

1 (At 1:37 p.m. on April 8, 1997, the
2 following proceedings were had:)

3 THE COURT: This is the continuation of
4 the hearing in Brent Anthony Richter versus Ron
5 Barteo and others, 4CV95-3309. At the time we
6 last met, the petitioner had completed his case,
7 and we were ready to present the
8 defendant's--excuse me, the respondent's case.
9 Mr. Brown?

10 MR. BROWN: Your Honor, we would call
11 Ken Benck.

12 THE COURT: Please come forward to the
13 clerk's desk to be sworn.

14 THE CLERK: Would you state your full
15 name, please?

16 THE WITNESS: Kenneth Benck.

17 THE CLERK: Is that B. E. N. K.?

18 THE WITNESS: B. E. N. C. K.

19 THE CLERK: All right.

20 KENNETH BENCK, RESPONDENT'S WITNESS, SWORN

21 DIRECT EXAMINATION

22 BY MR. BROWN:

23 Q. Again, could you give us your name for the
24 record?

25 A. Kenneth Benck.

1 Q. And could you spell the last name?

2 A. B. E. N. C. K.

3 Q. What's your present position or employment?

4 A. I'm a criminal investigator deputy sheriff
5 for the Sarpy County Sheriff's Department in
6 Papillion, Nebraska.

7 Q. Could you briefly give us your employment
8 history in law enforcement?

9 A. I began my law enforcement career in 1972 in
10 North Platte, Nebraska, where I was a police
11 officer for about a year and a half. I then
12 relocated to Plattsmouth, Nebraska, where I was a
13 police officer for one year prior to starting
14 with the Sarpy County Sheriff's Department on
15 August 12 of 1974.

16 Q. Can you describe your current
17 responsibilities with the Sarpy County Sheriff's
18 Department?

19 A. I'm a criminal investigator, polygraph
20 examiner.

21 Q. What was your position in, say, January of
22 1991?

23 A. The same as it is today, criminal
24 investigator and polygraph examiner.

25 Q. And can you describe your responsibilities

1 in that position?

2 A. My responsibilities as a criminal
3 investigator is to investigate all crimes that
4 are assigned to me. My particular case, I
5 usually do mostly property crimes, unless I'm on
6 call, and then it's any crime they give me. Also
7 to conduct polygraph examinations for our agency
8 as well as all surrounding agencies in the area.

9 Q. Okay. Do you also offer your services as a
10 polygraph examiner privately?

11 A. Yes, I do.

12 Q. In the time frame preceding July, 1991, can
13 you tell me what training or certifications you
14 had received in--is polygraphy the appropriate
15 term?

16 A. Yes, it is. I went to the University of
17 Houston Downtown Polygraph School in 1989. That
18 was a--consisted of an eight-week course in which
19 they teach all facets of polygraph. I then
20 returned to my agency where I completed a
21 one-year internship under another licensed
22 examiner in which you had to conduct a hundred
23 tests under his supervision. Then a licensing
24 examination in front of the Secretary of State,
25 and an oral board interview in front of a

1 licensing board.

2 Q. Who did you conduct your internship with?

3 A. My internship was done under Jack L.
4 Richardson. He was an Investigator Deputy
5 Sheriff of the Sarpy County Sheriff's Department.

6 Q. And you are presently licensed as a
7 polygraph examiner?

8 A. Yes, I am.

9 Q. And by whom are you licensed?

10 A. By the Secretary of State's office in the
11 State of Nebraska.

12 Q. Now, I believe you've described the process
13 of obtaining your license. Is there any
14 additional things you need to do to retain that
15 license?

16 A. Yes, you're required 24 hours of training
17 every two years. That's part of the licensing
18 requirements.

19 Q. And have you maintained your licensure?

20 A. Yes, I've been to numerous seminars and
21 conventions where various classes are held in
22 polygraphy.

23 Q. When did you first receive your license?

24 A. 1989 about March--well, that would have been
25 the intern license in March of '89. Within

1 that--probably within that same year got my
2 original license.

3 Q. Have you maintained your licensure to the
4 present time?

5 A. Yes, I have.

6 Q. Prior to July of 1991 can you estimate how
7 many polygraph examinations you had conducted?

8 A. Prior to July of 1991 I would say somewhere
9 in the vicinity of between 100 and 150.

10 Q. Is that in addition to those conducted
11 during your internship or would that--

12 A. No, that would include those.

13 Q. --include those? After you received your
14 license in 1989, in that time frame between 1989
15 and July of 1991, had you engaged in any
16 additional training that you could describe for
17 us?

18 A. I had been to an American Association of
19 Police Polygraphists seminar, I believe it was
20 held in Kansas City, and I can't give you the
21 exact dates on that. I don't recall.

22 Q. But this was a training seminar?

23 A. Yes.

24 Q. Could you describe for us the general
25 procedure engaged in performing a polygraph

1 examination?

2 A. Procedure that is used in polygraph is,
3 first of all, when the subject is brought in for
4 the polygraph examination, some forms are filled
5 out, which is an authorization release form
6 stating that the examinee is willingly
7 participating, is not being forced in any way.
8 He's also advised of his constitutional rights
9 per Miranda, also fills out a personal data sheet
10 which lists any medications, any illnesses, that
11 type of thing, some general information gathered
12 in reference to his health, and then a pretest
13 interview is conducted with the examinee.

14 From the pretest interview, when that is
15 completed the--I explain the full workings of the
16 polygraph instrument to the examinee, showing him
17 what different reactions look like in each of the
18 four channels on the polygraph instrument.

19 When that's completed--the questions are
20 formulated by myself at that time, and when the
21 questions are done being formulated, a review is
22 held with the examinee prior to the examination
23 so he knows exactly what each and every question
24 is word-for-word the way they're going to be
25 asked on the test.

1 When that's done the apparatuses are
2 hooked up to him, and the examination is
3 conducted with a minimum of two charts required
4 by law. When the charts are completed, the
5 examinee then signs the charts as well as signing
6 the authorization and release form again,
7 indicating that it was of his own free will.

8 The score--or the charts are then
9 numerically scored and then gone over with the
10 examinee at the conclusion of the findings.

11 Q. What's the purpose of the pretest interview,
12 or what's the goal?

13 A. Pretest interview is a, basically a
14 fact-gathering session in which the examinee will
15 tell me what he knows, he or she knows about the
16 whole situation. It's kind of a question and
17 answer situation where I'll ask questions
18 pertaining to the event and--to get his reactions
19 on what his answers are, and from that I
20 formulate what my questions are going to be on
21 the examination itself.

22 Q. Okay. You indicated that at some point in
23 time you engaged--or actually engage in the test
24 using the apparatus. What does the apparatus
25 measure?

1 A. There are four channels on the polygraph
2 instrument. The two channels are known as an
3 upper pneumograph and a lower pneumograph. The
4 upper pneumograph is a black tube that goes
5 around the chest with a black beaded chain around
6 the back, and the lower pneumograph goes around
7 the stomach in the same fashion. They record
8 everything from hiccoughs, sneezes, sighs,
9 coughing, clearing throat, yawning, belching,
10 turning your arms, moving your head, inhaling and
11 exhaling, or respiration.

12 You also have two attachments that go on
13 two fingers of the left hand, one on the index
14 finger and one on the ring finger. It's a metal
15 tab held on with a velcro strip that monitors
16 galvanic skin response. You then have a blood
17 pressure cuff which is placed over the brachial
18 artery in the right arm, and it does not read
19 blood pressure; it only monitors it.

20 Q. Can you tell me what is galvanic skin
21 response?

22 A. Galvanic skin response is--basically works
23 off from perspiration and also from resistance in
24 conductance to electricity generated within the
25 body. Nothing that's introduced by me.

1 Q. What does the term "pertinent questions"
2 refer to in the context of a polygraph
3 examination?

4 A. Pertinent questions, which I refer to as
5 relevant questions. There are basically three
6 types of questions on a polygraph examination:
7 Symptomatic, controls, and relevants. Relevant
8 being pertaining to the issue at hand.

9 Q. Okay. And can you describe for me the
10 nature of the other two types of questions?

11 A. The control is used to set up a norm and see
12 how the subject is going to react under normal
13 situations. And the symptomatic is simple
14 questions which you know the individual to be
15 telling the truth about: Is your first name
16 so-and-so, are you now in the state of Nebraska,
17 or something like that.

18 Q. How is--you indicated that after the test is
19 conducted employing the apparatus, the test is
20 scored how--what does, can you describe for us
21 that process?

22 A. There's a numerical scoring process used by
23 polygraph examiners. It's pretty much uniform
24 throughout the country. There may be a variation
25 or two to it, but you're going to come up with

1 the same result.

2 MS. HUTCHINSON: Your Honor, I object to
3 his testifying about what polygraph examiners do
4 generally. I believe the question is what he
5 does.

6 THE COURT: What is the objection?

7 MS. HUTCHINSON: Foundation.

8 THE COURT: Sustained.

9 Q. (By Mr. Brown) Mr. Benck, could you describe
10 for us, first of all, how you conduct scoring?

11 A. Okay. My form of scoring, which I was
12 taught at the school, is a scoring of a minus or
13 plus 1, 2, or 3 for each of the channels on the
14 polygraph instrument. The blood pressure, the
15 galvanic skin response, and one of the pneumatic
16 reactions, whichever is the clearest.

17 In simplifying that, when you score
18 polygraph charts, the minus side being
19 undeceptive, plus being untruthful, if you're
20 looking at a polygraph chart and, for an example,
21 in a blood pressure tracing, if you have a very
22 subtle change in the blood pressure it can either
23 be a plus or a minus, and that would be a 1. If
24 it was very obvious, then it would be minus or
25 plus 2. And if it's very traumatic, then it's

1 minus or plus 3.

2 Q. Is that scoring consistent with the training
3 you received and the licensure testing that
4 you've undergone?

5 A. Yes, it is.

6 Q. Now, in the course of scoring one of these
7 exams, do you score each relevant question or do
8 you score the overall test? What's your process
9 for coming up with a score?

10 A. Each relevant question is compared to the
11 control question immediately preceding it. The
12 scoring is done in each of the relevant
13 questions, and the score is brought down from
14 each question and then brought over to the side
15 for a total for the chart. And that's done with
16 all of the charts, and then they're combined for
17 a final score.

18 Q. So the final score is an overall impression
19 of the test as a whole?

20 A. That's correct.

21 Q. From the standpoint of this scoring, what is
22 the--is there--does a standard exist for the
23 measurement of truthfulness or deception?

24 A. Yes, there is.

25 Q. And what is that, as you understand it?

1 A. Minus 7 or above that, so anywhere from
2 minus 7 to minus whatever is considered
3 deceptive; anything minus 7 or under is truthful.

4 Q. And are the procedures you've described for
5 us consistent with your training in polygraphy?

6 A. Yes, they are.

7 Q. Can you tell us as a general matter how you
8 perceive your role as a polygrapher in the course
9 of a criminal investigation?

10 A. My role as a polygraph examiner in a
11 criminal investigation is to determine the truth,
12 not to determine innocence or guilt.

13 Q. Do you believe it is your responsibility in
14 conducting a polygraph exam to obtain
15 incriminating information; is that part of the
16 goal of that exam?

17 A. The goal of a polygraph examination is to
18 get the truth. If in the--if the subject shows
19 deceptive in the polygraph scoring process, a
20 post-test interview will then be conducted to try
21 and get any statements.

22 Q. On July 3, 1991, did you conduct a polygraph
23 examination of an individual by the name of Brent
24 Richter?

25 A. I did.

1 Q. Are you aware of why that examination was
2 conducted?

3 A. Yes, I am.

4 Q. Had you previously been involved in the
5 investigation of that--of the crime in question?

6 A. Only very slightly.

7 Q. How did--what's your understanding of the
8 reason this test was to be conducted, or how did
9 it come--how did you receive direction to conduct
10 this test?

11 A. A sexual assault had occurred, and, as a
12 result of that sexual assault, a composite
13 drawing had been made by another officer in our
14 department. The following night after the sexual
15 assault, an individual attempted suicide and was
16 taken to a local area hospital. One of our
17 officers then went to the hospital to complete a
18 report, and at that time had seen Brent Richter,
19 later identified as Brent Richter, realized that
20 he looked very similar to the composite drawing
21 from the night before on the sexual assault.

22 This information was passed on to the
23 criminal investigation division, and a photo was
24 obtained for a lineup.

25 On a, I believe on a Monday, Investigator

1 Kris Yount and I went to the hospital to speak
2 with him. He was being dismissed. We asked him
3 to come to the sheriff's department and stand in
4 a lineup. He agreed, and at that point he was
5 picked out and arrested by Investigator Yount.

6 Q. I'm sorry, he was picked out by--

7 A. By the victim, Denise Juve.

8 Q. And the information that you had prior to
9 conducting this test, what was the source of that
10 information?

11 A. From the offense report taken the night of
12 the sexual assault by the officers from the
13 victim, Denise Juve.

14 Q. Could you describe for us the procedure you
15 engaged in in taking Brent Richter's--or
16 conducting Brent Richter's polygraph examination?

17 A. At the time he was, I believe, incarcerated
18 in our jail, the Sarpy County jail, he was asked
19 to take a polygraph. He consented. I then went
20 back to the jail area where I brought him up to
21 the administration side where the polygraph lab
22 is. He was brought in, advised of his
23 constitutional rights. He signed the
24 authorization release form, the rights form. The
25 interview was conducted. The questions were

1 formulated. The charts were run and then gone
2 over with him after the examination.

3 Q. In the process of conducting any polygraph
4 examination, but in the context specifically of
5 Brent Richter's examination, do you conduct
6 any--any review of the apparatus itself to verify
7 its functioning or appropriate functioning?

8 A. Yes, there is a calibration that is done.

9 Q. And was it done in this instance prior to
10 this examination?

11 A. Yes, it was.

12 Q. As you structured the examination of Brent
13 Richter, what were the pertinent questions, or
14 relevant questions, as you termed them?

15 A. May I refer to my notes?

16 Q. Yes.

17 A. The relevant issues--or relevant questions
18 were, number one, "Regarding your activities on
19 Friday night, June 28, 1991, do you intend to
20 answer truthfully each question about that?"
21 Number two, "Did you beat and rape that woman on
22 Friday night, June 28, 1991?" And the third one,
23 "Were you at Willow Creek apartments on Friday,
24 June 28, 1991?" And the last question, "Did you
25 leave your house after Chris dropped you off on

1 Friday night?"

2 Q. After the examination was completed, did you
3 review the test results and score the examination
4 of Brent Richter?

5 A. Yes, I numerically scored the charts, and
6 after scoring them went over them with Brent
7 Richter.

8 Q. And how did you score Brent Richter on that
9 examination? What was the numerical?

10 A. Numerical test score was minus 21.

11 Q. As I understand it, anything greater than
12 minus 7 is, in your opinion, deceptive?

13 A. Yes.

14 Q. Based upon your training and your evaluation
15 of the test results, was your conclusion with
16 regard to Brent Richter's--what was your
17 conclusion with regard to Brent Richter's
18 truthfulness or deception with respect to the
19 relevant questions?

20 A. That he was attempting deception.

21 Q. Did you communicate the results of your
22 examination of Brent Richter to anyone?

23 A. To Brent Richter. I believe a copy was also
24 forwarded to the prosecutor's office.

25 Q. Since July, 1991, have you continued to be a

1 licensed polygrapher?

2 A. Yes, I have.

3 Q. Since July of '91, how many more polygraph
4 examinations have you conducted?

5 A. Probably about 900.

6 Q. And since July of 1991 have you received
7 additional training in the conducting and
8 evaluation of polygraph examinations?

9 A. Yes, I've been to numerous seminars
10 conducted by the American Polygraph Association,
11 also by the American Association of Police
12 Polygraphists. I am also the president of the
13 Nebraska Association of Polygraph Examiners, and
14 we have a seminar every two years.

15 Q. Once you knew that you were likely to be
16 giving testimony in this case, did you again
17 review the results of your July, 1991 examination
18 of Brent Richter?

19 A. Yes, I did.

20 Q. Did you rescore Brent Richter's examination?

21 A. Yes, I did.

22 Q. Did that review and rescoring result in any
23 alteration of your previous conclusions with
24 regard to that exam?

25 A. No, it did not.

1 Q. At the time you conducted Brent Richter's
2 polygraph examination in July of 1991, did you
3 believe it to be your task or responsibility or
4 obligation to try to obtain a test result which
5 indicated deception on his part?

6 A. No, my function is to determine what the
7 truth is, not to determine guilt or innocence.

8 Q. On April 2, 1992, did you have occasion to
9 conduct a polygraph examination of an individual
10 by the name of Chris Dappen, D. A. P. P. E. N.?

11 A. Yes, I did.

12 Q. Who requested you to undertake that
13 examination?

14 A. The Sarpy County Attorney's office.

15 Q. What is your understanding of Chris Dappen's
16 role in the investigation being conducted?

17 A. Chris Dappen was a personal friend of the
18 suspect, Brent Richter, had also been with him
19 earlier in the evening of June 28, 1991.

20 Q. Okay. From whom did you receive that
21 information?

22 A. I received that information from him during
23 the pretest interview of the polygraph
24 examination.

25 Q. Again, could you describe for us the

1 procedure you engaged in in taking Chris Dappen's
2 polygraph examination?

3 A. Be the same procedure as used with Brent
4 Richter, signing of the authorization and release
5 form, personal data sheet being filled out,
6 Miranda warnings, pretest interview, explanation
7 of the polygraph instrument, formulation of the
8 questions, running of the charts, numerically
9 scoring the charts, and going back over them with
10 him.

11 Q. As you structured the examination of Chris
12 Dappen, what were the relevant questions?

13 A. "Regarding the statements you made
14 concerning the times you took Brent home on
15 June 29th--28th, do you intend to answer
16 truthfully each question about that?" "Did you
17 take Brent Richter home before 12:15 of June 29,
18 1991?" And "Did you intentionally lie about the
19 time or event of that night?" And, "Did Brent
20 Richter ask you to lie or cover up for him?".

21 Q. After the examination was completed, did you
22 review the test results and score the examination
23 of Chris Dappen?

24 A. I did.

25 Q. And how did Chris Dappen score on that

1 examination?

2 A. He scored a minus 18.

3 Q. Based on your training and your evaluation
4 of the test results, was your conclusion with
5 regard to Chris Dappen--what was your conclusion
6 with regard to Chris Dappen's truthfulness or
7 deception with respect to the relevant questions?

8 A. The examinee was attempting deception when
9 he answered the questions as he did.

10 Q. How did the score compare to norms against
11 which they're to be evaluated?

12 MS. HUTCHINSON: Objection; foundation.

13 THE COURT: Sustained.

14 Q. (By Mr. Brown) Did you communicate the
15 results of your examination of Chris Dappen to
16 anyone?

17 A. Yes, I did.

18 Q. And to whom was that communicated?

19 A. To Chris Dappen at the time of the
20 conclusion of the examination. The results were
21 also provided to the Sarpy County Attorney's
22 office.

23 Q. In preparation of your testimony today, did
24 you again review the results of your July of '92
25 examination of Chris Dappen?

1 A. Yes, I did.

2 Q. Did you rescore that examination?

3 A. Yes, I did.

4 Q. Did that review and rescoring result in any
5 alteration of your previous conclusions with
6 regard to that exam?

7 A. No, it did not.

8 Q. At the time you conducted Chris Dappen's
9 polygraph examination in 1992, did you believe it
10 to be your task or responsibility to try and
11 obtain a deceptive test result from Chris Dappen?

12 A. No, that's not my job. My job is to only
13 determine the truth.

14 MR. BROWN: We have nothing further.

15 THE COURT: All right, cross-examination?

16 CROSS-EXAMINATION

17 BY MS. HUTCHINSON:

18 Q. Mr. Benck, did you review any records to
19 refresh your memory--did you review any records
20 to refresh your memory prior to your testimony
21 today?

22 A. I read through the files, yes.

23 Q. And do those files include the notes about
24 each of the polygraph exams about which you just
25 testified?

1 A. Which notes are you talking about?

2 Q. Well, specifically I'm talking about some
3 notes that were provided to me--

4 MS. HUTCHINSON: May I approach the
5 witness, Your Honor?

6 THE COURT: Yes.

7 Q. (By Ms. Hutchinson) I'm showing you some
8 papers now. What are they?

9 A. These are photocopies of the forms, the
10 papers, that are used during the polygraph
11 examination.

12 Q. Okay. Will you take a minute, please, to
13 review those photocopies to determine whether
14 they are true and correct copies of the records
15 that you used to refresh your memory prior to
16 testifying today?

17 MS. HUTCHINSON: May I approach the
18 witness, Your Honor?

19 THE COURT: Yes.

20 THE WITNESS: It would appear that these
21 are, yes.

22 Q. (By Ms. Hutchinson) And does that appear to
23 you to be a complete set of the notes pertaining
24 to the polygraph examination of Brent Richter
25 that you conducted?

1 A. Other than the charts themselves, yes.

2 Q. Okay. Will you take a look at the papers
3 that I'm showing you now, please? Just take a
4 moment to review those.

5 A. Okay.

6 Q. Are those, in their entirety, accurate
7 photocopies of the charts of the polygraph exam
8 that you administered to Brent Richter?

9 A. Not exactly.

10 Q. Will you explain, please, how they're
11 different?

12 A. A polygraph chart will run somewhere between
13 three and four feet. Those copies that you have
14 have been photographed or photocopied in
15 sections, and, if put together, it could alter
16 the outcome if you didn't get them lined up
17 perfectly.

18 Q. Okay. Assuming they were lined up
19 perfectly, would they be accurate depictions of
20 the charts and of the graph of the polygraph that
21 you administered to Mr. Richter?

22 A. Probably, yes.

23 Q. Okay. Now, I'll tell you, Mr. Benck, that I
24 was provided through Mr. Brown some photocopies
25 of some charts, and were those prepared by you?

1 A. Yes, they were.

2 Q. And, as best you can recall, were those
3 charts accurate depictions of the chart of
4 Mr. Richter's photograph--

5 A. Yes.

6 Q. --polygraph, I'm sorry?

7 A. Yes, because I personally photocopied them.

8 Q. Okay.

9 MS. HUTCHINSON: May I have a moment to
10 confer with Mr. Brown?

11 THE COURT: Yes.

12 MS. HUTCHINSON: Thank you, Your Honor.

13 (Off-the-record discussion between
14 counsel.)

15 MS. HUTCHINSON: Your Honor, the
16 petitioner would offer what's been marked as
17 Exhibit 18.

18 THE COURT: What is Exhibit 18?

19 MS. HUTCHINSON: Exhibit 18 is the papers
20 that Mr. Benck has indicated are accurate
21 photocopies of his records, other than the
22 graphs, of Mr.--

23 THE COURT: Perhaps you'd better have him
24 testify to that.

25 MS. HUTCHINSON: I believe he has.

1 THE COURT: He didn't testify to what the
2 number is.

3 MS. HUTCHINSON: Oh, okay. May I approach
4 him?

5 THE COURT: Yes.

6 Q. (By Ms. Hutchinson) I'm showing you now
7 what's been marked as Petitioner's Exhibit 18.
8 What is it?

9 A. This is a photocopy or photocopies of the
10 paperwork in my file of the Brent Richter
11 polygraph.

12 MS. HUTCHINSON: Petitioner would offer
13 Exhibit 18, Your Honor.

14 THE COURT: Any objection?

15 MR. BROWN: None.

16 THE COURT: 18 is received.

17 Q. (By Ms. Hutchinson) Now, Mr. Benck, is the
18 methodology that you used to interpret the data
19 on Mr. Richter's polygraph known as the Backster
20 zone comparison technique?

21 A. That's the technique that's used in the
22 polygraphic examination, yes.

23 Q. And are you aware of studies as to the
24 empirical validity of this methodology?

25 A. I don't think I understand what the question

1 is.

2 Q. Are you aware of any studies as to the
3 empirical validity of this methodology?

4 A. Cleve Backster developed the zone comparison.

5 Q. Excuse me, that wasn't my question. Are you
6 aware--

7 A. I don't understand your question.

8 Q. Are you aware of any studies in the
9 scientific literature that address whether or not
10 this is a valid method of interpreting polygraph
11 data?

12 A. To be able to quote to you an exact one, no.

13 Q. I'm sorry; that's not what I asked. I asked
14 you whether you're aware of any studies, yes or
15 no.

16 A. None that I can come up with right offhand,
17 no.

18 Q. Okay. Are you personally aware of the
19 validity rate of the Backster zone comparison
20 technique in polygraph methodology?

21 A. No.

22 Q. Are you familiar with the writings of any
23 experts in the science of polygraphy?

24 A. I have read numerous articles based on zone
25 comparison, as well as mixed general question

1 technique, Reed technique, the relevant/
2 irrelevant technique; there are numerous
3 techniques out there.

4 Q. Yes. Are you aware of the writings of a
5 Dr. Charles Honts, H. O. N. T. S.?

6 A. No, I'm not. I'm not familiar with him.

7 Q. Are you aware of the writings of a Stan
8 Abrams?

9 A. Yes, I am.

10 Q. Are you aware, then, that of the Backster
11 zone technique, in 1999(sic) Dr. Abrams wrote
12 that the significant weakness in this approach is
13 a lack of scientific research to demonstrate the
14 validity for many of these findings?

15 A. It's not 1999 yet.

16 Q. No, 1989, sir.

17 A. Would you repeat that, please?

18 Q. Are you aware that Mr. Abrams wrote of the
19 Backster zone of comparison technique that the
20 significant weakness in this approach is the lack
21 of scientific research to demonstrate the
22 validity of many of these findings?

23 A. I've read that, yes.

24 Q. I see. Now, are you aware of the validity
25 rate of the polygraph generally?

1 A. There's different information on it, yes.

2 Q. Sir, that's not what I asked. I asked you,
3 yes or no, are you aware of the validity rate of
4 the polygraph generally?

5 A. No, I'm not.

6 Q. Are you aware of the rate of error in the
7 Backster zone comparison technique for
8 polygraphy?

9 A. No.

10 Q. Are you familiar with the writings of a
11 Dr. Raskin, R. A. S. K. I. N.?

12 A. I've not read Dr. Raskin, no.

13 MS. HUTCHINSON: I have no more questions.

14 REDIRECT EXAMINATION

15 BY MR. BROWN:

16 Q. Mr. Benck, the--if I'm getting the term
17 right--the Backster zone of comparison technique
18 that you employed in this test, is that an
19 accepted method of conducting a--

20 MS. HUTCHINSON: Objection; foundation.

21 THE COURT: Let's get the question out
22 first.

23 Q. (By Mr. Brown) In the course of your
24 training and examination for licensure, is it
25 your understanding that the Backster zone of

1 comparison technique is approved for scoring or
2 evaluating polygraph examinations?

3 MS. HUTCHINSON: Objection; foundation.

4 THE COURT: He may answer as to his
5 understanding.

6 THE WITNESS: Yes.

7 MR. BROWN: I have nothing further.

8 THE COURT: All right, you may step down.

9 MR. BROWN: Your Honor, may this witness
10 be excused?

11 THE COURT: Any reason he shouldn't be?

12 MS. HUTCHINSON: We know of no reason,
13 Your Honor.

14 THE COURT: All right, you're excused.

15 MR. BROWN: Your Honor, may we have maybe
16 three minutes?

17 (At this time a short recess was taken.)

18 THE COURT: All right. Any other evidence
19 for the defense?

20 MR. BROWN: Nothing further.

21 THE COURT: For the respondent--excuse
22 me--rebuttal for the petitioner, Ms. Hutchinson?

23 MS. HUTCHINSON: Yes, Your Honor. For the
24 record, at this time we had planned to offer the
25 affidavit of Judge Irwin pursuant to our Motion

1 to Expand the Record, but he's told us that he
2 has mailed that to us, but it hasn't come in the
3 mail. So I guess I'd ask that Your Honor hold
4 the record open until we can provide an executed
5 copy of that affidavit. I believe you've already
6 been provided an unexecuted copy attached to our
7 motion.

8 THE COURT: I don't believe I have, but
9 I'll check. Just a moment. Yes, I do have a
10 two-page affidavit that's part of Exhibit--or,
11 excuse me, that is Exhibit A to filing 43, the
12 Motion to Expand the Record to include the
13 affidavit of John F. Irwin. Is that what you're
14 referring to?

15 MS. HUTCHINSON: Yes, Your Honor.

16 THE COURT: And this is the affidavit, I
17 take it, that, Mr. Brown, you had indicated you
18 have no objection to; is that right?

19 MR. BROWN: Yes. I'd like to--I mean
20 before it comes in, I'd like to see an executed
21 copy. But on the assumption that it will conform
22 to what we have, we'd have no objection to it.

23 THE COURT: All right. Then I'll hold the
24 record open so that we can have filed an executed
25 copy. But in the meantime, for purposes of

1 today, I will assume that the executed copy will
2 conform exactly to the unexecuted copy that we
3 have. All right.

4 MS. HUTCHINSON: Our understanding is it
5 will, Your Honor.

6 MR. BROWN: One question. Will
7 this--should we mark this as an exhibit as
8 opposed to--how else--

9 THE COURT: Since we don't have the
10 original, I'm not sure how we can do that. If
11 there is some discrepancy as between the two
12 versions, or the original and the copy, I will
13 get together with you on the phone and we'll work
14 it out.

15 MR. BROWN: But I guess my question is
16 when we do get the original would it be most
17 helpful in the record that we simply mark it as
18 an additional exhibit?

19 THE COURT: It would be, but we don't have
20 it to do that.

21 MR. BROWN: Yes, I understand. I just--

22 THE COURT: So we can assign it a number,
23 I suppose, we can make it Exhibit--what would it
24 be?--20--19, Exhibit 19. So when it arrives put
25 a sticker on it with Exhibit 19, provide it to