

1 Ms. Nelson, and it will become part of the
2 record.

3 MS. HUTCHINSON: Well, at this time, Your
4 Honor, the petitioner calls Dr. Charles Honts.

5 THE COURT: All right. We'll let you
6 literally call him on the telephone up here. And
7 despite our efforts to the contrary we weren't
8 able to make connections so that you could all
9 sit at counsel table and we could have everything
10 recorded with you sitting down. So it's going to
11 be necessary during this period of taking this
12 testimony that all of you come up here and we'll
13 put this phone on a speaker phone and hopefully
14 he'll be able to hear everyone and hopefully my
15 dictation machine will record everything through
16 the telephone. If that doesn't work, we're in
17 big trouble.

18 MS. HUTCHINSON: Hello. My name is
19 Ms. Hutchinson, we're in the courtroom and we're
20 ready to proceed.

21 THE WITNESS: Okay.

22 THE COURT: First of all, we'll have the
23 oath administered to you. I will simply do
24 this. This is Judge Piester, and I will ask,
25 do you solemnly swear or affirm that the

1 testimony that you are about to give will be the
2 truth to the best of your knowledge and belief?

3 THE WITNESS: Yes, I do.

4 THE COURT: All right, you will be
5 examined first by Ms. Hutchinson, later
6 cross-examined by Mr. Brown.

7 THE WITNESS: Mr. Brown, okay.

8 THE COURT: Just a moment. I need
9 to--would you state your full name, please?

10 THE WITNESS: Charles Robert Honts, and
11 that's spelled H. O. N. T. S..

12 THE COURT: All right. I'm going to have
13 to stop here for a minute. My indicator is not
14 indicating that it's recording, and so if you'll
15 hang on for just a minute, let me stop and
16 backtrack and see if we've got anything.

17 THE WITNESS: No problem.

18 THE COURT: All right. Mr. Honts, would
19 you state your name again, please?

20 THE WITNESS: Yes. Charles Robert Honts,
21 H. O. N. T. S.

22 THE COURT: All right. Tell me your
23 address, please.

24 THE WITNESS: It's 3105 Sweetwater Drive,
25 Boise, Idaho.

1 THE COURT: All right. Now, stop for a
2 moment; I'll see if I've got this.

3 (Listens back).

4 All right. Mr. Honts, repeat that again.
5 Let's try one more method.

6 THE WITNESS: All right, yes. My name is
7 Charles Robert Honts, H. O. N. T. S..

8 THE COURT: All right. We'll start all
9 over. I'm not sure if this will pick up on the
10 telephone tape but apparently the courtroom tape
11 recorder is picking it up.

12 All right, Mr. Honts, do you solemnly
13 swear or affirm that the testimony that you are
14 about to give will be the truth, to the best of
15 your knowledge and belief?

16 THE WITNESS: Yes, I do.

17 THE COURT: All right. Ms. Hutchinson,
18 you may proceed.

19 DIRECT EXAMINATION

20 BY MS. HUTCHINSON:

21 Q. Will you introduce yourself to the Court,
22 please?

23 A. Yes, I'm Charles R. Honts, H. O. N. T. S..

24 Q. And Dr. Honts, on Sunday, April 6th, do you
25 recall providing me a copy by facsimile message

1 of your curriculum vitae?

2 A. Yes, I did. The volume's not very good.

3 You're going to have to speak up.

4 THE COURT: All right. Come closer to the
5 phone.

6 Q. (By Ms. Hutchinson) And is that--would that
7 be 27 pages in length?

8 A. Yes, it is.

9 Q. Will you tell us something about your
10 professional background, please?

11 A. Certainly. I'm presently an associate
12 professor of psychology at Boise State
13 University. My education is in experimental
14 psychology. That's the part of psychology that's
15 concerned with scientific research. I received a
16 bachelor of science in psychology from Virginia
17 Polytechnic Institute and State University in
18 Blacksburg, Virginia, in June of 1974.

19 I received a master of science in
20 experimental psychology from that same
21 institution in June of 1982. I received a PhD
22 in experimental psychology from the University of
23 Utah in Salt Lake City in June of 1986.

24 Q. Okay. And do you have specific training in
25 the area of polygraphy?

1 A. Yes, I do.

2 Q. Will you describe your training, please?

3 A. Well, I originally was trained as a
4 polygraph examiner back in 1976 at the Backster
5 School in San Diego, California. I practiced for
6 several years as a polygraph examiner. Then in
7 1980 I went back to graduate school. I've
8 attended numerous workshops on polygraph and then
9 my master's thesis and dissertation were both on
10 that topic.

11 Q. Okay. Now, I have marked an exhibit which
12 is Plaintiff's Exhibit 17. I'm going to take a
13 moment and show it to Mr. Brown.

14 Okay, Mr. Brown will stipulate to the fact
15 that what I've marked as Exhibit 17 is a copy of
16 your curriculum vitae.

17 MS. HUTCHINSON: At this time I'd
18 offer--petitioner would offer Plaintiff's Exhibit
19 17.

20 MR. BROWN: No objection.

21 THE COURT: 17 is received.

22 Q. (By Ms. Hutchinson) Dr. Honts, have you
23 participated in any empirical research pertaining
24 to the validity of polygraphy?

25 A. Yes, quite a lot.

1 Q. Will you describe generally for the Court
2 some of those tests--or some of those studies,
3 rather?

4 A. Well, I've been involved in three areas of
5 research with regard to polygraphy. One line of
6 research that I've published and have conducted
7 quite a lot of research in is the area of
8 countermeasures, which is a study of ways that
9 people try to beat tests that's of particular
10 interest to how the national security people,
11 because they face individuals that are very
12 likely to have training and know a lot about
13 polygraphs.

14 The second area that I've been heavily
15 involved in is the use of computers and
16 statistical techniques to analyze the
17 physiological data in an effort to try to improve
18 accuracy.

19 And then the third area that I've done
20 research in and published in is on just basic
21 issues of validity. I've been involved in two
22 very large field studies. One with the U.S.
23 Secret Service, and the other with the Royal
24 Canadian Mounted Police where we've looked at the
25 validity of polygraphy as it's currently being

1 used by law enforcement in the field.

2 Q. Okay. Just real generally, when we speak of
3 the polygraph, will you state what you believe
4 that is, what, if anything, it measures?

5 A. Okay. The standard polygraph is a
6 physiological monitor. It monitors--the typical
7 one in the field monitors three or four indices
8 of autonomic nervous system activity.

9 A typical field polygraph instrument will
10 have a device that measures cardiovascular
11 activity. That's transduced from a cuff that's
12 put on the arm. It's no different than a blood
13 pressure cuff that a physician uses. Pressure is
14 put on that cuff and then a recording is made of
15 the individual's cardiovascular activity. From
16 that you can follow their blood pressure, you get
17 to see their heart rate, and see changes in their
18 cardiovascular activity.

19 A typical polygraph also measures
20 respiration. They do that by placing sensors
21 around the individual's torso, usually one over
22 the upper chest, one over the abdomen, and from
23 that you can follow the respiratory cycle with
24 how large a volume is inhaled, how large a volume
25 is exhaled.

1 The other standard measure is a device
2 that measures sweating on the palms of the hands,
3 and that's done by placing two sensors usually on
4 the fingers. Many field instruments also include
5 a device that measures how much blood is flowing
6 near the surface of the hand. That's called
7 vasomotor activity, V. A. S. O. M. O. T. O. R..
8 And those are the four standard measures.

9 They're of interest because they're
10 controlled by the autonomic nervous system and
11 they're not under voluntary control, but they do
12 change, and one of the times they change is when
13 people lie.

14 Q. Do you consider the polygraph examination to
15 be a valid scientific tool?

16 A. Yes, it can be.

17 Q. Okay. Has the validity of the polygraph
18 exam as a measure of truth and deception been
19 tested in controlled studies?

20 A. Many. In fact, I've written rather
21 extensively on that. I've published a Law Review
22 article in 1995 in the North Dakota Law Review
23 where we reviewed the studies that have been
24 conducted. Such studies are conducted in two
25 settings, in laboratory settings and in field

1 settings. Each of those has advantages and
2 disadvantages.

3 Q. Have these studies been subjected to peer
4 review?

5 A. Oh, yes, all of the studies that I report in
6 the Law Review article have all been subjected to
7 peer review at one level or another. Most of
8 them have been published in peer-reviewed
9 scientific journals.

10 Q. Are your findings as to the--whether the
11 polygraph is valid as a measure of truth and
12 deception accepted in the scientific community?

13 A. That's a very difficult question to answer.
14 At one level certainly yes is the answer to that
15 because the material has been published in
16 scientific journals. If it was not acceptable to
17 the scientific community it would not be
18 published in a scientific journal.

19 So, for example, a lot of the research
20 that is published on the polygraph has been
21 published in a journal called the Journal of
22 Applied Psychology, which is the journal of the
23 American Psychological Association, a
24 peer-reviewed scientific journal.

25 To be published in that journal articles

1 have to be sent out to other scientists, they
2 report the reviews to the editor, revisions are
3 undertaken. And over the years the Journal of
4 Applied Psychology has rejected about 85 percent
5 of the articles that are submitted to it. But
6 they've also published over the years a number of
7 articles on the polygraph, and to be published in
8 a scientific journal like that, that means the
9 work was acceptable to the people who reviewed it
10 and to the editorial board.

11 There certainly is controversy about the
12 polygraph. But I and a former graduate student
13 of mine have conducted some survey work on what
14 scientists think about the polygraph. We looked
15 at an organization called the Society for
16 Psychophysiological Research, and those members
17 of that society, who consider themselves to be
18 highly informed, about 80 percent of them said
19 that they believe that it was a useful forensic
20 tool. There's always controversy in science, I
21 don't know of any scientific technique that's
22 without controversy, but when 80 percent of the
23 people who say that they're well-informed believe
24 that it's a useful tool, that, to me, is general
25 acceptance.

1 Q. Does the literature show that its usefulness
2 as a tool depends upon the technique used to
3 interpret the data in a given test?

4 A. Yes, certainly that's true. They're--the
5 polygraph profession is a very mixed profession
6 at the moment. Part of that comes from the fact
7 that the polygraph as a profession developed on
8 its own in the police departments and in the
9 national security settings. It's only within the
10 last 25 years or so that scientists have become
11 involved in doing research in this area, and
12 clearly some of the things that the police
13 departments and the national security people have
14 developed don't work. But some of them do, and
15 so the scientists have, part of our job is to
16 determine what works and what doesn't.

17 Q. Okay. So in the course of discussing a
18 polygraph generally, would it be helpful to the
19 Court to discuss separately, say, the validity of
20 the test itself and then the validity of an
21 examiner's interpretation of the test?

22 A. Certainly. And that's no different than any
23 other forensic technique. There are many
24 forensic techniques that are valid techniques but
25 that may have been misinterpreted. So yes, those

1 two things should be considered separately.

2 Q. Have you had the opportunity to review
3 the graph and other documents pertaining to a
4 polygraph exam given by Kenneth Benck to
5 Brent Anthony Richter on July 3, 1991?

6 A. Yes, I have.

7 Q. Now, after reviewing the graph and the other
8 documents pertaining to the polygraph exam--we
9 need to back up just a moment.

10 MS. HUTCHINSON: Mr. Brown, I'm going to
11 ask you to stipulate to the fact that the chart,
12 when he refers to the graph, that the graph that
13 Dr. Honts is referring to is the copy that
14 Mr. Benck indicated in his testimony that he
15 provided to me through you, and that I then sent
16 to Dr. Honts. Would you be willing to stipulate
17 to that?

18 MR. BROWN: I guess with your assurance on
19 the record that that's accurate.

20 MS. HUTCHINSON: As an officer of the
21 court I assure you on the record, Mr. Brown, that
22 that's what he's talking about.

23 MR. BROWN: Then I have no problem with
24 that.

25 THE COURT: Very well.

1 Q. (By Ms. Hutchinson) Now, have you had an
2 opportunity to review that chart and the other
3 documents pertaining to the polygraph?

4 A. Yes, I have.

5 Q. And after review of those, have you arrived
6 at an opinion, to a degree of reasonable
7 scientific certainty, as to the validity of the
8 polygraph exam itself?

9 A. Yes, I have.

10 Q. And what's that opinion?

11 A. Well, there are some things about--

12 MR. BROWN: Objection; foundation.

13 THE COURT: Just a minute.

14 MS. HUTCHINSON: Excuse me, doctor.

15 There's been an objection, Dr. Honts.

16 THE COURT: For the record, the objection
17 is overruled. Now you may answer.

18 THE WITNESS: Yes. There are some things
19 about the exam that cause me some concern, but on
20 the whole I believe that it was a valid
21 examination.

22 Q. (By Ms. Hutchinson) Okay. Can you describe
23 particularly what sources informed your opinion
24 as to the validity of the test itself?

25 A. Yes. Well, there are several elements that

1 go into making a valid polygraph examination.
2 One concern that I have about this is that there
3 is no tape recording and so I don't have any way
4 of knowing exactly what the interaction between
5 the examiner and the subject was. And somewhat
6 to interpret certain things from the written
7 material. The control questions--perhaps it
8 would be useful if I talked just a little bit
9 about how these tests work.

10 There are two important types of questions
11 in these tests. There are relevant questions
12 which are then questions on the issues that are
13 designed--the test is designed to resolve. And
14 the expectation is that the person who is
15 attempting deception will produce large
16 physiological responses to those relevant
17 questions.

18 The problem is that if relevant questions
19 were the only thing you were to ask, innocent
20 people would know that they're important
21 questions so would probably respond to them as
22 well. And so comparison questions, sometimes
23 they're called control questions--that's probably
24 not a good term for them; they're really
25 comparison questions--are developed to give the

1 innocent person something to be concerned about.

2 The type of test that we're concerned with
3 here today is something called a probable lie
4 comparison question test. And these comparison
5 questions are developed and it's assumed that the
6 examiner, when the examiner gets a "no" answer to
7 these questions, the assumption is that it's
8 probably a lie on the part of the subject. So
9 you want to pick questions that it's very likely
10 that if their answer is no, that everyone will be
11 lying. And some of the control questions, one of
12 them in particular that was used in this test I
13 think is--is a very weak control question.

14 Q. Which question is that?

15 A. On the question sheet it's numbered question
16 number 46 and the question is, "Between the ages
17 of 16 and 18 do you remember ever forcing anyone
18 to have sexual intercourse with you?" Now, to
19 use that as a control question, your assumption
20 has to be that every young man between the ages
21 of 16 or 18 has forced someone to have sexual
22 intercourse with you. And I think that's
23 probably not a tenable assumption, so I think
24 that's a very weak control question unless you
25 have some special knowledge about this person

1 that they've done this before. And I didn't see
2 any evidence that that was the case.

3 Q. So would the interpretation of exam results
4 be somehow flawed if the results were based in
5 comparison to a weak control question?

6 A. Well, they certainly could be because if
7 your control questions are too weak, you're very
8 likely in the long run to make a large number of
9 false positive errors, that is, innocent people
10 will fail the test when they should actually pass
11 it.

12 Now, in this test there's actually one
13 control question that's pretty good, it's not
14 great, but it was during--the question is,
15 "During the past two years of your life, do you
16 remember ever masturbating while looking at
17 pornographic pictures?" And we know in fact that
18 he did have pornographic magazines because that
19 was in the record. And I think that's a more
20 reasonable question, but even that's fairly
21 weak.

22 Now, when you're interpreting the test and
23 you've got one very weak control question, if you
24 were to choose to compare to it more frequently,
25 you could bias the results toward false positive

1 errors. So on a test like this it's particularly
2 critical that you make comparisons to the best of
3 the control question.

4 Q. Okay. I guess while we're already on the
5 subject, then, of Mr. Benck's interpretation of
6 the exam results, after reviewing the records of
7 the polygraph exam in this case, have you arrived
8 at an opinion as to the validity of the result
9 reported by Mr. Benck?

10 A. Well, yes. I did my own evaluation of the
11 chart. And I used the techniques that we
12 developed at the University of Utah. And when I
13 say "we," I refer to the scientists who worked in
14 Dr. David Raskin's laboratory there, from a
15 period of about 1970 until Dr. Raskin's
16 retirement in 1994. Those techniques were
17 techniques that were developed and subjected to
18 peer review, a tremendous amount of scientific
19 research, we know that they're highly valid
20 techniques, and so I did my own scoring. And
21 perhaps I should back up and say a little bit
22 about how I go about my evaluation.

23 Q. Please do.

24 A. When I'm asked by an attorney to evaluate a
25 set of materials like this, the first thing I do

1 when I get the folder and the materials is to,
2 one, determine what the question sequence is. In
3 this case the question sequence is very familiar
4 to me, and it was obviously a Backster sequence,
5 and it was identified to me that way because the
6 way the questions were numbered it's very unique
7 to a Backster system. So that way I know what
8 the relevant questions are and what the control
9 questions are.

10 And then I evaluate the chart using the
11 numerical scoring system developed at the
12 University of Utah before I look at any of the
13 other material. So when I do my evaluation I
14 have not seen what the original examiner's
15 evaluation was. In this case I'd have to say I
16 was quite surprised because my evaluation was
17 quite different than originally found.

18 Q. What did your evaluation disclose?

19 A. Well, my numerical scoring produced a total
20 numerical score plus 7.

21 Q. Would that indicate truth or deception?

22 A. In the Utah system, that score is
23 interpreted in this way: There's a range of
24 scores and they can be positive or negative.
25 Negative scores indicate that the relevant

1 questions are overall stronger than the control.
2 And that would lead to an interpretation of
3 deception. Positive scores indicate that overall
4 the control questions are producing larger
5 physiological responses than the relevant
6 questions, and that would lead to an
7 interpretation of truthfulness.

8 We have established cutoffs and, again,
9 this is based on published scientific research.
10 And those cutoffs are a plus and minus 6. If you
11 get a score of plus 6 or larger, that's
12 considered truthful. Minus 6 or less is
13 considered deceptive. If it's in between plus or
14 minus 6, it's no decision, it's inconclusive.

15 And so my numerical scoring resulted in a
16 truthful outcome. When I went back and looked at
17 Mr. Benck's scoring, he had a rather strong
18 negative score--I'm trying to find it right
19 now--it was minus 21 total numerical score and he
20 concluded deception, which I think is just not
21 justified.

22 Q. Okay. Let's turn to Mr. Benck's
23 administration of the exam. After reviewing the
24 records provided to you, have you arrived at an
25 opinion to a reasonable degree of scientific

1 certainty as to whether the examiner in this case
2 engaged in any practice in the course of
3 administering the exam that would be calculated
4 to show a false positive for deception?

5 MR. BROWN: Objection; foundation.

6 THE WITNESS: That's difficult to--

7 THE COURT: Just a moment.

8 MS. HUTCHINSON: Excuse me, doctor,
9 there's been an objection. Doctor, there's been
10 an objection.

11 THE WITNESS: Yes, sorry; I didn't hear
12 it.

13 THE COURT: Yes, the objection is
14 sustained.

15 Q. (By Ms. Hutchinson) In the course of your
16 research, Dr. Benck, have you studied the
17 phenomenon known as a false positive for
18 deception--

19 A. Yes, I have.

20 Q. --for deception in the polygraph? And just
21 generally, is it possible for a person
22 administering a polygraph test to engage in
23 practices in the course of the administration of
24 the test that would be calculated to produce a
25 false positive for deception?

1 A. There are certainly things that could be
2 done that would bias the test in that direction.

3 Q. What are some of those things?

4 A. Well, there are two that come to mind as
5 being relatively easy to do, and one would be to
6 use very weak control questions. If you use
7 control questions that it's very likely that the
8 innocent person is answering truthfully, that
9 doesn't give the innocent person anything to be
10 concerned about, except the relevant question.

11 The other thing would be in how the charts
12 are evaluated. And if you chose to evaluate to
13 the weakest controls rather than to the strongest
14 controls, that's certainly going to bias the test
15 toward making more false positive errors.

16 Q. Did you find both of the--both of the
17 factors that you just described to be present in
18 the course of the documents you reviewed
19 pertinent to this test?

20 A. Yes, I did.

21 Q. Now, as to certain other specifics of the
22 test, are compound questions generally
23 appropriate to be included in polygraph exam
24 questions?

25 A. As relevant questions, no.

1 Q. Was there a compound question in this test
2 as a relevant question?

3 A. Yes, there was.

4 Q. What was that?

5 A. It was--I'm going through my documents--it
6 was relevant question number 33 which says, "Did
7 you beat and rape that woman on Friday night,
8 June 28, 1991?"

9 Q. Is there anything else that your knowledge
10 and experience tells you was problematic with
11 that particular question?

12 A. Well, the other thing, and as far as I know,
13 every polygraph school teaches this, is that you
14 don't use the word "rape" in a relevant question.

15 Q. Why is that?

16 A. Well, the term "rape" is a legal term. It
17 requires a legal definition, and it's also a very
18 emotionally-laden term. And every polygraph
19 school that I'm aware of, including the federal
20 schools of the U.S. and Canada, would teach that
21 what should be asked is, did you have sexual
22 intercourse, and then other questions that would
23 deal with the issue of the force. That way
24 there's no room for misinterpretation, you're not
25 asking what is basically a pejorative term, and

1 that provides protection on both sides of the
2 test in reducing both false negatives and false
3 positives.

4 Q. So would asking an emotionally-neutral term
5 such as has sexual intercourse, would that then
6 avoid a subject's reacting to the emotion of the
7 question?

8 A. It should, yeah.

9 Q. And could a reaction to the emotion of a
10 question like "Did you rape" produce stress that
11 could be misinterpreted?

12 A. Yes, it could.

13 Q. How could it be misinterpreted?

14 A. Well, the physiological responses associated
15 with stress, as you put it, are no different
16 qualitatively than the physiological responses
17 associated with lying. This test works because
18 of the structure of the test and the way the
19 questions are formulated, so that you see this
20 divergence that we've talked about between
21 relevant and control questions. If there's
22 something about a relevant question that causes a
23 truthful person to respond, then the test is
24 likely to break down.

25 Q. You mentioned earlier that you coauthored an

1 article?

2 A. I'm having a very difficult time hearing
3 you.

4 Q. I'm sorry; I walked away. You mentioned
5 earlier that you coauthored an article that was
6 published in the University of North Dakota Law
7 Review?

8 A. Yes, that's correct.

9 Q. That article was titled, The Polygraph in
10 1995, Progress in Science and the Law; is that
11 correct?

12 A. That's correct.

13 Q. Okay. In that article you describe a
14 phenomenon known as the unfriendly polygrapher
15 phenomenon. Will you describe what that is,
16 please, for the Court?

17 A. Yes, what that refers to is a concern that
18 police officer polygraph examiners have a very
19 difficult task in front of them, because in a
20 probable lie polygraph in particular it's very
21 important that there be trust between the
22 polygraph examiner and the subject, and that the
23 subject believes that if he or she is telling the
24 truth that they will in fact pass.

25 One phenomenon that I have unfortunately

1 observed with some frequency is that often police
2 officer polygraph examiners use the polygraph as
3 an interrogation tool rather than a forensic tool
4 for determining credibility. And so they do
5 things during the course of the polygraph test
6 that are setting up the interrogation that's to
7 follow. And those things are often at odds with
8 conducting a valid polygraph test and they come
9 across to the subject as unfriendly, rather than
10 unbiased, and that's very likely in some ways to
11 poison the test.

12 Q. In your review of the documents pertaining
13 to the test of Mr. Richter, did you observe any
14 indicia of the unfriendly polygrapher phenomenon?

15 A. Well, there are some. One thing that I did
16 observe is that Mr. Benck asked a series of
17 questions that--I'm trying to find them on a
18 document. There's a handwritten page, there's no
19 title on it, it looks like a sheet off of a
20 notepad, and at the bottom of that sheet there's
21 some responses that are indicated and those are
22 to a series of questions called the Reed
23 questions.

24 Q. What are the Reed questions?

25 A. The Reed questions are a technique that was

1 developed at the Reed College of Detection and
2 Deception for use in interrogation. And the
3 responses to the Reed questions provide the
4 interrogator with a set of keys that are used
5 later in the interrogation, and they serve
6 absolutely no purpose in the polygraph exam.
7 They're only there to lay the foundation for
8 things that the interrogator will do later on.

9 And the fact that they are included
10 indicates to me that this officer was focused on
11 conducting an interrogation rather than a
12 forensic polygraph test to determine credibility.

13 Q. Was there anything about the post test that
14 showed indicia of unfriendly polygrapher
15 phenomenon?

16 MR. BROWN: Object; irrelevant.

17 THE COURT: Overruled.

18 THE WITNESS: I didn't hear the
19 objection. It was overruled?

20 THE COURT: Yes.

21 THE WITNESS: Thank you. Well, there
22 isn't very much about the post test. There's a
23 little bit in the report, and what that indicates
24 is that there was--there was an interrogation. I
25 don't know how long it lasted. There's no

1 indication of that here, but--excuse me--clearly
2 the examiner confronted the subject in an attempt
3 to get him to confess. The subject did not
4 confess.

5 Q. (By Ms. Hutchinson) Are you familiar with
6 the Backster zone comparison technique for
7 interpreting polygraph data?

8 A. Yes, quite.

9 Q. Have you participated in any research or
10 study pertaining to that method?

11 A. Yes, I have.

12 Q. Will you describe, please, what your
13 research found as to the validity of that method?

14 A. I was originally trained in the Backster
15 technique and in fact used it as a field
16 polygraph examiner for several years. When I
17 went back to graduate school and began doing
18 research, the first two studies that I conducted
19 used that technique and I was very distressed to
20 discover that it didn't function very well with
21 innocent people.

22 The Backster technique, as it was taught
23 by Backster, produced a rather large number of
24 false positive errors. It did quite well with
25 guilty people. People who were lying almost

1 never passed the test, but many, approximately
2 half of the innocent people who were tested
3 failed when they should have in fact passed.

4 When I went to the University of Utah, I
5 discovered that Dr. Raskin had already done some
6 research on this and had found exactly the same
7 thing. They had taken data and had it compared,
8 the same set of charts, scoring it with the
9 Utah method versus scoring it with the Backster
10 method. And when it was scored with the Utah
11 method the false positive rate was 12 percent--
12 I'm sorry, 4 percent, and with the Backster
13 method it was 21 percent. The false positive
14 rate with the Backster technique was
15 approximately four or five times larger than with
16 the Utah method.

17 Q. And would the Backster method, then, with
18 the 21 percent rate for false positive be
19 considered empirically invalid?

20 A. Well, it's certainly inferior. It's
21 dramatically inferior to the Utah technique. It
22 still is a significant discriminator of innocent
23 and guilty, but it just makes a very large number
24 of false positives.

25 Q. And, again, when you referred to the Utah

1 method, that's the method you used to score
2 Mr. Richter's polygraph--

3 A. Yes, it is.

4 Q. --that resulted in a score of truth?

5 A. Yes.

6 MS. HUTCHINSON: Thank you, Dr. Honts. I
7 have nothing more at this time.

8 THE COURT: All right, cross-examination?

9 CROSS-EXAMINATION

10 BY MR. BROWN:

11 Q. Doctor, my name is Kirk Brown and I have a
12 few questions for you. Pardon me while I flip
13 pages here. It might be troublesome over the
14 microphone. I'll try and reduce that to a
15 minimum.

16 A. I don't hear the pages at all. If you speak
17 up, we'll be fine.

18 Q. All right. Doctor, to begin with, you've
19 talked about empirical studies and to the
20 validity of the results of polygraph
21 examinations; did I understand you correctly?

22 A. Yes, sir, that's correct.

23 Q. By what does one measure the quote, unquote
24 validity of a polygraph examination or a method
25 of evaluating an exam?

1 A. Yes, sir, there are two ways to go about
2 that. One way is to conduct studies in a
3 laboratory setting. What we do in a laboratory
4 setting is we set up a situation where we
5 randomly assign people to be either innocent or
6 guilty, and the guilty people then commit some
7 minor transaction that we have staged for them to
8 commit. They're later given polygraph tests and
9 we look to see how good a job the polygraph does
10 at deciding who committed the crime and who did
11 not.

12 The other approach to studying the
13 validity is to actually go out and look at real
14 cases that have been collected in the course of
15 criminal investigation. So, for example, the
16 study that I was involved in with the U.S. Secret
17 Service, we collected the case logs from the U.S.
18 Secret Service over a several year period in the
19 early 1980s and looked through the case logs to
20 see which cases where a polygraph had been used
21 has been confirmed. And we used the criterion,
22 actually fairly complex criterion, but what it
23 boiled down to was that we required that someone
24 in the case had confessed to the crime, and that
25 confession then was supported by physical

1 evidence. So with the U.S. Secret Service, of
2 course, they're mostly focused on counterfeiting,
3 and most of the cases in that study had to do
4 with counterfeiting. And so for us to include
5 the case in one of our studies the person who did
6 the counterfeiting had to have confessed, but not
7 only that, they had to have confessed and then
8 that confession led to evidence. So they said
9 yes, I'm the one who printed the money and
10 there's a sack of money under my bed at home, and
11 the Secret Service agents go and in fact find
12 that sack of counterfeit money. Now, that will
13 confirm deceptive outcomes and confirm guilty
14 people.

15 The way you confirm innocent people is you
16 have multiple suspect cases and some people take
17 the test and are later confirmed to be innocent
18 by the confession of someone else.

19 So that when I say validity, I'm referring
20 to those two approaches to doing research. And
21 they converge upon the same conclusion, and the
22 polygraph can be highly accurate.

23 Q. Doctor, if I understood you correctly, in
24 evaluating the methodology of an exam, it would
25 be helpful to someone in evaluating that if they

1 had a, for example, a tape recording of the
2 administration of the test itself to the subject?

3 A. Yes, sir, I did say that.

4 Q. And, as I understand it, you did not have a
5 tape recording or anything like that with regard
6 to this exam; is that correct?

7 A. That's correct.

8 Q. And with your observations with regard
9 to--if I'm using your term correctly--a weak
10 control question or at least a control question
11 that you had some concerns about, if I understood
12 you correctly, it's difficult to make that
13 evaluation in the absence of some comprehensive
14 information about what that question was based
15 upon?

16 A. Well, I don't believe it's quite what I
17 meant to say. That particular control question
18 is a weak control question, unless there is some
19 specific information that this person has
20 committed these kind of crimes in the past.

21 Q. And your observation simply was the
22 materials you received did not contain that type
23 of information?

24 A. No, it did not. In fact, there was some
25 indication of just the opposite in that there was

1 a notation in the report that the person had
2 never been charged with crimes like this in the
3 past.

4 Q. Doctor, you discussed the, if I use the term
5 correctly, the Backster zone technique. Based on
6 your knowledge of polygraphy as it's being
7 conducted in the United States, was the Backster
8 zone technique being employed regularly in the
9 1991-1992 time frame by polygraphers in this
10 country?

11 A. I--I don't know how frequent it would be,
12 but yes, that's a fair thing to say. It is being
13 used. My guess is it's probably still being used
14 by certain examiners.

15 Q. And, doctor, when you scored this test, as I
16 understand it, your scoring of this test was by
17 separate methodology; is that correct?

18 A. That's correct.

19 MR. BROWN: I have nothing further.

20 THE COURT: All right. Redirect?

21 REDIRECT EXAMINATION

22 BY MS. HUTCHINSON:

23 Q. Just a couple of quick ones. Dr. Honts,
24 just so we're clear on this, the test itself was
25 valid sufficient for you to score it; is that

1 correct?

2 A. Yes, the--the technique for asking the
3 questions and collecting data is independent of
4 the technique that's used to evaluate those
5 data. I don't have any real problems with the
6 way that the Backster technique collects data;
7 it's with the analysis of those data once they're
8 collected where the research shows that the
9 Backster technique fails. And I ought to have
10 mentioned this earlier, but that research has
11 been published and it was published in the
12 Journal of Polygraph, which is available to most
13 polygraph examiners.

14 Q. So it's your opinion to a reasonable degree
15 of scientific certainty that the result as
16 reported by Mr. Benck is invalid?

17 A. I believe it is incorrect, yes.

18 Q. Have all the opinions you've offered today
19 been to a reasonable degree of scientific
20 certainty?

21 MR. BROWN: Object--

22 THE WITNESS: Yes, they have.

23 MR. BROWN: --form of the question.

24 THE COURT: Overruled. The answer will
25 stand.

1 Q. (By Ms. Hutchinson) And are the sources that
2 informed your opinion those that typically are
3 relied on by persons in the scientific community?

4 MR. BROWN: Objection to the breadth of
5 the question.

6 THE WITNESS: Yes, they are.

7 THE COURT: Sustained.

8 Q. (By Ms. Hutchinson) Are the sources,
9 specifically the sources that are relied on to
10 inform your opinion as to the validity of the
11 test and the validity of the interpretation, are
12 those generally relied on in the scientific
13 community?

14 MR. BROWN: Objection; I don't think it's
15 specific enough.

16 THE COURT: Sustained.

17 Q. (By Ms. Hutchinson) As to your opinion
18 about--I believe this is in the record
19 already--but as to your opinion about the
20 validity of the test itself, those sources that
21 you relied on, the ones that you've testified to
22 that you relied on, are those sources the type of
23 things that are generally relied on to arrive at
24 such an opinion in the scientific community?

25 MR. BROWN: Objection; foundation.

1 THE COURT: Sustained.

2 MS. HUTCHINSON: I have nothing more.

3 THE COURT: All right. This will conclude
4 the testimony, and hopefully we have it on the
5 record. I think we have it in at least one place
6 out of two or three that we've tried, so we'll--

7 THE WITNESS: Technology is a wonderful
8 thing when it works.

9 THE COURT: That's right. Thank you,
10 Dr. Honts.

11 THE WITNESS: Thank you, Your Honor. I
12 appreciate your accommodation in this way.

13 THE COURT: All right. Good-bye.

14 THE WITNESS: Good day, sir.

15 THE COURT: Now, is there anything else
16 for the petitioner?

17 MS. HUTCHINSON: There is nothing else for
18 the petitioner, Your Honor.

19 THE COURT: Let's take a break. I'll hear
20 your arguments if you wish to make them. I take
21 it you want to argue today; is that correct?

22 MS. HUTCHINSON: What more can we say,
23 Your Honor? We have no argument. We submit it.

24 THE COURT: All right. Mr. Brown?

25 MR. BROWN: Let me inquire of the Court,