOP FORMAT WITH A CENTRAL CONTROL BOX,

1 AND IT TRANSFORMS MECHANICAL INTO DIGITAL. AND SO IT WORKS OFF
2 OF SOFTWARE WHICH GIVES YOU AN IMMEDIATE QUALITY CONTROL.
3 THAT'S THE PRIMARY BETWEEN ANALOG AND COMPUTERIZED. IT'S
4 IMMEDIATE QUALITY CONTROL.

5 IN OTHER WORDS, SOFTWARE IS DECIDING WHETHER THE
6 PERSON FAILED OR PASSED A TEST. AND THE SECOND, OF COURSE, IS
7 THE WORD PROCESSING CAPABILITY.

8 Q. CONNECTED WITH THE COMPUTER?

9 A. YES.

10 Q. DOES THE COMPUTER ELIMINATE HUMAN ERROR OR HUMAN
11 MANIPULATION, IF IT OCCURS, IN ARRIVING AT A CERTAIN RESPONSE?

12 A. I WOULD SAY IT RESISTS THAT ACT IN ANY POLYGRAPH
13 EXAMINER. IT RESISTS IT, BUT IT DOESN'T PREVENT IT. IT'S
14 POSSIBLE.

15 Q. SO IT COULD STILL BE MANIPULATED?

16 A. YES.

17 Q. HOWEVER, THE ANALOG DOESN'T RESIST IT, DOES IT?

18 A. NO.

19 Q.. HOW DO YOU DETERMINE WHICH COMPUTER -- I'M
20 SORRY, WHICH MACHINE YOU WILL USE FOR WHICH QUESTION THE PEOPLE
21 YOU ARE EXAMINING? HOW DO YOU DETERMINE WHICH TEST?

22 A. IT'S REALLY QUITE SIMPLE.

23 Q.. EXCUSE ME?

24 A. IT'S QUITE SIMPLE. I DO ALL OF MY TEST WITH THE
25 ANALOG INSTRUMENT UNTIL THE SOFTWARE WHICH GIVES THE QUALITY

1 CONTROL IS PERFECTED.

2 IN OTHER WORDS, THAT SOFTWARE OFTEN DOES NOT
3 AGREE WITH THE POLYGRAPH EXAMINER. AND SO I TAKE THE SOFTWARE
4 OUT OF THE EQUATION, AND I SEND MY CHARTS TO PEOPLE LIKE
5 MR. HOMER IN SAN FRANCISCO.

6 Q. THAT WOULD BE ASKING ANOTHER HUMAN BEING TO LOOK
7 AT SOME CHARTS THAT YOU MAY HAVE MANIPULATED?

8 A. WELL, ACTUALLY --

9 Q. THAT YOU COULD MANIPULATE?

10 A. I WOULD NOT MANIPULATE. I DON'T MANIPULATE.

11 Q. BUT YOU COULD.

12 MR. MC GOWAN: I'D OBJECT.

13 THE WITNESS: MY REPUTATION PRECEDES ME INTO ANY
14 COURTROOM.

15 BY MR. WILLIAMS:

16 Q. I UNDERSTAND YOUR REPUTATION.

17 A. ANYONE COULD, MR. WILLIAMS.

18 Q. BUT WITH REGARD TO --

19 MR. MC GOWAN: I'LL OBJECT --

20 HEARING OFFICER ADLER: GENTLEMEN, IT IS NOT POSSIBLE
21 FOR THE RECORD TO BE TAKEN WITH TWO, MUCH LESS THREE OF YOU,
22 TALKING AT ONCE.

23 MR. WILLIAMS: I APOLOGIZE, YOUR HONOR.

24 HEARING OFFICER ADLER: I'D LIKE TO CAUTION ALL OF
25 YOUR TO WAIT UNTIL THE PERSON BEFORE YOU STOPS SPEAKING.

1 MR. MC GOWAN: COULD I BE HEARD?

2 I WOULD OBJECT TO MR. WILLIAMS INTERRUPTING THE
3 WITNESS AND ARGUING WITH THE WITNESS.

4 BY MR. WILLIAMS:

5 Q. MR. TRIMARCO, I DON'T INTEND TO ARGUE WITH YOU,
6 AND I APOLOGIZE IF IT APPEARS THAT I AM. I'M TRYING TO
7 UNDERSTAND THE WORKINGS OF THESE MACHINES.

8 DO YOU KNOW WHAT TYPE OF MACHINE THAT MR. GROGAN
9 USES?

10 A. YES.

11 Q. AND WHAT KIND IS THAT?

12 A. IT'S A COMPUTERIZED -- EITHER A LAFAYETTE OR AN
13 (INAUDIBLE.)

14 Q. HOW DO YOU KNOW THAT?

15 A. BECAUSE I READ HIS POLYGRAPH REPORT.

16 Q. AND IS THAT THE REPORT THAT WAS GIVEN TO YOU BY
17 THE DEPARTMENT?

18 MR. MC GOWAN: COULD THE RECORD REFLECT MY CONTINUING
19 OBJECTIONS?

20 I'LL THINK WE'LL BE HEARD AT A LATER TIME ON THE
21 QUESTION OF WHETHER OR NOT THERE'S ANYTHING ADMISSIBLE
22 CONCERNING MR. GROGAN'S --

23 MR. WILLIAMS: YOUR HONOR, THE WITNESS IS TESTIFYING
24 AS TO WHAT HE READ.

25 MR. MC GOWAN: BUT I'D LIKE --

1 MR. WILLIAMS: THERE'S BEEN NOTHING OFFERED THIS FAR.
2 I DON'T KNOW WHAT HE'S OBJECTING TO.

3 MR. MC GOWAN: I'D LIKE THE RECORD TO REFLECT THAT I'M
4 NOT WAIVING ANY OBJECTIONS I HAVE TO MR. GROGAN'S OPINION, AND
5 IF WE STIPULATE TO THAT FACT --

6 MR. WILLIAMS: YOUR HONOR, WHAT HE'S DOING IS
7 INTERRUPTING ME SO THAT HE CAN TRY TO INTERRUPT MY COURSE OF
8 EXAMINATION. HE KNOWS THAT AS AN ATTORNEY THAT HE HAS AN
9 OPPORTUNITY TO OBJECT WHEN I, IN FACT, OFFER A DOCUMENT.

10 BUT THE WITNESS HIMSELF OFFERED THAT HE HAD READ
11 THE REPORT. I DIDN'T AUTHOR A REPORT.

12 MR. MC GOWAN: AGAIN, I'M ONLY REQUESTING --

13 HEARING OFFICER ADLER: I WILL ACCEPT YOUR CONTINUING
14 OBJECTION.

15 MR. MC GOWAN: THANK YOU.

16 BY MR. WILLIAMS:

17 Q. NOW, MR. TRIMARCO, THE REPORT THAT YOU REFERRED
18 TO, IS THAT THE REPORT THAT MR. -- JUST A MOMENT, YOUR HONOR.

19 EXHIBIT B.

20 HEARING OFFICER ADLER: YES.

21 MR. MC GOWAN: "B" AS IN "BOY"?

22 MR. WILLIAMS: "B" AS IN "B."

23 MR. MC GOWAN: HE'S THINKING OF ANOTHER WORD.

24 HEARING OFFICER ADLER: APPARENTLY SEVERAL, ACTUALLY.

25 MR. WILLIAMS: MAY THE RECORD SHOW I'M SHOWING THE

1 WITNESS A COPY OF EXHIBIT B?

2
3 (APPELLANT'S EXHIBIT B WAS MARKED FOR
4 IDENTIFICATION BY THE HEARING OFFICER.)

5
6 BY MR. WILLIAMS:

7 Q. IS THAT THE REPORT YOU REFERRED TO,
8 MR. TRIMARCO?

9 A. NO. ACTUALLY, THIS IS HIS QUALITY -- THIS IS
10 HIS CRITIQUE OF MY EXAM.

11 Q. OKAY.

12 A. BY THE WAY, IT'S A CONFLICT OF INTEREST. HE
13 SHOULDN'T BE DOING A POLYGRAPH TEST --

14 Q. I DON'T WANT TO HEAR THAT. YOU KNOW, I'M NOT
15 ASKING ANY QUESTIONS.

16 A. I MEAN, WE'RE HERE FOR THE TRUTH.

17 Q. I ASKED YOU, IS THIS THE REPORT THAT YOU
18 REFERRED TO, AND YOUR ANSWER IS "NO."

19 JUST HOLD ON A MOMENT. WE'LL BE BACK WITH YOU.

20 A. OKAY.

21 MR. WILLIAMS: MARKED AS EXHIBIT C, YOUR HONOR, IS A
22 DOCUMENT THAT APPEARS TO BE A CERTIFICATE VERIFYING A PASSING
23 OF A POLYGRAPH EXAMINATION, AND THAT'S TO BE MARKED AS EXHIBIT
24 C. IT HAS A SECOND DOCUMENT THAT IS A LETTER TO MR. HOLLEY
25 FROM MR. GROGAN TELLING HIM HOW WELL HE DID ON THE SAME TEST

1 REGARDING THE SAME SET OF FACTS AND THE SAME INCIDENT.

2
3 (APPELLANT'S EXHIBIT C WAS MARKED FOR
4 IDENTIFICATION BY THE HEARING OFFICER.)
5

6 MR. WILLIAMS: MAY THE RECORD SHOW I'M SHOWING A COPY
7 OF EXHIBIT C.

8 HEARING OFFICER ADLER: YES.

9 BY MR. WILLIAMS:

10 Q. I ASKED YOU, MR. TRIMARCO, HAVE YOU EVER SEEN
11 THIS DOCUMENT BEFORE?

12 A. THIS CERTIFICATE?

13 Q. HAVE YOU SEEN THE FIRST ONE, THE PASSING -- NO
14 DECEPTION INDICATED ISSUED TO BENJAMIN HOLLEY?

15 A. YES.

16 Q. WHEN DID YOU SEE THAT?

17 A. I DON'T RECALL, BUT SOMEONE SENT IT TO ME, AND I
18 DON'T RECALL.

19 Q. NOW --

20 A. SOMETIME BETWEEN LIKE SIX MONTHS AGO, MAYBE.

21 Q. OKAY. LOOK AT THE SECOND DOCUMENT ON THAT
22 EXHIBIT, WHICH APPEARS TO BE FROM MR. GROGAN TO MR. HOLLEY
23 EXPLAINING THE -- IT SAYS WHAT IT SAYS.

24 HAVE YOU EVER SEEN THAT DOCUMENT BEFORE?

25 A. I THINK SO.

1 Q. AND THIS WAS SENT TO YOU BY THIS PERSON THAT YOU
2 DON'T RECALL?

3 A. PERHAPS JANE. I DON'T RECALL WHO SENT IT, BUT
4 SOME OFFICIAL SENT IT TO ME.

5 Q. BUT IT WAS AFTER NOVEMBER 20, WAS IT NOT?

6 A. NOVEMBER 20.

7 Q. OF THE YEAR 2005?

8 A. AFTER THE DATE OF THE REPORT?

9 Q. YES.

10 A. YES, IT WAS AFTER THAT.

11 Q. WHAT, IF ANYTHING, DID YOU DO WHEN YOU RECEIVED
12 THIS?

13 A. I LAUGHED.

14 Q. AFTER YOU GOT YOURSELF UNDER CONTROL, WHAT DID
15 YOU DO, IF ANYTHING?

16 A. I CALLED THE PRESIDENT OF THE CALIFORNIA
17 POLYGRAPH EXAMINER'S, AND I FAXED HIM A COPY OF THIS
18 CERTIFICATE. I THOUGHT HE NEEDED A GOOD LAUGH, TOO.

19 Q. OKAY. ANYTHING ELSE YOU DID?

20 A. I'M NOT SURE I CALLED SOMEBODY AT -- I DON'T
21 REMEMBER IF IT WAS JANE OR -- I SPOKE TO SOMEONE THAT THIS WAS
22 THE MOST JUVENILE, UNPROFESSIONAL THING I'VE EVER SEEN IN
23 POLYGRAPH.

24 Q. WELL, YOU GOT THAT IN. BUT ARE YOU SURE WHO YOU
25 TALKED TO?

1 A. I GUESS I'M NOT SURE.

2 Q. OKAY. AND WHEN YOU SAID THIS WAS JUVENILE AND
3 UNPROFESSIONAL, IS THIS THE SOURCE AND THE BASIS FOR YOUR
4 LAUGHTER?

5 A. THE CERTIFICATE. BUT MORE THAN THAT, HIS
6 CRITIQUE OF MY TEST.

7 Q. EXCUSE ME?

8 A. HIS CRITIQUE OF MY TEST.

9 Q. WOULD YOU BE SURPRISED TO KNOW THAT CERTAIN
10 POLYGRAPH EXAMINERS CONSIDER YOU TO BE A RACIST?

11 MR. MC GOWAN: I'LL OBJECT TO THE QUESTION.

12 THE WITNESS: THAT'S A BUNCH OF CRAP. THAT'S CRAP,
13 SIR.

14 MR. MC GOWAN: MY OBJECTION IS THAT MR. WILLIAMS IS
15 SIMPLY INJECTING HIS OWN OPINIONS --

16 MR. WILLIAMS: NO, THAT'S NOT TRUE.

17 MR. MC GOWAN: IT ASSUMES FACTS NOT IN EVIDENCE.

18 MR. WILLIAMS: NO.

19 MR. MC GOWAN: I'VE NOT COMPLETED MY OBJECTION.

20 MR. WILLIAMS: THE OBJECTION SUCKS. YOU'RE NOT GIVING
21 AN OBJECTION --

22 MR. MC GOWAN: (OVERLAPPING COLLOQUY) I'D LIKE TO HAVE
23 THAT --

24 HEARING OFFICER ADLER: GENTLEMEN, YOU DIDN'T SEEM TO
25 GET THE MESSAGE BEFORE. ARCY ONLY HAS TWO HANDS AND ONE

1 MACHINE.

2 YOU WILL EACH GET A CHANCE TO SPEAK. THE
3 WITNESS MAY NOT, MUCH TO HIS FRUSTRATION. WE NEED TO TAKE THIS
4 IN ORDER.

5 NOW, FRED CAN FINISH HIS QUESTION, AND THEN YOU
6 OBJECT TO IT. THAT'S THE WAY WE DO THINGS JUST THE WAY WE GO
7 THE OTHER WAY AROUND.

8 MR. MC GOWAN: I THOUGHT HE HAD FINISHED HIS QUESTION,
9 BUT I HAD NOT FINISHED MY OBJECTION.

10 MR. WILLIAMS: THE WITNESS WAS ANSWERING THE QUESTION.

11 HEARING OFFICER ADLER: HAD YOU FINISHED YOUR
12 QUESTION?

13 MR. WILLIAMS: NO, I HAD NOT, YOUR HONOR.

14 MR. MC GOWAN: I'D REQUEST THE QUESTION TO BE READ
15 BACK.

16 HEARING OFFICER ADLER: WHY DON'T WE JUST START OVER?
17 BY MR. WILLIAMS:

18 Q. SIR, MR. TRIMARCO, ARE YOU FAMILIAR WITH A STUDY
19 THAT FOUND THAT BLACK EXAMINEES TEND TO RECEIVE MORE FALSE
20 POSITIVES THAN WHITE EXAMINEES ON THE SAME SET OF FACTS IN THE
21 EXAMINATION?

22 A. I DON'T BELIEVE THAT.

23 Q. HAVE YOU READ SUCH A STUDY?

24 A. NO.

25 Q. ARE YOU FAMILIAR WITH -- YOU SAID THERE ARE

1 SEVERAL ANTIPOLYGRAPH ORGANIZATIONS?

2 A. AND IF THAT'S WHAT YOU'RE QUOTING, I -- IT HAS
3 NO CREDENCE.

4 Q. YOU'RE GOING TO GET A CHANCE TO SEE IT. HOLD ON
5 JUST A SECOND.

6 YOUR HONOR, I HAVE TO GET COPIES OF THIS
7 DOCUMENT. IT'S SEVERAL PAGES. IF YOU WOULD LIKE, I'D LIKE TO
8 HAVE IT IDENTIFIED BY THE WITNESS IF HE'S SEEN IT BEFORE.

9 A. I HAVEN'T SEEN IT. I SEE THE PAPER.

10 Q. THERE'S NO QUESTION TO YOU.

11 AND IF THE HEARING OFFICER WOULD ALLOW ME TO
12 COMPLETE MY STATEMENT, I'D APPRECIATED IT.

13 HEARING OFFICER ADLER: WELL, YOU CAN SHARE WITH HIM.
14 AND IF HE HASN'T SEEN IT, YOU HAVE TO GET IT IN SOME OTHER WAY.

15 MR. WILLIAMS: I WILL HAVE IT --

16 HEARING OFFICER ADLER: IN WHICH CASE WE DON'T NEED TO
17 DUPLICATE IT RIGHT THIS MINUTE.

18 MR. WILLIAMS: WELL, I'M GOING TO OFFER IT.

19 HEARING OFFICER ADLER: WELL, NOT RIGHT THIS MINUTE.

20 MR. WILLIAMS: I'LL LET YOU DENY IT ON THE RECORD, AND
21 WE CAN DO THAT NOW.

22 BY MR. WILLIAMS:

23 Q. DO YOU KNOW WHO A GORDON H. BARLAND, PH.D. IS?

24 A. YES.

25 Q. WHO IS HE?

1 A. HE'S A SCIENTIST.

2 Q. HOW DO YOU KNOW HIM?

3 A. HE WAS AN INSTRUCTOR AT THE DEPARTMENT OF
4 DEFENSE POLYGRAPH INSTITUTE.

5 Q. DID YOU EVER TAKE CLASSES FROM HIM?

6 A. PHYSIOLOGY.

7 Q. NOW, ARE YOU FAMILIAR WITH A STUDY THAT HE DID
8 CONCERNING A SUMMARY AND A DOCUMENT ON "RACIAL BIAS IN
9 POLYGRAPH AND POSSIBLE COVER-UP: CAUSE FOR CONCERN"?

10 YOU EVER READ THAT?

11 A. NO.

12 Q. YOU EVER HEAR ABOUT IT?

13 A. NO.

14 Q. AND IS IT SOMETHING THAT WOULD HAVE CONCERNED
15 YOU IF YOU HEARD ABOUT IT?

16 MR. MC GOWAN: OBJECTION. LACK OF FOUNDATION.

17 HEARING OFFICER ADLER: OVERRULED.

18 THE WITNESS: IT WOULDN'T AFFECT ME.

19 BY MR. WILLIAMS:

20 Q. WHY NOT?

21 A. BECAUSE I RUN A FAIR, EQUAL TEST FOR EVERYONE
22 THAT WALKS INTO MY ROOM, AND CHIP KNOWS THAT.

23 MR. WILLIAMS: WELL, I'LL MOVE TO STRIKE HIS RESPONSE
24 OF WHAT CHIP KNOWS.

25 HEARING OFFICER ADLER: LET'S JUST MOVE ON.

1 MR. WILLIAMS: I DON'T THINK HE'S QUALIFIED TO SAY
2 WHAT CHIP KNOWS.

3 MR. MC GOWAN: WELL, I'LL OBJECT TO --

4 MR. WILLIAMS: I OUGHT TO BE ABLE TO MAKE MY
5 STATEMENT. HE'S THE ONE THAT DOESN'T WANT ME TO INTERRUPT HIM.

6 MR. MC GOWAN: IF MR. WILLIAMS IS FINISHED, I DON'T
7 WANT TO INTERRUPT HIM, BUT I WOULD OBJECT TO THIS RUNNING
8 COMMENTARY. HE'S -- I DON'T KNOW IF YOU HEARD THIS A LITTLE
9 WHILE AGO WHERE HE REFERRED TO ONE OF MY OBJECTIONS AS, I THINK
10 THE WORD HE USED WAS "SUCKS," BUT I OBJECT TO THIS KIND OF
11 INVECTIVE THAT HE'S INJECTING INTO THESE PROCEDURES.

12 WE HAVE FILED A PREHEARING STATEMENT REQUESTING
13 THE HEARING OFFICER IN APPROPRIATE CIRCUMSTANCES TO EXERCISE
14 YOUR AUTHORITY UNDER PROCEDURAL RULES 520 AND 521, AND WE
15 REQUEST THAT IF THIS CONTINUES, THIS KIND OF BEHAVIOR CONTINUES
16 AND IT ESCALATES, WE WILL FORMALLY REQUEST YOU EXERCISE YOUR
17 AUTHORITY IN THAT RESPECT.

18 I AM NOT HERE TO BE INSULTED. I KNOW THE
19 HEARING OFFICER ISN'T, THE WITNESS ISN'T, AND I WOULD OBJECT TO
20 THIS KIND OF BEHAVIOR.

21 MR. WILLIAMS: DOES THAT ALSO INCLUDE SLEAZY LEGAL
22 MANEUVERING?

23 HEARING OFFICER ADLER: GENTLEMEN, COME ON.

24 MR. WILLIAMS: I MEAN, IF HE WANTS TO HAVE SOMEBODY
25 CITED, HE SHOULD CITE HIMSELF FOR THESE LITTLE TRICKY THINGS

1 THAT HE TRIES TO DO. I'M NOT GOING TO BE INTIMIDATED BY THIS
2 PERSON.

3 HEARING OFFICER ADLER: LET'S GO OFF THE RECORD.

4
5 (DISCUSSION OFF THE RECORD.)

6
7 HEARING OFFICER ADLER: BACK ON THE RECORD.

8 MR. WILLIAMS: SINCE YOU TOLD HIM WHAT HE HAS TO SAY
9 TO AVOID IT --

10 HEARING OFFICER ADLER: OH, COME ON. HE'S ALREADY
11 TESTIFIED HE HASN'T SEEN IT, FRED.

12
13 CROSS-EXAMINATION CONTINUED

14
15 BY MR. WILLIAMS:

16 Q. THE DOCUMENT THAT FOLLOWS THE FIRST TWO PAGES,
17 THAT APPEARS TO BE WRITTEN -- I ASKED YOU IF YOU KNEW --

18 A. I DON'T KNOW WHAT THIS IS, MOCK CRIME. THE ONE
19 ENTITLED "MOCK CRIME"?

20 Q. YES. SHOWING YOU -- ANYTHING IN THERE THAT
21 LOOKS FAMILIAR TO YOU THAT YOU MIGHT HAVE SEEN BEFORE?

22 A. NO. NO.

23 Q. OKAY.

24 A. NO.

25 Q. YOU NEVER SAW THOSE DOCUMENTS BEFORE, RIGHT?

1 A. NO.

2 Q. NOW, THESE ORGANIZATIONS THAT YOU BELONG TO, DO
3 YOU ATTEND MEETINGS FOR THOSE ORGANIZATIONS?

4 A. YES.

5 Q. ANY OF THEM, DO THEY TALK ABOUT CURRENT TRENDS
6 IN THE POLYGRAPH INDUSTRY?

7 A. YES.

8 Q. AND WOULD IT BE SOMETHING THAT THEY WOULD
9 DISCUSS, FINDINGS THAT, IN FACT, FIND:

10 "LESS THAN 60 PERCENT OF THESE
11 TESTS RESULTED IN A CORRECT DECISION
12 HAVEN'T BEEN RENDERED FOR ALL 1,141
13 SUBJECTS INVOLVED, BLACK AND WHITE,
14 GUILTY AND INNOCENT."
15 WOULD THAT BE SOMETHING THEY WOULD DISCUSS AT
16 THAT MEETING?

17 A. NOT IF IT COMES OFF OF POLYGRAPH.COM OR
18 ANTIPOLYGRAPH.COM. THAT'S DRIBBLE, AND WE DON'T WASTE OUR TIME
19 ON IT.

20 Q. OH, THAT'S DRIBBLE?

21 A. ANYTHING OFF OF THOSE WEBSITES IS PUT THERE TO
22 RUIN THE CREDIBILITY OF POLYGRAPH. IT'S DRIBBLE.

23 Q. OKAY. HAVE YOU EVER PASSED A PERSON OF COLOR OR
24 AFRICAN-AMERICAN ON A POLYGRAPH TEST, EVER?

25 A. ABSOLUTELY.

1 Q. WOULD YOU BE SURPRISED TO KNOW THAT MR. GROGAN
2 SAYS THAT TO HIS KNOWLEDGE YOU NEVER HAVE?

3 MR. MC GOWAN: I'LL OBJECT TO THE FORM OF THE
4 QUESTION. ASSUMES FACTS NOT IN EVIDENCE.

5 THE WITNESS: MR. GROGAN DOESN'T KNOW ME.

6 HEARING OFFICER ADLER: SUSTAINED.

7 MR. WILLIAMS: YOUR HONOR, I'M ASKING WOULD YOU BE
8 SURPRISED TO KNOW IF MR. GROGAN -- THAT'S NOT AN IMPROPER
9 QUESTION.

10 HEARING OFFICER ADLER: IT DOESN'T GET US ANY PLACE.
11 BY MR. WILLIAMS:

12 Q. SIR, WHEN YOU SAID THAT THE TEST IS 90 PERCENT
13 ACCURATE, IS THAT WHAT YOU SAID?

14 A. APPROXIMATELY. WHEN DONE WITH A QUALIFIED,
15 EXPERIENCED, HONEST POLYGRAPH EXAMINER.

16 Q. YOU GOT THAT IN THE RECORD.

17 A. THANK YOU.

18 Q.. BUT ARE THEY EVER NOT ACCURATE -- STRIKE THAT.

19 SO EVEN WITH THE BEST QUALIFIED POLYGRAPH
20 EXAMINER, YOU HAVE TEN PERCENT ERROR RATE; IS THAT CORRECT?

21 A. TEN, PERHAPS SEVEN, DEPENDING ON THE STUDY.

22 Q. WELL, 90 PERCENT WOULD BE 10?

23 A. NO. NINETY-THREE PERCENT WOULD BE SEVEN.

24 Q. OKAY. SO WHERE DO THESE FIGURES COME FROM?

25 WHERE DO YOU GET THESE FIGURES FROM?

1 A. SOME OF THOSE POLYGRAPH MEETINGS THAT YOU
2 MENTIONED WHERE YOU HAVE SCIENTISTS AND YOU HAVE PEOPLE WHO ARE
3 KNOWLEDGEABLE IN THE FIELD, PHYSIOLOGISTS, PSYCHOLOGISTS COME
4 IN, AND THEY RECORD STUDIES THAT ARE GOING ON IN SOME PART OF
5 THE COUNTRY.

6 Q. CAN YOU TELL ME WHY POLYGRAPH EXAMINATIONS ARE
7 NOT ADMISSIBLE IN SOME COURTS?

8 MR. MC GOWAN: I'LL OBJECT AS IRRELEVANT. I WOULD
9 OBJECT ALSO ON THE BASIS OF THE STIPULATION.

10 IN LIGHT OF THE STIPULATION ON THIS PARTICULAR
11 CASE, ANY OBJECTIONS AT THIS POINT ARE IRRELEVANT FOR THIS
12 WITNESS.

13 HEARING OFFICER ADLER: WELL, I SORT OF THINK YOU'RE
14 BOTH RIGHT IN THIS CIRCUMSTANCE.

15 I ASSUME YOU'RE NOT GOING TO SPEND A WHOLE LONG
16 TIME ON THIS.

17 MR. WILLIAMS: I'M CERTAINLY NOT, YOUR HONOR.

18 HEARING OFFICER ADLER: I'M GOING TO OVERRULE THE
19 OBJECTION.

20 BY MR. WILLIAMS:

21 Q. WITH REGARD TO POLYGRAPH TESTS BEING ADMISSIBLE
22 ABLE IN CERTAIN TYPES OF CRIMINAL CASES, DO YOU KNOW WHY THEY
23 ARE NOT?

24 A. ABSOLUTELY I DO.

25 Q. WHY NOT?

1 A. BECAUSE WE HAVE PEOPLE LIKE MR. GROGAN CLAIMING
2 TO BE A POLYGRAPH EXAMINER.

3 Q. SO IT'S MR. GROGAN'S FAULT THAT THEY'RE NOT
4 ADMITTED IN --

5 A. IT'S PEOPLE LIKE HIM WHO ARE NOT QUALIFIED, AND
6 YOU DON'T NEED CERTIFICATION OR LICENSING IN THE STATE OF
7 CALIFORNIA TO BE A POLYGRAPH EXAMINER. ANYONE COULD BE A
8 POLYGRAPH EXAMINER. AND SO FOR THAT REASON --

9 Q. OBVIOUSLY.

10 A. YOU KNOW, YOU'RE OUT OF LINE.

11 Q. WELL, COULD IT BE BECAUSE THE POLYGRAPH TEST
12 ITSELF IS NOT RELIABLE UNDER ANY CONDITION?

13 A. THAT'S ABSOLUTELY NOT TRUE.

14 Q. DIDN'T YOU YOURSELF SAY THAT IT'S 90 TO 93
15 PERCENT RELIABLE?

16 MR. MC GOWAN: OBJECT AS ASKED AND ANSWERED.

17 HEARING OFFICER ADLER: SUSTAINED.

18 MR. WILLIAMS: WHAT WAS THE OBJECTION?

19 HEARING OFFICER ADLER: IT WAS ASKED AND ANSWERED.

20 HE HAS REPEATEDLY SAID HE BELIEVES THAT IT'S 90
21 TO 93 PERCENT ACCURATE.

22 MR. WILLIAMS: THIS IS A TOUGH CROSS-EXAMINATION. I
23 THOUGHT I HAD MORE LATITUDE THAN THAT.

24 HEARING OFFICER ADLER: WELL, FRED, LET'S MOVE ON.

25 MR. WILLIAMS: I WANT TO MOVE ON, TOO, YOUR HONOR.

1 I'VE BEEN IN THIS THING FOR A YEAR OR MORE. AND HE GETS ALL --
2 I SIT HERE AND SUFFER THROUGH ALL OF THESE LONG, DRAWN OUT
3 QUESTIONS OVER AND OVER AGAIN, THE SAME THING, AND WE SIT HERE
4 AND TOLERATE IT.

5 NOW I'M ON CROSS-EXAMINATION, AND I GET CUT OFF
6 TALKING ABOUT MOVING ON, BUT I WILL DO WHAT YOU SUGGEST.

7 HEARING OFFICER ADLER: THANK YOU, SIR.

8 MR. WILLIAMS: YOU'RE WELCOME, YOUR HONOR.

9 BY MR. WILLIAMS:

10 Q. SIR, WITH REGARD TO MR. GROGAN, WHO YOU'VE BEEN
11 BEATING UP ON FOR QUITE AWHILE SINCE WE STARTED THIS TESTIMONY,
12 CALLING HIM INCOMPETENT AND ALL OF THESE THINGS, DO YOU KNOW IF
13 MR. GROGAN DOES THE BACKGROUND POLYGRAPH TEST FOR THE LOS
14 ANGELES COUNTY SHERIFF'S DEPARTMENT?

15 A. I DON'T BELIEVE ANYTHING HE WRITES ON HIS
16 RESUME.

17 Q. YOU DON'T KNOW THAT, OR YOU DON'T BELIEVE IT?

18 A. I DON'T KNOW IT, AND I WON'T BELIEVE IT --

19 Q. WHY NOT?

20 A. -- UNTIL IT'S PROVEN TO ME.

21 Q. WHY NOT?

22 A. BECAUSE OF HIS REPUTATION. I DON'T KNOW HOW HE
23 DOES BACKGROUND INVESTIGATIONS IF HE'S NOT A PRIVATE
24 INVESTIGATOR ANYMORE.

25 Q. WELL, LET ME READ WHAT IT SAYS ON THE EXHIBIT,

1 LET ME READ THIS AND I'LL GET IT MARKED, "MOST WELL KNOWN
2 RESPECTED PRIVATE INVESTIGATORS AMONG HIS NATIONWIDE INDUSTRY
3 PEERS," LOS ANGELES TIMES.

4 A. WELL, CHECK WITH THE STATE OF CALIFORNIA,
5 BECAUSE THEY JUST PULLED HIS LICENSE.

6 Q. PROBABLY BEEN ARRESTED FOR KILLING LINCOLN, TOO,
7 HASN'T HE?

8 MR. MC GOWAN: I'LL OBJECT TO THE QUESTION.

9 THE WITNESS: IT'S A MATTER OF RECORD.

10 MR. MC GOWAN: I'LL OBJECT AS IRRELEVANT.

11 MR. WILLIAMS: YOUR HONOR, I HAVE A DOCUMENT THAT I'M
12 FORCED TO OFFER. HE CAN CHALLENGE IT IF HE WISHES, BUT I'M
13 GOING TO OFFER, AND WE DON'T HAVE COPIES. WE'RE GOING TO HAVE
14 TO MAKE COPIES.

15 AND IT IS THE POLYGRAPH EXAMINATION FOR
16 MR. GROGAN ADVERTISING HIS BUSINESS. IT'S IN THE NEWSPAPER, IN
17 THE YELLOW PAGES, PERIODICALS THROUGHOUT LOS ANGELES
18 ADVERTISING HIS WORK FOR L.A. COUNTY SHERIFF'S DEPARTMENT AND
19 OTHER AGENCIES, CHAMBER OF COMMERCE.

20 HEARING OFFICER ADLER: I DON'T SEE THAT THIS WITNESS
21 CAN DO ANYTHING WITH THAT INFORMATION.

22 MR. WILLIAMS: YOUR HONOR, HE'S BEEN DISPARAGING THIS
23 MAN ALL DAY LONG.

24 HEARING OFFICER ADLER: IN SOME OTHER FASHION, YOU CAN
25 INTRODUCE THE TESTIMONY, BUT THIS WITNESS DOESN'T HAVE ANYTHING

1 TO ADD.

2 MR. WILLIAMS: HE'S THE MAN THAT SAID THESE THINGS. I
3 DON'T THINK IT'S NOT PROPER TO ALLOW HIM TO SIT HERE AND -- IF
4 YOU WANT TO STRIKE THE RECORD OF ALL THAT --

5 HEARING OFFICER ADLER: IF YOU WANT TO BRING IN
6 MR. GROGAN OR IF YOU WANT TO BRING IN SOMEONE WHO KNOWS
7 MR. GROGAN --

8 MR. WILLIAMS: I'LL BRING MR. GROGAN.

9 HEARING OFFICER ADLER: BUT THERE'S NO WAY THAT THIS
10 GENTLEMAN CAN TELL ME WHETHER OR NOT --

11 MR. WILLIAMS: THIS GENTLEMAN YOU'RE TALKING ABOUT HAS
12 BEEN SITTING HERE DISPARAGING MR. GROGAN, WHO I THINK IS AN --

13 HEARING OFFICER ADLER: HE'S EXPRESSING AN OPINION,
14 AND HE'S GOT A RIGHT TO HIS OPINION.

15 MR. WILLIAMS: HE'S TESTIFYING AS TO A MATTER OF FACT.
16 HE CAN'T BE SANITIZED BY, WITH ALL DUE RESPECT, YOU BECAUSE HIS
17 WORD'S IN THE RECORD.

18 I THINK THAT IF HE'S DOING THAT, I'LL AT LEAST
19 OUGHT TO BE ABLE TO REFUTE THAT WITH THE DOCUMENTATION THAT I
20 POSSESS.

21 NOW, IF YOU'RE GOING TO FORCE MR. HOLLEY TO GO
22 PAY A MAN TO COME IN HERE TO TESTIFY TO REBUT -- WE DON'T HAVE
23 THE COUNTY'S MONEY. WE CAN'T PAY HIM WHATEVER IT IS HE SAYS
24 HE'S CHARGING.

25 HEARING OFFICER ADLER: FRED, THERE'S JUST NO WAY THAT

1 THESE DOCUMENTS CAN MEANINGFULLY COME IN THROUGH THIS WITNESS.

2 MR. WILLIAMS: I'M SORRY, BUT I DON'T UNDERSTAND THAT
3 IF THESE DOCUMENTS -- IF I TELL YOU AND STATE AS A MATTER OF
4 FACT THAT AS AN OFFER OF PROOF MY WIFE WILL TESTIFY THAT SHE
5 GOT THESE FROM THE COMPUTER.

6 HEARING OFFICER ADLER: WELL, PUT YOUR WIFE ON THE
7 STAND AS TO WHERE SHE GOT THEM, BUT THIS MAN CAN'T HELP YOU GET
8 THESE DOCUMENTS IN.

9 MR. WILLIAMS: YOUR HONOR, I THINK I'M ENTITLED TO
10 CROSS-EXAMINE THIS WITNESS SINCE HE HAS MADE THESE REMARKS
11 ABOUT MR. GROGAN, AND I HAVE DOCUMENTATION TOTALLY CONTRARY TO
12 WHAT HE IS SAYING.

13 HE MAY NOT BE THE ONE, AND I DON'T KNOW IF HE'S
14 SEEN HIM OR NOT, BUT HE CERTAINLY KNOWS A LOT ABOUT HIM FOR A
15 PERSON WHO DOESN'T KNOW THE MAN. AND HE'S MADE ALL THESE
16 COMMENTS BECAUSE HE SAW THESE POLYGRAPH TESTS WHICH WERE
17 DIAMETRICALLY OPPOSED TO WHAT HE FOUND.

18 WE BELIEVE THAT MR. TRIMARCO WAS PAID FOR DOING
19 THESE EXAMINATIONS AND WAS PAID TO MAKE THESE FINDINGS, AND
20 THAT'S WHAT WE'RE TRYING TO SHOW, AND I'M ENTITLED TO SHOW
21 THAT. HE IS NOT A GENTLEMAN. YOU COULD CALL HIM WHATEVER YOU
22 WISH, BUT I DON'T CALL HIM THAT.

23 I THINK I'M ENTITLED TO ATTACK ANYTHING IN THESE
24 SELF-SERVING REMARKS THAT HE'S MAKING. AND YOU CAN MAKE THE
25 DECISION AFTERWARDS TO THROW IT OUT OR WHATEVER, BUT YOU CAN'T

1 STOP ME FROM MAKING MY CASE.

2 HEARING OFFICER ADLER: I'M NOT TRYING TO STOP YOU.
3 I'M TRYING TO MOVE THIS ALONG AND GET THE DOCUMENTS IN THROUGH
4 A WITNESS WHO CAN, IN SOME FASHION, BRING THEM IN.

5 MR. WILLIAMS: OKAY. AS AN OFFER OF PROOF -- IF YOU
6 WANT ME TO PUT HER ON THE STAND, I CAN DO THAT, BUT I WILL GIVE
7 YOU AN OFFER OF PROOF THAT CHERYL WILL TESTIFY THAT SHE GOT
8 THESE DOCUMENTS THROUGH THE INTERNET AT THE LAW LIBRARY. NOT
9 THESE (INDICATING), BUT THE OTHERS FROM THE LAW LIBRARY.

10 HEARING OFFICER ADLER: OKAY.

11 MR. WILLIAMS: AND WHEN SHE TESTIFIES, SHE'LL TESTIFY
12 THAT THESE CAME FROM THE INTERNET. SHE GOT THEM OFF THE
13 INTERNET AND THESE OTHER DOCUMENTS SHE GOT DURING OUR LUNCH
14 BREAK OVER AT THE LAW LIBRARY.

15 HEARING OFFICER ADLER: I HAVE NO REASON TO DOUBT ANY
16 OF THOSE THINGS.

17 MR. WILLIAMS: YOU MAY TALK ABOUT THE WEIGHT OF IT,
18 BUT I DON'T REALLY THINK YOU CAN ARGUE ABOUT THE ADMISSIBILITY.

19 HEARING OFFICER ADLER: I'M NOT ARGUING WITH
20 ADMISSIBILITY. I'M CERTAINLY SAYING THIS GENTLEMAN CANNOT GET
21 YOU THE DOCUMENTS ABOUT MR. GROGAN'S ADVERTISING.

22 MR. WILLIAMS: I UNDERSTAND THAT. I UNDERSTAND THAT.

23 I THINK HE NEEDS TO SAY AFTER HE SEES THE
24 DOCUMENT THAT HE HAS NOT SEEN THEM. I DON'T THINK WE CAN
25 PRESUPPOSE JUST LIKE HE SAID ABOUT ANOTHER DOCUMENT WHEN I

1 SHOWED IT TO HIM THAT HE HADN'T SEEN IT.

2 HEARING OFFICER ADLER: FRED, EVEN IF HE HAS SEEN
3 THEM, HE CAN'T SAY WHETHER OR NOT WHETHER THEY'RE TRUTHFUL.

4 MR. WILLIAMS: HE CERTAINLY CAN'T IF YOU'RE TELLING
5 HIM HE CAN'T SAY IT. THAT'S THE PROBLEM.

6 HEARING OFFICER ADLER: HE'S ALREADY SAID THAT HE
7 DOESN'T KNOW THE MAN.

8 MR. WILLIAMS: HE'S ALSO SAID THAT HE'S UNQUALIFIED,
9 HE SAID ALL THESE THINGS, YOUR HONOR, AND YOU PICK OUT ONE
10 THING THAT HE SAYS, I DON'T KNOW HIM, BUT YET -- WELL, YOU'LL
11 DEAL WITH THAT IN YOUR FINDING, I'M SURE.

12 I DON'T HAVE ANY FURTHER QUESTIONS ON THAT
13 SUBJECT. I WILL BEND TO YOUR WILL.

14 HEARING OFFICER ADLER: THANK YOU.

15 MR. WILLIAMS: YOU'RE WELCOME, YOUR HONOR.

16 BY MR. WILLIAMS:

17 Q. SIR, ONE THING YOU SAID IN YOUR DIRECT
18 EXAMINATION, OUT OF MANY THINGS, BUT ONE THING YOU SAID
19 THAT CAUSED ME SOME PAUSE IS THAT -- IF I HAVE IT CORRECT --
20 YOU WERE TALKING ABOUT THREE SIGNIFICANT PORTIONS OF THIS
21 CHART, AND I THOUGHT YOU SAID YOU INTERVENED AND BROUGHT THE
22 CARDIAC BACK DOWN TO WHERE IT BELONGS.

23 DO YOU REMEMBER SAYING THAT?

24 A. NO.

25 Q. WELL, IT WAS WHEN YOU WERE TESTIFYING ABOUT THE

1 THREE CHARTS, AND YOU SAID THAT YOU INTERVENED DURING THE
2 EXAMINATION --

3 A. I REMEMBER THAT.

4 Q. YOU SAID YOU BROUGHT THE CARDIAC BACK DOWN TO
5 WHERE IT BELONGS. WHAT EXACTLY WERE YOU TALKING ABOUT?

6 A. THERE'S A CENTERING CONTROL DEVICE. AND IN
7 ORDER FOR THE TRACING TO BE VALID, IT'S GOT TO BE WITHIN THE
8 CHANNEL. AND SO WHEN IT GOES OUT OF THE PIN LIMITS, THE
9 CENTERING CONTROL DEVICE CAN BRING THE CARDIO BACK DOWN TO
10 WHERE IT BELONGS.

11 Q. ARE YOU ACTUALLY BRINGING THE CARDIO BACK, OR
12 ARE YOU BRING THE NEEDLE BACK?

13 A. THE NEEDLE TAKES THE TRACING WITH IT. THE INK
14 IS COMING OUT OF THE NEEDLE, OUT OF THE PIN. AND SO THE
15 TRACING IS GOING TO COME DOWN WITH IT.

16 Q. IS THAT WHEN THE NEEDLE WAS NOT IN LINE, NOT
17 WHERE IT SHOULD HAVE BEEN? WAS THAT BEING RECORDED AS A
18 RESPONSE GIVEN BY THE EXAMINEE ON THE CHART ITSELF?

19 A. WELL, IT WAS A VIOLENT RESPONSE. AND TO BRING
20 IT BACK DOWN TO GET IT BACK WHERE IT BELONGED, I INTERVENED
21 WITH THE CENTERING CONTROL NOD, AND I WOULD MARK SMALL ARROWS
22 TO INDICATE THAT IT WAS BACK WHERE IT BELONGS BECAUSE I DID IT,
23 NOT BECAUSE OF SOMETHING MR. HOLLEY DID.

24 Q. HOW LONG A PERIOD OF TIME WAS IT OUT OF SYNC TO
25 WHERE IT SHOULD HAVE BEEN?

1 A. IT WASN'T OUT OF SYNC. IT WAS NOT IN THE
2 CHANNELING WHERE IT BELONGS.

3 Q. THIS IS A MECHANICAL --

4 A. IT'S ANALOG, AND IT'S PROPER PROCEDURE TO MOVE
5 THE TRACING BACK INTO THE CENTER OF THE CHANNEL ACCOMPANIED BY
6 AN ARROW, WHICH LETS ANY QUALIFIED EXAMINER KNOW THAT THE MOVE
7 WAS MADE BY THE EXAMINER AND NOT BY ANYTHING ELSE.

8 Q. OKAY. THANK YOU. THIS PERSON -- THE GENTLEMAN
9 UP IN SAN FRANCISCO --

10 A. HOMER.

11 Q. YES. DOES HE WORK FOR YOU?

12 A. NO.

13 Q. ARE YOU -- HOW ARE YOU RELATED, IF AT ALL, WITH
14 THIS PERSON?

15 A. WE'RE NOT RELATED.

16 Q. WELL, HE'S ON THE SAME PAGE AS YOUR
17 ADVERTISEMENT --

18 A. RIGHT.

19 Q. -- IN THE MARGIN?

20 A. RIGHT.

21 Q. AND SO WHAT IS THAT RELATIONSHIP?

22 A. HE'S AN ASSOCIATE.

23 Q. SO HE'S RELATED AS AN ASSOCIATE?

24 A. MY DAUGHTERS ARE RELATED TO ME. MR. HOMER IS AN
25 ASSOCIATE OF MINE AS REFERENCED ON MY LETTERHEAD, "JACK

1 TRIMARCO AND ASSOCIATES." THEY'RE RIGHT DOWN THE BORDER.

2 Q. "JACK TRIMARCO AND ASSOCIATES"?

3 A. RIGHT.

4 Q. AND HOW MANY SUCH ASSOCIATES ARE THERE?

5 A. WELL, ONE PASSED AWAY, AND I BELIEVE -- YOUR
6 HONOR, MAY I COUNT THEM?

7 HEARING OFFICER ADLER: SURE.

8 THE WITNESS: WELL, NOW THERE'S FIVE. ONE IS RETIRED.
9 THERE'S SIX. ONE RETIRED AND ONE PASSED AWAY.

10 BY MR. WILLIAMS:

11 Q. AND RONALD HOMER IS STILL THERE; IS THAT
12 CORRECT?

13 A. YES.

14 Q. AND WHAT DO THESE -- I NEED YOU TO EXPLAIN TO ME
15 WHAT DO THESE ASSOCIATES DO FOR JACK TRIMARCO AND ASSOCIATES
16 POLYGRAPH INVESTIGATIONS, INCORPORATED.

17 DO THEY HAVE DIFFERENT FUNCTIONS?

18 A. NO. THEY ALL HAVE THE SAME FUNCTION.

19 Q. WHAT IS IT THAT THEY DO IN ASSOCIATION WITH YOUR
20 ORGANIZATION?

21 A. WELL, WE'VE ALL AGREED FOR NO MONEY EXCHANGE TO
22 QUALITY CONTROL ANY CHARTS THAT ARE SENT TO US IN THE BLIND.

23 SECONDLY, IF THERE'S A QUERY FOR A POLYGRAPH
24 EXAM IN A CERTAIN PART OF THE COUNTRY, WE KNOW EACH OTHER, WE
25 KNOW WHERE WE ALL STAND IN THE POLYGRAPH COMMUNITY, AND OUR

1 FIRST CHOICE, ALL THINGS BEING EQUAL, IS TO REFER ONE OF
2 ASSOCIATES. THAT'S THE EXTENT OF THE ASSOCIATION.

3 Q. AND YOU USE MR. HOMER 95 PERCENT OF THE TIME?

4 A. YES.

5 Q. AND DID HE USE YOU 95 PERCENT OF THE TIME?

6 A. I'M NOT SURE.

7 Q. DID HE USE YOU AT ALL?

8 A. OFTEN, YEAH.

9 Q. WHAT PERCENTAGE OF THE TIME, IF YOU KNOW, WOULD
10 HE USE YOU?

11 A. I DON'T KNOW. I'M NOT ON THAT END. I JUST
12 RESPOND TO HIS FAX.

13 Q. I SEE. YOU GET THEM WEEKLY?

14 A. YES. BUT THEN AGAIN, IT DEPENDS. IT DEPENDS ON
15 IF HE RUNS A TEST THAT WEEK, OBVIOUSLY.

16 Q. OBVIOUSLY.

17 A. WELL, I DON'T WANT YOU TO TAKE WHAT I SAY THE
18 WRONG WAY, MR. WILLIAMS.

19 Q. I APPRECIATE YOUR CONCERN.

20 A. I JUST WANT TO BE SPECIFIC.

21 Q. DID YOU SAY THAT AFTER MR. HOLLEY'S EXAMINATION,
22 YOU BECAME EMOTIONAL?

23 A. YES, I SAID THAT.

24 Q. AND HOW DID THAT EMOTIONAL FEELING MANIFEST
25 ITSELF, WHAT DID YOU DO?

1 A. I SAID TO HIM, "I TOLD YOU NOT TO TAKE THIS TEST
2 UNLESS YOU COULD PASS IT. YOU RUINED MY DAY. I'M SORRY."

3 AND I HUGGED HIM, AND HE HUGGED ME AND HE SAID,
4 "THAT'S OKAY. DON'T WORRY ABOUT IT."

5 Q. DID HE SAY THAT HE LIED?

6 A. NO. BUT HE DIDN'T SAY HE DIDN'T LIE.

7 Q. I SEE.

8 A. HE JUST SAID, "DON'T WORRY ABOUT IT."

9 Q. AND HOW MANY POLYGRAPH TESTS HAVE YOU GIVEN OVER
10 THE -- UP TO THAT POINT?

11 A. I DON'T KNOW.

12 Q. GIVE ME AN ESTIMATE. YOU WERE GIVING ESTIMATES
13 ALL ALONG.

14 A. WELL, IT'S A MATH PROBLEM THEN.

15 Q. GIVE ME A MATH PROBLEM. HOW MANY DO YOU THINK
16 YOU'VE DONE?

17 A. APPROXIMATELY 2,000.

18 Q. UP TO MR. HOLLEY'S?

19 A. MR. WILLIAMS, PLEASE.

20 Q. YES.

21 A. I'D SAY 2,000 TO 2,500 UP TO MR. HOLLEY.

22 Q. NOW, DURING THAT TIME, HAVE YOU HAD PERSONS FAIL
23 THE TEST THAT YOU FELT COULD PASS IT?

24 A. I DON'T GO INTO IT.

25 MR. MC GOWAN: I OBJECT TO THE FORM OF THE QUESTION,

1 VAGUE.

2 HEARING OFFICER ADLER: I'M NOT SURE IF I UNDERSTAND
3 THE QUESTION.

4 BY MR. WILLIAMS:

5 Q. I'LL ASK IT ANOTHER WAY.

6 HAVE YOU BECOME EMOTIONAL WHEN INTERVIEWING THE
7 PREVIOUS 2,500 --

8 A. SOMETIMES.

9 Q. WHY?

10 A. WELL, ONE TIME A GUY CONFESSED THAT HE KILLED
11 HIS HALF SISTER AND LEFT HER IN AN ORANGE GROVE. I CRIED WHEN
12 HE TOLD ME THAT AFTER HE CONFESSED. AND MARKESHA KANDLER WAS A
13 LITTLE AFRICAN-AMERICAN GIRL THAT WAS MISSING FROM THE FOX
14 HILLS MALL, AND WHEN HER GRANDMOTHER AND HER AUNT TOLD ME WHERE
15 SHE WAS BURIED, I GOT EMOTIONAL.

16 Q. YOU CRIED THEN, TOO?

17 A. YEAH.

18 Q. SO YOU EQUATE THE KILLING OF THE LITTLE GIRL IN
19 THE ORANGE GROVE AND THE OTHER INCIDENT WITH MR. HOLLEY USING
20 PROFANITY ALLEGEDLY AGAINST --

21 A. I DIDN'T CRY.

22 Q. MY QUESTION IS, AND I'M ENTITLED TO ASK MY
23 QUESTION THE WAY I DEEM IT TO BE, AND MY QUESTION IS, ARE YOU
24 EQUATING THE INCIDENT OF THESE TWO MURDERS WITH THE FAILING,
25 ACCORDING TO YOU, OF MR. HOLLEY ON A POLYGRAPH EXAM ABOUT

1 CURSING OUT DEPUTY SHERIFFS AND USING PROFANITY AGAINST THEM?

2 A. FAIR QUESTION. I WOULD ANSWER THAT THIS WAY
3 MR. WILLIAMS: THOSE TWO MURDERS OF LITTLE GIRLS WAS A TRAGEDY,
4 AND THEY WERE IMPORTANT POLYGRAPH TESTS, BUT THE ONLY POLYGRAPH
5 TEST EVER IN MR. HOLLEY'S LIFE THAT WAS IMPORTANT TO HIM WAS
6 THE ONE I GAVE HIM THAT DAY.

7 AND SO ON THAT LEVEL, I WOULD SAY THAT HIS
8 POLYGRAPH TO HIM WAS MORE IMPORTANT THAN THE TWO POLYGRAPHS
9 INVOLVING THOSE TWO LITTLE GIRLS.

10 Q. YOU'RE AN EX-DEPUTY SHERIFF?

11 A. YES.

12 Q. YOU SAID YOU WERE A DEPUTY SHERIFF IN BILLINGS,
13 MONTANA?

14 A. YES.

15 Q. HOW LONG?

16 A. SEVEN YEARS.

17 Q. AND AFTER THAT YOU WERE AN F.B.I. AGENT?

18 A. TWENTY-ONE.

19 Q. TWENTY-ONE YEARS?

20 A. ALMOST 21.

21 Q. AND THEN YOU WERE A BUREAU CHIEF?

22 A. NO.

23 Q. WHAT WAS YOUR RANK?

24 A. I WAS THE BUREAU CHIEF IN CHARGE OF THE
25 POLYGRAPH UNIT WHILE I WAS AN F.B.I. AGENT.

1 Q. AFTER ALL THAT EXPERIENCE, DID YOU HAVE THESE
2 EMOTIONAL EXHIBITIONS OF REMORSE AFTER EACH CRITICAL SITUATION
3 IN THESE DEPARTMENTS?

4 MR. MC GOWAN: I'LL OBJECT TO THE FORM OF THE
5 QUESTION. IT'S ARGUMENT AS PHRASED.

6 MR. WILLIAMS: WELL, YOU GOT MY POINT.

7 HEARING OFFICER ADLER: A BIT OVERBROAD, FRED.

8 MR. WILLIAMS: OKAY. YOUR HONOR, I'LL MOVE ON.
9 BY MR. WILLIAMS:

10 Q. DID MR. HOLLEY TELL YOU ANYTHING ABOUT HIM BEING
11 A VICTIM OF A GUNSHOT WOUND IN HIS STOMACH?

12 A. I DON'T RECALL.

13 Q. DO YOU RECALL HIM SAYING THAT HAD TO UNDERGO
14 ANOTHER OPERATION AT THE TIME YOU GAVE HIM THE POLYGRAPH TEST
15 BECAUSE OF THAT GUNSHOT WOUND?

16 A. I DON'T RECALL.

17 Q. DO YOU RECALL HIM TELLING YOU THAT HE WAS SHOT
18 WHILE SAYING GOODBYE TO HIS GRANDMOTHER STANDING IN FRONT OF
19 THE HOUSE IN A DRIVE-BY SHOOTING?

20 A. I DON'T RECALL. WE COULD WATCH THE VIDEO.

21 Q. I'M SORRY?

22 A. WE COULD LOOK AT THE VIDEO.

23 Q. THIS WASN'T SAID ON THE VIDEOTAPE.

24 A. WELL, THEN I DON'T RECALL.

25 Q. LET ME ASK THIS, DID YOU GIVE MR. HOLLEY

1 ANYTHING TO DRINK PRIOR TO THAT EXAMINATION?

2 A. I DON'T RECALL.

3 Q. ISN'T IT A FACT THAT YOU GAVE HIM A GLASS OF
4 WATER UNREQUESTED?

5 A. UNREQUESTED?

6 Q. YES.

7 A. ABSOLUTELY NOT.

8 Q. ISN'T IT A FACT THAT YOU GAVE HIM A GLASS OF
9 WATER, AND HE STARTED COMPLAINING ABOUT SWEATING A LOT?

10 A. NO, I DON'T RECALL THAT.

11 Q. AS A MATTER OF FACT, DIDN'T YOU ALSO GIVE
12 MR. DAMPIER A GLASS OF WATER BEFORE THE EXAMINATION?

13 A. ONLY IF REQUESTED. I ALWAYS ASK IF THEY WOULD
14 LIKE A GLASS OF WATER.

15 Q. ISN'T IT A FACT YOU GAVE MR. DAMPIER A GLASS OF
16 WATER?

17 A. LET ME SAY THIS AGAIN, I DON'T RECALL,
18 MR. WILLIAMS.

19 Q. YOU DIDN'T SAY THAT WITH MR. DAMPIER, BUT YOU'RE
20 SAYING -- IT'S GOOD ENOUGH. WE'LL MOVE ON.

21 A. GOOD.

22 Q. NOW, ISN'T DID A FACT THAT MR. DAMPIER
23 COMPLAINED ABOUT SWEATING?

24 A. I DONT' RECALL. SWEATING IS NOT A COMPLAINT.
25 EVERYBODY SWEATS BECAUSE YOU'RE NERVOUS.

1 Q. SIR, ISN'T IT A FACT THAT MR. DAMPIER COMPLAINED
2 ABOUT SWEATING?

3 A. LET ME SAY IT AGAIN, I DON'T RECALL.

4 Q. OKAY. AND THAT'S YOUR ANSWER.

5 A. SWEATING DOESN'T AFFECT THE TEST.

6 MR. WILLIAMS: YOUR HONOR, WOULD YOU INSTRUCT THE
7 WITNESS NOT TO TALK UNLESS THERE IS A QUESTION?

8 HEARING OFFICER ADLER: WOULD YOU CONSIDER YOURSELF SO
9 INSTRUCTED.

10 THE WITNESS: YES, MA'AM.

11 BY MR. WILLIAMS:

12 Q. THE QUESTION REGARDING, I BELIEVE YOU SAID THAT
13 THERE WERE FOUR THINGS IN THE PRETEST THAT THE PERSON BE WELL
14 RESTED, THAT HE NOT BE ILL AT ALL?

15 A. PAIN OR DISCOMFORT, RIGHT.

16 Q. AND YOU SAID NOT EMOTIONAL?

17 A. NO, I DIDN'T SAY THAT.

18 Q. WELL, I WROTE DOWN EMOTIONAL.

19 A. EMOTIONAL PROBLEMS.

20 Q. EXCUSE ME?

21 A. EMOTIONAL PROBLEMS.

22 Q. EMOTIONAL PROBLEMS, OKAY.

23 A. IN OTHER WORDS, PSYCHIATRIC CARE.

24 Q. OKAY. THANK YOU. AND FATIGUE?

25 A. RIGHT. BE WELL RESTED.

1 Q.. YES. NOW, I TAKE IT MR. DAMPIER -- I'M SORRY,
2 MR. HOLLEY, ANSWERED THAT NONE OF THESE THINGS WERE PRESENT?

3 A. WELL, HE TOLD ME HE HAD TEN HOURS OF SLEEP, SO I
4 CONSIDERED THAT WELL RESTED. I THINK HE SAID HE WAS IN NO PAIN
5 OR DISCOMFORT AT THE TIME OF THE TEST.

6 Q. ARE THESE ON THE TAPE?

7 A. NO. THEY'RE ON THAT SHEET, D-17.

8 Q. OKAY. DID MR. HOLLEY REFUSE TO ANSWER ANY
9 QUESTIONS YOU ASKED HIM?

10 A. NO, WE HAD GREAT RAPPORT.

11 Q. WELL, I DON'T KNOW IF THAT'S ANSWERING MY
12 QUESTION. DID HE REFUSE TO ANSWER ANY QUESTIONS YOU ASKED?

13 A. NO, HE WAS VERY COOPERATIVE.

14 Q. I WANT TO LEAVE WITH JUST ONE THING, IT MAY
15 BE -- I'M NOT GOING TO ASK YOU THE SAME WAY, BUT WITH REGARD TO
16 THE SPECIFIC COMMENTS IN THE -- ON THE DOCUMENT MARKED AS --
17 I'M NOT SURE WHAT THIS DOCUMENT IS MARKED.

18 HEARING OFFICER ADLER: APPELLANT'S B, IF YOU'RE
19 THINKING ABOUT THE CRITIQUE.

20 MR. WILLIAMS: THE JESSE FRANK DAMPIER?

21 HEARING OFFICER ADLER: THEN I DON'T KNOW WHAT YOU'RE
22 LOOKING AT.

23 THE WITNESS: YOU'VE GOT THE WRONG ONE.

24 MR. MC GOWAN: THIS WAS CIRCULATED THIS MORNING, BUT
25 IT HASN'T BEEN MARKED. IT'S THE WORKSHEET FOR JESSE DAMPIER

1 MR. WILLIAMS IS REFERRING TO.

2 MR. WILLIAMS: YES, THAT'S RIGHT.

3 BY MR. WILLIAMS:

4 Q.. DID MR. DAMPIER ALSO OBJECT TO THE WORD "UTTER"?

5 A. I DON'T RECALL. I DON'T KNOW THAT WE WENT THAT
6 FAR INTO HIS TEST, TO THE QUESTION REVIEW.

7 Q. EXCUSE ME?

8 A. I DON'T KNOW THAT WE WENT THAT FAR INTO THE
9 TESTING PROCESS TO WHERE WE GOT TO THE WORD "UTTER."

10 Q. DOES MR. DAMPIER -- STRIKE THAT.

11 DO YOU MAKE THIS SHEET OUT, THE DOCUMENT THAT
12 STARTS WITH "ARE YOU SOMETIMES KNOWN AS," AND THE PERSON GIVE
13 YOU A NAME?

14 A. YEAH.

15 Q. WHAT DO YOU CALL THAT DOCUMENT?

16 A. THAT'S THE POLYGRAPH QUESTIONS.

17 Q.. THE POLYGRAPH QUESTIONS?

18 A. IN THEIR ENTIRETY.

19 Q. IS THAT DONE BEFORE YOU START THE INVESTIGATIVE
20 POLYGRAPH TEST, THE ONE THAT'S RECORDED?

21 A. IT'S A WORK IN PROGRESS. SOMETIMES YES,
22 SOMETIMES NO. BUT IT'S CERTAINLY CHANGEABLE UNTIL THE EXAMINEE
23 IS COMFORTABLE WITH THOSE QUESTIONS.

24 Q. WITH REGARD TO MR. DAMPIER, DID YOU MAKE THIS
25 DOCUMENT OUT, THIS INFORMATION SHEET, POLYGRAPH EXAMINATION

1 WORKSHEET, DID YOU MAKE ALL THREE PAGES OUT AFTER YOU STARTED
2 THE INVESTIGATIVE QUESTIONS?

3 A. YOU KNOW, I REVIEWED MR. HOLLEY'S POLYGRAPH
4 PACKAGE. I DID NOT REVIEW MR. DAMPIER'S. IF YOU SHOW THEM TO
5 ME, THAT MIGHT HELP.

6 HEARING OFFICER ADLER: VINCE, DO YOU HAVE AN EXTRA
7 COPY?

8 MR. MC GOWAN: CAN WE MARK THIS AS DEPARTMENT'S 19?

9 HEARING OFFICER ADLER: WE CAN.

10 MR. WILLIAMS: NO. I'M OFFERING THE DEPARTMENT. IT
11 IS THE APPELLANT'S D.

12 HEARING OFFICER ADLER: OKAY. IT'S APPELLANT'S D.

13
14 (APPELLANT'S EXHIBIT D WAS MARKED FOR
15 IDENTIFICATION BY THE HEARING OFFICER.)
16

17 MR. WILLIAMS: I'M TRYING TO KEEP IT AS REAL AS IT
18 COULD BE.

19 BY MR. WILLIAMS:

20 Q. LOOKING AT THAT DOCUMENT, SIR, IF YOU HAVE A
21 CHANCE TO TAKE A LOOK AT IT.

22 A. THIS WOULD BE A -- THIS MAY HAVE BEEN A XEROX OF
23 THE FIRST POLYGRAPH EXAMINATION WORKSHEET WITH THOSE OBSCENE
24 REMARKS AT THE BOTTOM FOR PURPOSES OF DEFINITION.

25 Q. YOU'RE SAYING THEY MAY HAVE BEEN MADE FOR

1 HOLLEY?

2 A. I'M NOT SAYING THAT. I WANTED TO BE SURE THAT I
3 REVIEWED EVERYTHING EXACTLY THE SAME FOR MR. HOLLEY AND
4 MR. DAMPIER. SO IF YOU LOOK, THAT'S EXACTLY THE SAME AS IT IS.

5 SO THAT'S WHAT HAPPENED. BUT THIS GETS FILLED
6 IN CONTEMPORANEOUS WITH MY INTERVIEW. THE ONLY THING THAT WAS
7 WRITTEN ON THESE PAPERS WERE THOSE REFERENCES FROM THE POLICE
8 REPORTS THAT I WANTED TO BE SURE THAT THOSE QUALIFIED AS
9 OBSERVE COMMENTS OR OFFENSIVE COMMENTS.

10 Q. YOU'RE LOOKING AT THE FIRST PAGE; IS THAT
11 CORRECT, SIR?

12 A. YES.

13 Q. ARE YOU REFERRING TO THE -- LET ME ASK YOU, ARE
14 YOU SAYING THIS IS DAMPIER'S POLYGRAPH EXAMINER'S WORKSHEET; IS
15 THAT CORRECT?

16 A. YES.

17 Q. BUT THE COMMENTS AT THE BOTTOM, DID YOU ASK
18 MR. DAMPIER AT ANY POINT ABOUT THESE COMMENTS?

19 A. I DON'T KNOW IF WE GOT TO THAT POINT. HE
20 ABORTED THE TEST.

21 Q. OKAY. AND ON THE SECOND PAGE, YOU HAVE UNDER
22 NUMBER 7 --

23 A. IN FACT, I KNOW I DIDN'T BECAUSE YOU'LL NOTICE
24 THERE ARE NO ANSWERS NEXT TO THOSE QUESTIONS. SO THERE WAS NO
25 QUESTION REVIEWED.

1 Q. WELL, "UTTER" IS STRICKEN AND "SAY" IS WRITTEN
2 IN.

3 A. RIGHT.

4 Q. AND YOU TESTIFIED THAT YOU DID THAT ON HOLLEY'S
5 BECAUSE HE WAS UNEASY WITH THE WORD "UTTER"?

6 A. RIGHT.

7 Q. BUT IT APPEARS ON JESSE DAMPIER'S.

8 A. JESSE DAMPIER NEVER SAW THIS. I WAS PREPARED TO
9 ASK THE SAME QUESTIONS TO BOTH PEOPLE IN THE INTEREST OF
10 UNIFORMITY. AND SO IF HE WAS NOT COMFORTABLE WITH "SAY," THEN
11 I WOULD CHANGE IT TO "UTTER" OR VICE VERSA.

12 I'M TELLING YOU THIS IS NOT CAST IN STONE. IT'S
13 WHAT THEY'RE COMFORTABLE WITH.

14 Q. OKAY. I JUST WANTED TO KNOW BECAUSE I HEARD YOU
15 TESTIFY ABOUT THE OTHER ONE.

16 A. WHAT DID YOU HEAR ME TESTIFY ABOUT?

17 Q. I HEARD YOU TESTIFY ABOUT MR. HOLLEY WAS
18 UNCOMFORTABLE WITH THE WORD "UTTER"?

19 A. THAT'S EXACTLY RIGHT.

20 Q. MAY I COMPLETE?

21 "DID YOU UTTER OFFENSIVE
22 COMMENTS REGARDING THE SHERIFF
23 DEPUTIES WHILE AT TELLIES ON
24 MARCH 23, 2005?"

25 A. RIGHT.

1 Q. DID YOU EVER ASK THAT QUESTION TO MR. DAMPIER?

2 A. I MIGHT HAVE, BUT WE DID NOT REVIEW THE
3 QUESTIONS BECAUSE THERE ARE NO ANSWERS NEXT TO THEM AS THEY ARE
4 FOR MR. HOLLEY. ON HIS THIRD PAGE, YOU'LL SEE, "YES," "YES,"
5 "YES," "YES," "NO," "NO," "NO," "NO," "NO," AND "YES."

6 THAT IS NOT ON HERE (INDICATING), WHICH MEANS I
7 DIDN'T GET TO THAT POINT. HE QUIT THE TEST BEFORE WE GOT
8 THERE.

9 Q. OKAY. NOW, AND THE SECOND SENTENCE, YOU WROTE
10 BEFORE YOU -- STRIKE THAT.

11 WAS THIS WRITTEN BEFORE YOU SPOKE TO DAMPIER?
12 THAT'S WHAT I'D LIKE TO KNOW.

13 A. PROBABLY. I'D LIKE TO HAVE THIS DONE BEFORE I
14 MEET THE EXAMINEE. IT'S A WORK IN PROGRESS. IT CHANGES
15 DEPENDING ON WHAT THEY TELL ME.

16 Q. WELL, DID YOU ASK MR. DAMPIER IF HE MADE
17 OFFENSIVE REMARKS OR COMMENTS, OR DID YOU ASK HIM IF HE MADE
18 THESE SPECIFIC UTTERANCES REFLECTED ON THE FIRST PAGE?

19 A. I DON'T REMEMBER HOW FAR WE GOT. I HAVEN'T
20 REVIEWED HIS FILE OR HIS TAPE.

21 Q. WOULD YOUR ANSWER BE THE SAME FOR MR. HOLLEY?

22 A. REPEAT THE QUESTION.

23 Q. DID YOU ASK MR. HOLLEY IF HE MADE OFFENSIVE
24 REMARKS OR COMMENTS AS REFLECTED ON THE TWO AND AT THE TOP --
25 LET ME ASK YOU THIS, YOU SAY "YES" REGARDING THE QUESTION:

1 "IF YOU MADE OFFENSIVE
2 COMMENTS OR REMARKS, DID YOU
3 INTEND TO BE COMPLETELY TRUTHFUL
4 WITH ME ABOUT THAT?"

5 A. THAT'S NOT EXACTLY ACCURATE. YOU LEFT OUT HALF
6 THE SENTENCE.

7 Q. YOU SAY:

8 "IF YOU MADE OFFENSIVE
9 COMMENTS OR REMARKS, DO YOU
10 INTEND TO BE COMPLETELY TRUE" --

11 A. NO. YOU'RE MISREADING IT.
12 MAY I READ IT TO YOU?

13 Q. YES.

14 A. "REGARDING IF YOU MADE
15 OFFENSIVE COMMENTS OR REMARKS
16 REGARDING THE SHERIFF DEPUTIES
17 AT TELLIES ON MARCH 23, 2005,
18 DO YOU INTEND TO BE COMPLETELY
19 TRUTHFUL WITH ME ABOUT THAT?"

20 Q. SO IT'S WRITTEN IN HERE OUT OF -- OUT OF
21 SEQUENCE?

22 A. IT'S WRITTEN FOR ME TO READ IT.

23 Q. I SEE. THIS WAS FOR YOUR BENEFIT?

24 A. I'M THE ONE ASKING HIM THE QUESTIONS.

25 Q. DID YOU SHOW IT TO HIM?

1 A. ABSOLUTELY. HE SAID, "YES."

2 Q. BUT HE WAS SAYING YES, THAT HE INTENDED TO BE
3 COMPLETELY HONEST; IS THAT CORRECT?

4 A. YES.

5 Q. AT THAT TIME, HAD YOU EXPLAINED TO HIM WHAT YOU
6 MEANT BY "OFFENSIVE COMMENTS" OR "REMARKS"?

7 A. BEFORE I GOT TO THE QUESTION REVIEW AS REFLECTED
8 IN MY REPORT, WE DEFINED "OFFENSIVE COMMENTS" AND "OFFENSIVE
9 REMARKS" TO MEAN THOSE OBSCENITIES THAT YOU SPEWED EARLIER.

10 Q. WHY DON'T YOU ASK HIM IF HE SAID THE SPECIFIC
11 WORDS AS YOU TOLD ME YOU WOULD DO --

12 A. I DON'T REMEMBER HAVING THAT CONVERSATION WITH
13 YOU.

14 Q. SIR, WE HAD A TELEPHONE CONVERSATION WHEN I
15 ASKED YOU --

16 A. WELL, THEN YOU SHOULD TESTIFY.

17 Q. YES. I WILL DO THAT, SIR. BUT I ASKED YOU
18 ISN'T IT A FACT THAT I TOLD YOU THAT IF YOU -- TELL ME WHAT
19 YOU'RE GOING TO ASK THEM, AND YOU SAID YOU WOULD ASK THEM THE
20 SPECIFIC STATEMENTS IN THAT LETTER THAT I READ TO YOU ON THE
21 TELEPHONE?

22 A. THAT IS NOT HOW IT WORKS, NO. I WOULDN'T HAVE
23 SAID THAT. SPECIFIC ISSUES ARE NOT SPECIFIC STATEMENTS.
24 YOU'RE USING THEM INTERCHANGEABLE. AN ISSUE IS DIFFERENT FROM
25 A STATEMENT.

1 Q. SIR, THESE STATEMENTS WERE IN QUOTATION MARKS IN
2 THE LETTER OF DISCHARGE, QUOTE, UNQUOTE, AND THEY WERE READ TO
3 YOU ON THE PHONE BY ME.

4 ARE YOU SAYING I DIDN'T DO THAT?

5 MR. MC GOWAN: OBJECT TO COUNSEL, MR. WILLIAMS IS
6 ATTEMPTING TO TESTIFY.

7 MR. WILLIAMS: MY QUESTION IS --

8 MR. MC GOWAN: I'D LIKE TO MAKE MY OBJECTION. I'D
9 ALSO OBJECT TO THE QUESTION AS BEING COMPOUND.

10 HEARING OFFICER ADLER: OVERRULED.

11 BY MR. WILLIAMS:

12 Q. ARE YOU SAYING I DIDN'T READ THOSE STATEMENTS TO
13 YOU ON THE TELEPHONE?

14 A. I'M TELLING YOU FOR THE FIFTH TIME, I DON'T
15 REMEMBER YOU SAYING THAT.

16 Q. YOU DON'T REMEMBER ME SAYING THAT?

17 A. NO. BUT IT DOESN'T MATTER, MR. WILLIAMS.

18 Q. SIR, YOU SAID THAT I SAID I WILL USE YOU AS --

19 A. MR. WILLIAMS, YOU HIRED ME.

20 Q. I DIDN'T HIRE YOU.

21 A. YOU HIRED ME.

22 Q. MR. ADAMS HIRED YOU.

23 A. YOU HIRED ME AND TOLD ME, "I'M HIRING YOU
24 BECAUSE I BELIEVE IN YOU."

25 AND I'M SAYING IF I'M SUCH A BAD POLYGRAPH

1 EXAMINER, YOU DIDN'T DO YOUR WORK. YOU DIDN'T GET THE RESULT
2 THAT YOU WANTED, AND SO HERE WE ARE, SOUR GRAPES.

3 Q. NO. I DIDN'T GET THE BACKGROUND ON YOU UNTIL
4 AFTERWARDS.

5 A. MY BACKGROUND IS STELLAR.

6 Q. THERE'S NO WAY YOU WOULD HAVE EVER BEEN
7 PICKED --

8 HEARING OFFICER ADLER: GENTLEMEN --

9 THE WITNESS: MY BACKGROUND IS STELLAR. SHAME ON YOU.

10 MR. WILLIAMS: YOUR HONOR, YOU ALLOW HIM TO SIT HERE
11 AND ADMONISH ME?

12 THE WITNESS: CALL ME A RACIST, AND I'M SUPPOSED TO
13 SIT HERE?

14 HEARING OFFICER ADLER: SIR, I'M SORRY, THIS IS NOT AN
15 APPROPRIATE BEHAVIOR IN THIS PROCESS.

16 THE WITNESS: I'M SORRY, YOUR HONOR. I'M NOT USED TO
17 THIS FOR THE LAST EIGHT YEARS.

18 MR. WILLIAMS: FINALLY, THE IDEA IS -- YOUR HONOR, CAN
19 I JUST COMPLETE THIS WITNESS HERE?

20 HEARING OFFICER ADLER: I'M TRYING.

21 BY MR. WILLIAMS:

22 Q. MR. TRIMARCO, YOU SAID IN YOUR INITIAL STATEMENT
23 ON DIRECT EXAMINATION THAT YOU DISCERNED FROM MY COMMENTS TO
24 YOU THAT I WAS A FRIEND OF MR. HOLLEY AND MR. DAMPIER. WHAT
25 DID YOU MEAN BY THAT?

1 A. YOU SEEMED VERY CONCERNED ABOUT THEM.

2 Q. SO THAT MADE ME FRIENDS OF THEIRS?

3 A. IT MADE YOU GIVE ME THE IMPRESSION THAT YOU WERE
4 FRIENDS OF THEIRS OR CARED ABOUT THEM, YES.

5 Q. DIDN'T I TELL YOU THAT THESE WERE MY CLIENTS?

6 A. NO. I THOUGHT YOU WERE WITH CHUCK ADAMS' GROUP,
7 AND I ALREADY TESTIFIED TO THAT.

8 Q. I DIDN'T TELL YOU THAT I REPRESENT THESE TWO
9 PEOPLE?

10 A. I DIDN'T KNOW THAT UNTIL THE LAST PHONE CALL
11 WHEN YOU TOLD ME I WAS HIRED.

12 Q. SIR, I NEVER TOLD YOU THAT YOU WERE HIRED.

13 A. THAT'S NOT TRUE.

14 HEARING OFFICER ADLER: FRED, THIS IS NOT APPROPRIATE
15 FOR YOU EITHER.

16 MR. WILLIAMS: OKAY, YOUR HONOR.

17 BY MR. WILLIAMS:

18 Q. DID YOU GET A CHECK FOR THIS -- DOING THESE
19 POLYGRAPH EXAMINATIONS FOR THESE TWO PEOPLE?

20 A. YES.

21 Q. AND HOW MUCH WAS THAT CHECK?

22 A. \$2,700.

23 Q. \$2,700?

24 A. I THINK I ALREADY ANSWERED THAT ONE, TOO.

25 Q. YEAH. \$2,700 FOR THE BOTH OF THEM?

1 A. YES.

2 Q. COULD IT HAVE BEEN \$7,000?

3 A. NO.

4 MR. MC GOWAN: I'LL OBJECT AS ASKED AND ANSWERED.

5 HEARING OFFICER ADLER: THAT WAS ASKED AND ANSWERED
6 TWICE. LET'S GO ON.

7 BY MR. WILLIAMS:

8 Q. WELL, IT WAS ASKED AND ANSWERED BY SOMEONE ELSE.
9 THE FIGURE WAS MUCH DIFFERENT.

10 A. I DON'T THINK SO. LET'S GO BACK. IT WAS 1,700
11 FOR THE FIRST AND 1,000 FOR THE SECOND.

12 MR. MC GOWAN: I'LL OBJECT. THERE'S NO QUESTION
13 PENDING.

14 MR. WILLIAMS: YOU CAN'T OBJECT. YOU CAN MOVE TO
15 STRIKE HIS ANSWER, BUT YOU CAN'T OBJECT TO THE WITNESS.

16 HEARING OFFICER ADLER: FRED, WE'RE GOING OVER
17 TERRITORY WE'VE GONE OVER BEFORE. HE SAYS WHAT HE RECALLS, AND
18 YOU CAN ASK MR. ADAMS WHAT HE RECALLS.

19 MR. WILLIAMS: YES, YOUR HONOR.

20 HEARING OFFICER ADLER: IT MAY NOT BE THE SAME. ISN'T
21 ALWAYS.

22 BY MR. WILLIAMS:

23 Q. WHEN YOU GOT THE CHECK, SIR, FOR YOUR SERVICES
24 AS IT WERE, WHO WROTE THE CHECK?

25 A. I HAVE NO IDEA.

1 Q. YOU DIDN'T LOOK TO SEE WHO WAS THE --

2 A. NO.

3 Q. -- ENDORSER OF THE CHECK?

4 A. NO.

5 Q. SO YOU DON'T KNOW WHERE THE MONEY CAME FROM?

6 A. I DON'T CARE.

7 Q. YOU DON'T CARE?

8 A. NO.

9 Q. DID YOU SEE FRED WILLIAMS' NAME ON THERE
10 ANYWHERE?

11 A. NO. IT WAS A GOOD CHECK. I CASHED CHECK. IT
12 WAS OKAY.

13 Q. DID YOU SEE FRED WILLIAMS' NAME ON IT?

14 A. I SAID, NO, I DIDN'T. I CASHED IT. IT WENT
15 THROUGH.

16 MR. WILLIAMS: YOUR HONOR, I HOPE YOU'RE NOTING THESE
17 DENIALS FROM THIS WITNESS, AND THIS WAS THE GENTLEMAN YOU WERE
18 TALKING ABOUT.

19 I DON'T HAVE ANY FURTHER QUESTIONS FOR THIS
20 GENTLEMAN.

21 MR. MC GOWAN: AND I'D MOVE TO STRIKE MR. WILLIAMS'
22 COMMENTS. THIS IS JUST A CONTINUING EFFORT ON HIS PART TO
23 INJECT HIS OWN RUNNING COMMENTARY ON THESE PROCEEDINGS.

24 HEARING OFFICER ADLER: WELL, I THINK BOTH THE WITNESS
25 AND COUNSEL GOT A LITTLE CARRIED AWAY DURING THE COURSE OF

1 THIS.

2 THE WITNESS: SORRY, YOUR HONOR.

3 HEARING OFFICER ADLER: I PROPOSE THAT WE TAKE A
4 BREAK.

5
6 (RECESS.)

7
8 HEARING OFFICER ADLER: WHENEVER YOU'RE READY FOR
9 REDIRECT.

10 MR. MC GOWAN: WE CAN MAKE ARRANGEMENTS TO HAVE
11 MR. TRIMARCO'S ORIGINAL COPIED. WILL THAT BE ACCEPTABLE?

12 AND I'LL PROVIDE IT WITHIN -- IF I COULD BE
13 GIVEN TWO WEEKS OR TEN DAYS TO FILE A NEW COPY OF THE COMPLAINT
14 CHART FOR MR. TRIMARCO'S ORGANIZATION.

15 HEARING OFFICER ADLER: THAT'S GOT TO BE DONE, GIVEN
16 OUR TIME SCHEDULE, SOMETIME IN THE NEXT COUPLE OF WEEKS.

17 MR. MC GOWAN: YES.

18 HEARING OFFICER ADLER: THE TIMING BECOMES LESS
19 CRUCIAL.

20 OKAY. REDIRECT.

21
22 REDIRECT EXAMINATION

23
24 BY MR. MC GOWAN:

25 Q. WHY DID YOU USE THAT ANALOG INSTRUMENT RATHER

1 THAN A COMPUTER INSTRUMENT FOR MR. HOLLEY'S --

2 A. AS I ALREADY TESTIFIED, THE SOFTWARE -- THAT
3 APPEARS TO BE THE ADVANTAGE TO USING A COMPUTERIZED POLYGRAPH
4 INSTRUMENT. AND SINCE THE SOFTWARE IS NOT YET PERFECTED AND
5 OFTEN OPPOSED TO WHAT THE ORIGINAL EXAMINER'S NUMERICAL SCORING
6 IS, I CHOOSE TO USE ANOTHER HUMAN BEING, ANOTHER EXPERT.

7 Q. IN THE POLYGRAPH ASSOCIATION THAT YOU'RE A
8 MEMBER OF IN CALIFORNIA, DO YOU KNOW WHAT PERCENTAGE OF THE
9 CERTIFICATED POLYGRAPH EXAMINERS USE ANALOG VERSUS COMPUTER?

10 A. THE MAJORITY HAVE ALREADY SWITCHED OVER TO THE
11 COMPUTER.

12 Q. I BELIEVE YOU MENTIONED EARLIER IF THERE WAS
13 SOME SORT OF MANIPULATION DURING THE TEST CONCERNING PINS BEING
14 MOVED, WOULD THAT SHOW UP?

15 A. IT CERTAINLY WOULDN'T SHOW UP IN A POLYGRAPH
16 ROOM, BUT IT MIGHT SHOW UP IN A LABORATORY. IN OTHER WORDS, I
17 THINK IT COULD BE PROVEN.

18 Q. OKAY. DID YOU -- HAVE YOU HAD AN OPPORTUNITY TO
19 REVIEW MR. GROGAN'S CRITIQUE OF YOUR EXAMINATION?

20 A. YES.

21 Q. DO YOU AGREE WITH HIS CRITIQUE?

22 A. IT'S RIDICULOUS.

23 Q. WHY?

24 MR. WILLIAMS: WHAT WAS THE ANSWER TO THE QUESTION?

25 THE WITNESS: RIDICULOUS.

1 MR. WILLIAMS: IS THAT A "YES" OR "NO"?

2 THE WITNESS: IT'S RIDICULOUS.

3 BY MR. MC GOWAN:

4 Q. WHY DO YOU BELIEVE HIS CRITIQUE IS RIDICULOUS?

5 A. WELL, I READ IT AND THE CRITICISMS ARE COMICAL.

6 Q. COULD YOU PLEASE EXPLAIN.

7 A. WELL, IN OTHER WORDS, HE DOESN'T SAY ANYTHING
8 ABOUT THE TEST. HE CLAIMS THAT THE REASON MR. HOLLEY FAILED
9 THE TEST WAS BECAUSE I WORE A SUIT.

10 Q. WOULD THAT HAVE ANY BEARING ON THE VALIDITY OF
11 THIS TEST?

12 A. ABSOLUTELY NOT.

13 Q. OKAY. WHAT ABOUT THE FACT THAT YOU, THE
14 EXAMINER, "LOOKED THE SAME" AS THE OFFICERS, WOULD THAT HAVE
15 ANY BEARING?

16 A. LOOKED THE SAME AS THE ACCUSING OFFICERS BECAUSE
17 I'M CAUCASIAN, LAW ENFORCEMENT DEMEANOR, SAME HAIR STYLE, AND
18 MANNERISMS THAT THE ACCUSING OFFICERS -- THAT'S RIDICULOUS.

19 Q. BUT COULD IT HAVE -- ARE YOU CAUCASIAN?

20 A. YES.

21 Q. NOW, WOULD THE FACT THAT IF MR. HOLLEY WAS AWARE
22 THAT THE OFFICERS MAKING THE ALLEGATIONS WERE CAUCASIAN AND
23 YOU, THE POLYGRAPH EXAMINER, WAS CAUCASIAN, WOULD THAT HAVE ANY
24 EFFECT ON THE VALIDITY OF THE TEST?

25 A. IF THERE WERE CONCERNS OF BIAS OR RACISM, THAT

1 SHOULD HAVE BEEN DETERMINED BEFORE I WAS EVER HIRED FOR THE
2 JOB.

3 Q. DID MR. HOLLEY AT ANY TIME --

4 MR. WILLIAMS: YOUR HONOR, I MOVE TO STRIKE THE ANSWER
5 AS NOT RESPONSIVE TO THE QUESTION.

6 HE WAS ASKED ABOUT CERTAIN THINGS THAT WERE
7 PRESENT AT THE TIME OF THE EXAMINATION AND ASKED WHETHER OR NOT
8 HIS PERSUASION COUPLED WITH THAT OF THE DEPUTY SHERIFFS THAT
9 WOULD HAVE AN IMPACT ON THE RESPONSES GIVEN BY -- THE ACTIONS
10 OF --

11 HEARING OFFICER ADLER: MR. TRIMARCO, WHEN YOU ARE
12 ASKED A "YES" OR "NO" QUESTION, I WOULD APPRECIATE YOUR ANSWER
13 "YES" OR "NO." AND IF YOU NEED TO MAKE AN EXPLANATION, YOU CAN
14 SAY YOU NEED TO MAKE AN EXPLANATION. THAT WOULD MAKE THE
15 RECORD A WHOLE LOT CLEARER.

16 THE WITNESS: OKAY. WOULD YOU REPEAT THAT?
17 BY MR. MC GOWAN:

18 Q. WELL, THE FACT THAT YOU'RE CAUCASIAN AND THE
19 OFFICERS MAKING THE ALLEGATIONS WERE CAUCASIAN, WOULD THAT HAVE
20 ANY EFFECT ON THE VALIDITY OF THE TEST?

21 A. ABSOLUTELY NOT.

22 Q. WHY NOT?

23 A. I'VE NEVER SEEN A STUDY THAT SAID THAT THAT WAS
24 EVER TO BE CONSIDERED.

25 Q. DID MR. HOLLEY AT ANY TIME RAISE ANY CONCERNS

1 OVER THE FACT THAT YOU WERE CAUCASIAN?

2 A. ABSOLUTELY NOT.

3 Q. AND AT THE TIME WHEN MR. WILLIAMS ENCOUNTERED
4 YOU AT YOUR OFFICE, DID HE RAISE ANY CONCERNS ABOUT YOU BEING
5 CAUCASIAN?

6 MR. WILLIAMS: I DO OBJECT TO THE PHRASE
7 "ENCOUNTERED." I DON'T KNOW WHAT THAT MEANS IN THE CONTEXT OF
8 WHETHER IT HAPPENED -- I MET MR. TRIMARCO IN HIS OFFICE.

9 HEARING OFFICER ADLER: WOULD YOU CARE TO REPHRASE THE
10 QUESTION?

11 BY MR. MC GOWAN:

12 Q. WELL, DURING YOUR MEETING WITH MR. WILLIAMS ON
13 NOVEMBER 17, 2005, IN YOUR OFFICE, DID MR. WILLIAMS EXPRESS ANY
14 CONCERNS OR OBJECTIONS TO YOU BEING THE TESTER BECAUSE YOU'RE
15 CAUCASIAN?

16 A. NO.

17 Q. DID YOUR RACE EVER COME UP AS A SUBJECT IN ANY
18 OF YOUR DISCUSSIONS WITH EITHER MR. ADAMS OR MR. WILLIAMS?

19 A. NOT UNTIL TODAY.

20 Q. AT ANY TIME DURING THE NUMBER OF TELEPHONE
21 CONVERSATIONS YOU HAD, DID MR. WILLIAMS EVER INQUIRE ABOUT YOUR
22 ETHNIC ORIGIN OR RACE?

23 A. NO.

24 Q. WHAT ABOUT THE CRITIQUE ABOUT YOU ALLEGEDLY
25 SPEAKING IN DETAIL TO MR. HOLLEY ABOUT YOUR OWN LAW ENFORCEMENT

1 BACKGROUND, WOULD THAT AFFECT THE VALIDITY OF THE TEST?

2 A. MAY I EXPLAIN, YOUR HONOR?

3 HEARING OFFICER ADLER: FIRST ANSWER "YES" OR "NO."

4 BY MR. MC GOWAN:

5 Q. WOULD THAT AFFECT THE VALIDITY OF THE TEST?

6 A. YES.

7 Q. WITH RESPECT TO THE CRITIQUE THAT YOU ALLEGEDLY
8 SPOKE IN DETAIL TO THE EXAMINER ABOUT YOUR OWN LAW ENFORCEMENT
9 BACKGROUND AND HISTORY, WOULD THAT AFFECT THE VALIDITY OF THE
10 TEST?

11 A. I DON'T BELIEVE SO.

12 Q. WHY NOT?

13 A. THE REASON THAT I SHARED MY LAW ENFORCEMENT
14 EXPERIENCE WITH MR. HOLLEY WAS TO LET HIM KNOW THAT AS AN
15 F.B.I. AGENT, PART OF MY DUTIES AS A POLYGRAPH EXAMINER WAS TO
16 POLYGRAPH ACCUSED POLICE OFFICERS IN CRIMES THAT ARE FEDERAL IN
17 NATURE.

18 AND SO I WANTED TO ASSURE HIM THAT I WASN'T ON
19 ANYONE'S SIDE, THAT I WAS IN THE MIDDLE. AND WHATEVER HAPPENS
20 HAPPENS ON THIS POLYGRAPH TEST.

21 Q. WHAT ABOUT THE CRITIQUE THAT YOUR EXAMINATION
22 USED WHAT WAS REFERRED TO AS AN "OLD STYLE ANALOG," MOVING PINS
23 TYPE OF POLYGRAPH INSTRUMENT INSTEAD OF A MODERN, COMPUTERIZED
24 DIGITAL POLYGRAPH INSTRUMENT, IS THAT A VALID CRITICISM?

25 A. NO.

1 Q. WHY NOT?

2 A. BOTH POLYGRAPHS MEASURE EXACTLY THE SAME
3 PHYSIOLOGICAL RESPONSES WITH THE SAME COMPONENT SET UP AND HOOK
4 UP. THE ONLY DIFFERENCE IS THAT THE COMPUTERIZED HAS THE
5 QUALITY CONTROL REVIEW AND THE WORD PROCESSING CAPABILITY.

6 ALL MAJOR POLYGRAPH SCHOOLS AND ORGANIZATIONS
7 ACCEPTS AND, IN FACT, ENDEAR THEMSELVES TO THE ANALOG POLYGRAPH
8 INSTRUMENT.

9 Q. WHAT ABOUT THE FINAL CRITICISM ABOUT THAT YOUR
10 EXAMINATION INVOLVED A VISIBLE VIDEO CAMERA, IS THAT A VALID
11 CRITICISM?

12 A. NO, IT'S NOT.

13 Q. WHY NOT?

14 A. THAT IS A FISHER PRICE EXPLANATION FOR A SYSTEM
15 WHICH IS NOT ONLY ACCEPTED BUT DEMANDED BY MANY LAW ENFORCEMENT
16 AGENCIES AND POLYGRAPH ORGANIZATIONS TO FURTHER GIVE BEST PROOF
17 OF WHAT WENT ON IN THAT ROOM, WHAT WAS SAID, AND HOW WAS IT
18 SAID. EVERY POLYGRAPH EXAM DONE IN THIS COUNTRY SHOULD BE
19 VIDEOTAPED.

20 I'VE NEVER HEARD OF AGGRAVATOR OR AN EXCITER.
21 IT SOUNDS LIKE SOMETHING OUT OF RADIO SHACK.

22 MR. WILLIAMS: IS HE STILL ANSWERING THE QUESTION,
23 YOUR HONOR?

24 THE WITNESS: WANT ME TO REPEAT IT?

25 MR. WILLIAMS: I'M NOT CALLING YOU "YOUR HONOR." WHEN

1 I SAY THAT, I'M SPEAKING TO THE HEARING OFFICER.

2 HEARING OFFICER ADLER: I BELIEVE HE WAS COMPLETING
3 HIS ANSWER TO THE SECOND SESSION OF THIS GROUPING.

4 MR. WILLIAMS: THANK YOU, YOUR HONOR.

5 BY MR. MC GOWAN:

6 Q. WHAT ABOUT MR. GROGAN'S REPORT, DID YOU HAVE AN
7 OPPORTUNITY TO STUDY HIS REPORT?

8 A. I DID.

9 Q. WHAT WAS YOUR --

10 MR. WILLIAMS: THAT WAS A COMPOUND QUESTION.

11 WHEN YOU ASK HIM WHAT ABOUT THE REPORT AND THEN
12 ASK IF HE DID HAVE AN OPPORTUNITY TO READ IT, THAT'S TWO
13 DIFFERENT QUESTIONS.

14 HEARING OFFICER ADLER: I BELIEVE THE SECOND PART OF
15 IT WAS THE QUESTION. THE OTHER WAS SORT OF A PREFATORY --

16 MR. WILLIAMS: THERE'S PARTS TO IT THAT I --

17 MR. MC GOWAN: WOULD YOU LIKE ME TO REPEAT THE SECOND
18 PART OR THE FIRST PART?

19 MR. WILLIAMS: THE SECOND PART. I GOT THE FIRST PART
20 DOWN PAT.

21 BY MR. MC GOWAN:

22 Q. WELL, MAYBE I'LL JUST REPHRASE SO THERE'S NO
23 CONFUSION. HAVE YOU READ MR. GROGAN'S REPORT?

24 A. YES.

25 Q. BASED ON YOUR BACKGROUND, TRAINING, AND

1 EXPERIENCE AS A POLYGRAPH EXAMINER, DO YOU AGREE WITH HIS
2 ANALYSIS?

3 A. THERE'S NO WAY I COULD AGREE WITH IT.

4 Q. OKAY. IN WHAT WAY DO YOU DISAGREE WITH HIS
5 ANALYSIS? AND I'D LIKE TO JUST CONFINE THIS -- I'M NOT ASKING
6 ABOUT MR. GROGAN. I'M ASKING ABOUT HIS ANALYSIS SET FORTH IN
7 HIS REPORT.

8 A. IN ANY WAY FOR ME TO DO A FAIR QUALITY CONTROL
9 REVIEW OR A CRITIQUE OF THIS TEST, I WOULD HAVE TO SEE THE
10 CHARTS, I WOULD HAVE TO SEE THE VIDEO, IF THERE IS ONE. BUT OF
11 COURSE, MR. GROGAN MAY NOT DO THAT BECAUSE IT'S THE EXCITER --

12 MR. WILLIAMS: (OVERLAPPING COLLOQUY) YOUR HONOR, I --

13 THE WITNESS: AND SO --

14 THE REPORTER: ONE AT A TIME, PLEASE.

15 HEARING OFFICER ADLER: YOU HAVE TO LET HIM FINISH HIS
16 ANSWER AND THEN MOVE TO STRIKE.

17 MR. WILLIAMS: BUT HE PUTS ALL THIS GARBAGE IN THE
18 RECORD ABOUT THIS MAN, AND I DON'T THINK IT'S FAIR.

19 HEARING OFFICER ADLER: THEN YOU MOVE TO STRIKE.

20 MR. WILLIAMS: OKAY.

21 BY MR. MC GOWAN:

22 Q. NOW, LET ME ASK THE QUESTION, CAN YOU TELL US,
23 HOW DO YOU DISAGREE WITH MR. GROGAN'S REPORT?

24 A. WELL, AGAIN, IT'S ELEMENTARY. IT DOESN'T
25 INCLUDE EVERYTHING THAT NEEDS TO BE IN THE REPORT. IT'S A HALF

1 PAGE JUST SAYING THAT HE DID A POLYGRAPH REPORT, THESE ARE THE
2 QUESTIONS THAT WERE ASKED, AND HE PASSED.

3 Q. WHAT'S MISSING?

4 A. EVERYTHING THAT IS INCLUDED IN MY POLYGRAPH
5 REPORT IS EXPECTED AND DEMANDED BY THE PROFESSION TO INCLUDE
6 THE HEALTH STATEMENT.

7 Q. ANYTHING ELSE?

8 A. IT IS LACKING IN DETAILS. IT SAYS NOTHING ABOUT
9 THE EXAMINEE'S CONDITION AT THE TIME OF THE TEST. BUT MORE
10 THAN THAT, I MEAN, THIS -- ANYTHING HE WRITES COULD BE -- HE
11 CAN WRITE WHATEVER HE WANTS, BUT I DON'T BELIEVE ANYTHING
12 THAT'S HERE. I WOULD HAVE TO SEE THE CHARTS, AND I WOULD HAVE
13 TO SEE THE VIDEO, AND THEN I COULDN'T MAKE A SUBJECTIVE OPINION
14 ON THIS, BECAUSE I'VE ALREADY DONE THE TEST.

15 AND HE COULD NOT CRITIQUE MY TEST AFTER
16 POLYGRAPHING MR. HOLLEY OR BEFORE. IT'S A CONFLICT OF
17 INTEREST. IN OTHER WORDS, IF HE SAYS THAT MY TEST IS INVALID
18 AND THEN HE POLYGRAPHS MR. HOLLEY AND MR. DAMPIER, THEN THEY
19 HAVE TO PASS. IF MY TEST IS INVALID, THEN HIS HAS TO BE, AND
20 IT HAS TO BE OPPOSED TO MINE.

21 SO PROFESSIONALLY, THERE'S NO ORGANIZATION THAT
22 WOULD ACCEPT HIS ACTIONS IN THIS CASE.

23 MR. WILLIAMS: I MOVE TO STRIKE. IT'S NOT RESPONSIVE
24 TO THE QUESTION.

25 HEARING OFFICER ADLER: SUSTAINED.

1 BY MR. MC GOWAN:

2 Q. YOU'VE ALSO HAD QUESTIONS SUGGESTING POSSIBLE
3 MANIPULATION DURING THE PROCESS INVOLVING MR. HOLLEY, IS THERE
4 ANY TRUTH TO THAT?

5 MR. WILLIAMS: WHAT WAS THE QUESTION?

6 BY MR. MC GOWAN:

7 Q.. THERE'S BEEN SUGGESTIONS THAT YOU'VE MANIPULATED
8 THE PROCESS DURING MR. HOLLEY'S POLYGRAPH EXAMINATION, IS THERE
9 ANY TRUTH TO THAT?

10 A. NO. EVERY TIME THERE WAS A MANIPULATION OR A
11 MOVEMENT OF THE CENTERING DEVICE, IT WAS BACKED UP BY AN ARROW
12 INDICATING THAT I DID THAT.

13 MR. MC GOWAN: THANK YOU, MR. TRIMARCO. I HAVE
14 NOTHING FURTHER.

15 HEARING OFFICER ADLER: RECROSS.

16
17 CROSS-EXAMINATION

18
19 BY MR. WILLIAMS:

20 Q.. SIR, WHEN YOU MANIPULATED THE MACHINE THAT YOU
21 USED FOR THIS EXAMINATION FOR MR. HOLLEY AND MR. DAMPIER, DID
22 YOU EXPLAIN TO THEM -- STRIKE THAT.

23 DID THEY OBSERVE YOU MANIPULATING THE MACHINE?

24 A. WELL, MR. DAMPIER NEVER GOT THAT FAR. HE
25 TERMINATED THE TEST AS WE'VE SAID.

1 Q. BUT YOU DID HAVE A VIDEO OF HIM, DIDN'T YOU?

2 A. YES. THERE IS A PARTIAL VIDEO UP TO THE TEST
3 PART WHERE HE SAYS HE DOESN'T WANT TO TAKE THIS TEST.

4 Q. DID YOU DO ANY MANIPULATION DURING THAT PERIOD
5 OF TIME THAT YOU PHOTOGRAPHED HIM?

6 A. NO. WE DIDN'T GO THAT FAR.

7 Q. WITH MR. HOLLEY, DID YOU EXPLAIN TO HIM --
8 STRIKE THAT.

9 DID THEY OBSERVE YOU, TO YOUR KNOWLEDGE,
10 MANIPULATING THE MACHINE?

11 A. THE ANSWER IS NO.

12 AND YOUR HONOR, I'D LIKE TO EXPOUND BY SAYING A
13 MANIPULATION, HOW YOU SAY IT, SOUNDS LIKE SOMETHING UNTOWARD OR
14 ILLEGAL OR DISHONEST. MANIPULATION OR ADJUSTING THE CENTERING
15 CONTROL DEVICE, IT'S THE SAME THING. LET'S MAKE THAT CLEAR.

16 IT'S EXPECTED TO BE DONE. AND WHEN IT'S DONE,
17 THE EXAMINER NOTES IT ON THE CHARTS. SO TELL ME WHERE YOU
18 DON'T SEE AN ARROW WHERE THERE'S MOVEMENT DONE BY ME.

19 Q. COULD I ASK THE QUESTION AGAIN?

20 A. PLEASE.

21 Q. DID MR. DAMPIER OR MR. HOLLEY --

22 A. MR. DAMPIER DIDN'T GO THAT FAR.

23 Q. MR. HOLLEY OBSERVE YOU, TO YOUR KNOWLEDGE,
24 MANIPULATING THE MACHINE?

25 A. PROBABLY NOT. HE WAS TURNED AWAY FACING THE

1 WALL.

2 Q. AND WHY IS THAT?

3 A. SO HE'S NOT DISTRACTED BY THE MOVEMENT OF THE
4 PINS. BECAUSE IF YOU ASK SOMEONE, DID YOU ROB THE BANK OF
5 AMERICAN, AND HE COULD LOOK AT THE PINS WHEN HE ANSWERS, HE'S
6 GOING TO --

7 Q. BUT WE'RE NOT TALKING ABOUT ROBBING THE BANK OF
8 AMERICA.

9 A. I'M GIVING YOU AN EXAMPLE TO MAKE IT EASIER FOR
10 YOU TO UNDERSTAND.

11 Q. DURING THIS INTERVIEW, YOU WEREN'T ASKING ANY
12 QUESTIONS ABOUT ROBBING BANKS, WERE YOU?

13 A. NO. I ASKED HIM ABOUT HONESTY AND THOSE
14 OFFENSIVE REMARKS.

15 Q. OKAY. AND DID YOU ASK MR. HOLLEY TO DO ANYTHING
16 ELSE OTHER THAN -- YOU COULDN'T RECALL GIVING HIM WATER. DID
17 YOU ASK HIM TO WASH HIS HANDS?

18 A. PROBABLY.

19 Q. WHY?

20 A. AT A BATHROOM BREAK, TO STIMULATE -- I ASKED HIM
21 TO WASH HIS HANDS WITH WARM WATER TO STIMULATE THE SWEAT GLAND
22 ACTIVITIES IN THE FINGERS WHICH CONTAIN MORE SWEAT GLANDS THAN
23 ANYWHERE ELSE IN OUR BODY. IT'S A STANDARD PRACTICE TO REMOVE
24 ANY FOREIGN MATTER OR CHEMICALS OR COLOGNE OR LOTION THAT MIGHT
25 HAVE BEEN ON HIM FROM HIS MORNING CLEANSING.

1 MR. WILLIAMS: OKAY. OKAY. I DON'T HAVE ANY FURTHER
2 QUESTIONS, YOUR HONOR.

3 MR. MC GOWAN: I HAVE NOTHING FURTHER.

4 HEARING OFFICER ADLER: THANK YOU, SIR. WE APPRECIATE
5 YOUR COMING.

6 THE WITNESS: THANK YOU, YOUR HONOR.

7 HEARING OFFICER ADLER: OFF THE RECORD.

8

9 (END OF PARTIAL TRANSCRIPT.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

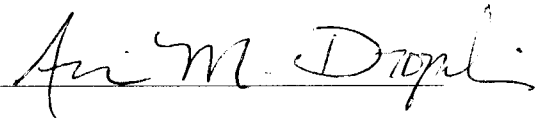
1
2 HEARING REPORTER'S COPY CERTIFICATE
3

4 I, ARCY M. DROPULIC, HEARING REPORTER, IN
5 AND FOR THE STATE OF CALIFORNIA, DO HEREBY CERTIFY:

6 THAT THE FOREGOING TRANSCRIPT OF
7 PROCEEDINGS WAS TAKEN BEFORE ME AT THE TIME AND PLACE SET
8 FORTH, THAT THE TESTIMONY AND PROCEEDINGS WERE REPORTED
9 STENOGRAPHICALLY BY ME AND LATER TRANSCRIBED BY COMPUTER-AIDED
10 TRANSCRIPTION UNDER MY DIRECTION AND SUPERVISION, THAT THE
11 FOREGOING IS A TRUE RECORD OF THE TESTIMONY AND PROCEEDINGS
12 TAKEN AT THAT TIME.

13 I FURTHER CERTIFY THAT I AM IN NO WAY
14 INTERESTED IN THE OUTCOME OF SAID ACTION.

15 I HAVE HEREUNTO SUBSCRIBED MY NAME THIS
16 7TH DAY OF MAY 2007.
17
18
19

20
21 

22 ARCY M. DROPULIC
23 HEARING REPORTER
24
25