

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,) Case No. A98-0158-CR (JKS)
)
Plaintiff,)
) Anchorage, Alaska
vs.) Thursday, February 25, 1999
) 11:20 o'clock a.m.
CONSTANCE M. WALKER,)
)
Defendant.)
)
)
_____)

**CONTINUED EVIDENTIARY HEARING ON DEFENDANT'S MOTION IN LIMINE
TO PRECLUDE ADMISSION OF DEFENDANT'S POLYGRAPH EXAMINATION**

VOLUME 3

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE JOHN D. ROBERTS
UNITED STATES MAGISTRATE JUDGE

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ANCHORAGE, ALASKA - THURSDAY, FEBRUARY 25, 1999

(Call to Order of the Court at 11:20 a.m.)

(Defendant present)

THE CLERK: All rise. His Honor the Court, the United States District Court for the District of Alaska is now in session, the Honorable John D. Roberts presiding. Please be seated.

THE COURT: Mr. McCoy, you were going to call a rebuttal witness.

MR. McCOY: Yes, Your Honor, I was. Thank you. Dr. Raskin is present. Does he need to be resworn?

THE COURT: He does, yes.

MR. McCOY: Thank you.

DAVID C. RASKIN, PH.D., DEFENDANT'S REBUTTAL WITNESS, RESWORN

(Recalled)

THE CLERK: For the record again, sir, please state your full name, address, and spell your last name.

THE WITNESS: David C. Raskin, R-a-s-k-i-n. Post Office Box 2419, Homer, Alaska, 99603.

THE CLERK: Thank you.

MR. McCOY: Can I inquire?

THE COURT: You may.

MR. McCOY: Thank you.

DIRECT EXAMINATION

BY MR. McCOY:

Q Dr. Raskin, what I propose to do this morning is to make a

point-by-point response to some of the things that Dr. Abrams testified to yesterday. One of the things that happened at the end was that your credentials and standing within the scientific and governmental community with regard to polygraphs were attacked. Would you tell me how that made you feel?

A Well, I was quite disappointed. Not surprised, I must say, but disappointed. Because I had come here expecting to talk about the scientific literature and the scientifically validated procedures and not get into a personal mud-slinging match, so to speak.

Q With regard to your standing with the federal government and the polygraph, could you describe what your standing is?

A Well, I have --

MR. COLLINS: Your Honor, if I -- I want to make an objection. This is not really rebuttal. The defendant asked Dr. Abrams, the government did not ask Dr. Abrams. The defendant -- the defense set up the topic to which they are now attempting to introduce rebuttal. It's not rebuttal as to the topic of this evidentiary hearing. In essence, this is now providing a forum for Dr. Raskin to state what was elicited by the defense. The defense knew in advance what that may entail, and now they've set up for rebuttal which is not the topic.

MR. McCOY: In fact, it came as a total surprise, Judge. This is the first time Dr. Raskin's been attacked like this.

This is a total surprise.

THE COURT: Well, keep in mind that this is not the trial.

MR. McCOY: I understand.

THE COURT: And I realize he wants to respond and I'll allow limited response.

MR. McCOY: And I -- and we're not going to focus on that -- Judge, I -- the -- there's a record being made here that's going to be looked at not only here, not only upstairs, but in other courts. And I think it's important that that record be clear so that there be no question. And that's -- I'm not attempting to do anything more than that.

THE COURT: You may proceed at this point.

MR. McCOY: Thank you.

BY MR. McCOY:

Q Just briefly, with is your standing with the federal community with regards to the polygraph?

A Well, I have continued to do extensive work for a wide variety of federal agencies and also state and local law enforcement. I've had a large number of federal grants from the Department of Justice and Department of Defense and Secret Service and so on to study polygraph research. And I've been widely praised both in those arenas and also by the scientific community for my work.

Q Did you have an opportunity to review Dr. Abrams' resume last night?

A Yes, I did.

Q Are there comments that you want to make with regards to his qualifications as an expert witness with regards to that resume?

A Yes.

MR. COLLINS: Objection, Your Honor. This is not a swearing match. This is not the trial. Dr. Raskin has testified to his response to what the defense elicited, and now they're attempting to open up a new matter on the attack on Dr. Abrams, which is not the focus --

THE COURT: I'll sustain the objection. That's not the purpose of rebuttal here. Again, this is not the trial of the case.

MR. McCOY: I --

THE COURT: The -- both witnesses were allowed to testify as experts. We're here talking about the polygraph methods. There are some different methods, but we're not talking about the personalities at this point. Perhaps if you were making a play before the fact finder, these things would be important. But I don't see it --

MR. McCOY: I just -- if I could be heard, and then I will respect whatever ruling you make. You are the fact finder

and you are being asked to evaluate the credibility of two witnesses. And part of your ability to assess that is information about the various witnesses that have been offered. We got the resume yesterday, shortly before the hearing.

MR. COLLINS: That's incorrect, Your Honor.

MR. McCOY: Is that -- well, at any rate, Dr. Abrams -- or Dr. Raskin only had an opportunity to review it. And we think it's -- recently, yesterday. And we think it's important that we allow that it be -- put this information in the record. You can accept it or reject it, but we think it's important to put in the record.

THE COURT: I'll allow a little bit of latitude here, but we're not going to spend a lot of time on this.

MR. McCOY: All right.

THE WITNESS: I don't recall what the question was.

MR. McCOY: Okay.

THE COURT: Look at the resume of Dr. Abrams.

BY MR. McCOY:

Q Right. And were there things that caught your attention that caused you to question his ability to serve as an expert witness in this matter?

A Yes.

Q And would you tell me what those were?

A Well, first of all, he's trained as a clinical

psychologist, he's not a psychophysiologicalist and has no formal training in that area. This is a psychophysiological technique. Secondly, his resume clearly indicates that he is not a contributor to the mainstream scientific psychophysiology research on polygraphs. And I know for a fact that he doesn't attend the psychophysiology meetings and is generally unknown in that community. So to criticize the psychophysiological basis and the recordings as he did yesterday, I think there's a real question about his credentials.

Q Do you have before you Defendant's Exhibit HH?

A Yes, I do.

MR. McCOY: Judge, you have a copy. These are rebuttal exhibits.

THE COURT: I do.

BY MR. McCOY:

Q Would you tell me what HH is?

A HH is a letter from Dr. Abrams to Mr. Collins dated February 15th, 1999.

Q Is it accurate, sir?

A No, it's not.

MR. COLLINS: Your Honor, I'm going to object to this. This was a document that the government elected to present -- provide to Mr. McCoy. There's no requirement that we turn it over. It was not admitted as evidence. Mr. McCoy cross-

examined Dr. Abrams after receiving this document. Dr. Raskin -- well, there's no basis for his testimony on what communications there were between Dr. Abrams and myself. Mr. McCoy, who's the attorney here, cross-examined Dr. Abrams, and that cross-examination is on the record. Now we have Dr. Raskin attempting to testify as to some matter that -- based upon his personal opinion. It's not relevant to the issue at hand.

MR. McCOY: Your Honor, it's -- one of the last comments that Dr. Abrams made in the hearing was -- were -- was that these charts are worthless. And I think we need to understand where this man is coming from to evaluate that comment. That's what he testified to, the charts that we've offered are worthless. And I think for you to understand where that comes from, you need to understand what kind of man he is. And that's the only reason we're going through this.

THE COURT: Keep in mind that this is not in evidence as yet, so reading it may be premature.

MR. McCOY: Okay.

THE COURT: But you can lay a foundation and pursue it.

MR. McCOY: All right.

BY MR. McCOY:

Q How long have you had contact with Dr. Abrams?

A I first met him in January of 1976.

Q Okay. And what was the context in when you -- in which you first met him?

A We were both retained by the defense team in the *Patricia Hearst* case.

Q And what was your experience with him in that case?

A Well, we both conducted polygraph examinations on Ms. Hearst, we both evaluated polygraph examinations run by each other, including Dr. Barland, the three of us --

Q Uh-huh (affirmative).

A -- did that. And we had a -- extensive interactions as well as discussions about the report that would be written.

Q What was the bottom line?

A The bottom line was, there were a number of very serious problems that arose, because Dr. Abrams, first of all, it was clear he did not use any standard scoring system. He did not -- he had one that no one had ever seen before, that he'd invented himself. He mis-scored the charts more favorable to the defense than they should have been, and both Dr. Barland and I clearly pointed that out and disagreed with him, which did not make him happy. His test questions that he asked were inappropriate, even though there was discussion in advance that they would be problematic. But he did it because the defense attorneys asked him to do it even though it was improper technique.

He then did not object to an -- request presented by his lawyer's -- Ms. Hearst's lawyer's representative, Mr. Zimmerman, who organized the polygraph efforts. Mr. Zimmerman wanted us to write a misleading report about these matters, and I objected strenuously and Dr. Abrams did not object at all. And it caused me some very serious concerns at the time and it created a lot of friction between Dr. Abrams and myself, which I think is the basis for his animosity toward me.

Q Since that time have you had periodic contact with him?

A Yes, I have.

Q And has that animosity continued?

A Yes. It's, I would say, greatly intensified and also has taken the form of continual misrepresentations and factual inaccuracies about cases that I've worked on and what I have done, what I've testified to, and what the results of tests have shown, and also the outcomes of cases where I have testified. It has been just a -- a very distressing thing professionally, because it shows little regard for factual accuracy.

Q For example, he mentioned the *Meade* case and you testify -- or making television comments and whatnot. What -- is that accurate?

A The *Meade* case. That wasn't television comments. He talked about that in detail about how he said that Meade pled

guilty right after my polygraph testimony, which isn't true at all. Mr. Meade's lawyer pressured him into taking a guilty plea to a lesser charge because he said he would otherwise get convicted of a much greater charge. And it was because the government was going to present a witness from many years ago that was going to say negative things about Mr. Meade in a sort of, you know, bad acts, prior bad acts kind of thing. And that's why Mr. Meade was pressured to take the guilty plea. But he refused to admit guilt. And Dr. Abrams said he confessed, which he never confessed. And he -- he went to prison for an extra four years because he refused to admit that he did the things of which he was accused. So there was a very inaccurate representation factually, just horrendous.

Q Have the other representations that he made about interactions between you -- and without going through all of them -- were they accurate yesterday?

A Every single one of them --

Q Okay.

A -- was filled with factual inaccuracies that put me in a bad light, which are untrue, and I think it not becoming a professional scientific or expert witness and certainly not from somebody testifying under oath. It's very distressing to see that happen.

Q All right. Let's move on to the -- do you have a personal

animus towards him?

A Well, I mean, I -- I -- my -- I must frankly say that my opinion of him as a professional and as an expert has been severely eroded because of this continual behavior. And each time it happens, my opinion, unfortunately, sinks lower and lower. I wish that it were not so. And I try to be friendly to the man, as I did when I met him here yesterday, but it doesn't have any effect.

Q I'd invite your attention to Exhibit DD. Do you have that in front of you?

A Yes, I do.

Q Would you tell me what that is?

A That's a paper. It's a -- a published version of the paper that was written by Dr. Honts and presented to the American Psychological Society meetings, which is the premiere scientific psychological society in the world, on the friendly examiner hypothesis.

Q What did Dr. Abrams tell us yesterday about the friendly examiner hypothesis?

A Well, he -- I'd have to refer to my notes, but basically he was saying that there are problems, as I recall, when -- when it is done under the confidential friendly situation.

Q Did he offer --

A And he made --

Q -- any scientific studies that supported his position in that regard?

A No, he did not. He sort of misrepresented, I think, in a -- in a brief way Dr. Honts's paper that we're just talking about.

Q With regard to the friendly polygrapher problem, what does DD tell us?

A DD tells us, again, that the data indicate that the friendly polygraph hypothesis doesn't bear out when you examine the actual results of such tests. And he also goes through an analysis, as I did in my Law Review article, showing why the friendly polygraph examiner doesn't even make theoretical sense and cannot explain why a person who is in fact engaging in deception could pass a polygraph test simply because there's presumably some reduced apprehension about the disclosure, because in a comparison question test, it can't work that way. A reduced apprehension would result in inconclusives but would not result in errors, at worst, and that's not what happens.

Q And do you discuss the friendly polygraph article in your affidavit and in the Law Review article --

A Yes, I do.

Q -- that's been provided -- okay.

A Yes, I do.

Q All right. Now, Dr. Abrams talked about people beating the

test and -- using the directed lie question test and the relevant-irrelevant question when they train. Can you tell me what you mean by that?

A Well, Dr. Abrams said yesterday that military intelligence uses a directed lie question and the relevant-irrelevant when people may have been trained to beat the test.

Q Uh-huh (affirmative).

A And he indicated that that's why they use the directed lie, because people who are trained to beat the test have a harder time with the directed lie in terms of beating it.

Q And so why do you think that's important to bring to the judge's attention?

A Well, Dr. Abrams is trying to indicate that people are more able to beat the test when it's a directed lie and that they, you know, can focus their attention and perhaps even engage in countermeasures on the directed lie questions. And his own testimony indicated military intelligence uses that for the opposite reason.

Q Suggesting that if you're using a directed lie test, the friendly polygrapher issue has no applicability?

A Well, and also we're talking now about directed lie with regard to people who are sophisticated and trained to beat the test. Because that's why MI developed it, so that they could use it on people that have to be tested repeatedly and who may

have been co-opted by foreign intelligence agencies and been given training --

Q My recollection of --

A -- and that --

Q -- of Dr. Abrams' testimony is yesterday, that he testified that Canada doesn't teach it?

A He said, yeah, they don't teach it in Canada, and he said the Air Force Office of Special Investigations, that the DOD doesn't accept it.

Q Is that accurate?

A Both of those are false statements.

Q And how is it that you know that, sir?

A Well, I have taught the directed lie test at the Canadian Police College. Dr. Honts has taught it regularly at the Canadian Police College. Both of us have taught there for years. I -- I've taught there since their course started in 1979 until just this last year when it was just too far to fly and I -- I don't go anymore. Ottawa's too far for me now. But -- so both of us have been teaching it there and we -- I know firsthand from that. And -- and as far as the Air Force Office of Special Investigations, the statement he made about that, the letter from Dr. Yankee, who is the director of the Defense Polygraph Institute, clearly indicates that the Air Force Office of Special Investigations does use the directed

lie.

Q Now, when I was questioning him about that, he kept saying, well, they use the directed lie, not the Raskin directed lie. What was he talking about?

A Well, I'm not sure exactly. Sometimes it was hard to tell. But I think what he was talking about is he was -- it -- it was all involved with this business about discussion between charts and whether or not discussion between charts ruins the test.

Q Uh-huh (affirmative).

A And that's his main basis for saying that it's not the Raskin or the Utah directed lie, and that's just not correct.

Q Okay.

A Because the discussion between charts is not the critical factor.

Q All right. Could I invite your attention again to F2?

A Yes.

Q And tell us what that is again?

A Well, that is the field study done by Dr. Honts and myself on the directed lie control question.

Q Now, had -- did Dr. -- had Dr. Abrams done any field studies or other studies about the directed lie question?

A Well, he did that one study that was discussed yesterday and introduced an -- as an exhibit by the -- the people, I think, the United States Government. And I don't know the

exhibit number, but it's --

Q Right.

A -- his 1991 study on the directed lie.

Q Did that 1991 study have any integrity?

A No scientific integrity.

Q Tell me why.

A Well, first of all, he represented that study as being the same type of directed lie procedure that we had developed and used and the type of directed lie procedure that was used in this case. The fact is that it doesn't bear any resemblance whatsoever. Because in order to do a directed lie test properly, whether we do it or whether the government does it, not only do directed lie questions have to be reviewed in advance of conducting the test, but those questions have to be used on every chart. And instead, Dr. Abrams conducted a series of charts and then the very last question on the very last chart, which would have question 30 or so in the series, so the subject is heard -- or 31, it would be, at least -- subject's heard at least 30 presentations of questions. And the very -- very last one was a directed lie that had not been mentioned since early in the pretest interview. This, every psychophysicologist knows, presents the problem of a novel stimulus and dishabituation, well-established phenomena, which would make it almost invariable that that question, regardless

of its content, even if it was asking the person's first name, would produce an exceptionally large reaction to that question, whether they were lying, whether they were telling the truth, whether it was important or not important, by virtue of the fact that it's new and it's at the end and it comes as a surprise. And it is an absolute violation of any proper polygraph procedure no matter what the technique.

Q And is that discussed in the -- in Exhibit F2, the 1988 Honts and Raskin study?

A No, it isn't, because --

Q Oh.

A -- that study was done prior to that. But it's been discussed extensively and discussed in Dr. Honts's analysis of Dr. Abrams' study. It's been --

Q Okay.

A -- discussed in testimony, it's been discussed in Dr. Abrams' testimony himself in the *Gilliard* (ph) case. And it's many times been put forward. It's in an exhibit that I think we'll be introducing a little later which points this out very clearly.

Q All right. Has there studying about talking between -- have there been scientific study about the talking between charts and the impact that it has?

A Oh, yes.

Q What did Dr. Abrams say about that?

A He said there was no research, because it is, quote, "blatantly obvious," unquote.

Q Is that true?

A No, it is absolutely false. The -- there is scientific data, there are many studies in the literature. And it has been studied because it's been a question that was raised. And in fact, the opposite is true, that the discussion between charts about the relevant and control questions or comparison questions enhances the accuracy of the test. And in fact, it most clearly has its effect in reducing the number of guilty people who pass the test.

Q Could I invite your attention to Defendant's Exhibit AA?

A Yes.

Q Tell me what that is.

A That is Dr. Honts's article, which is forthcoming, it's in press, in the Journal of Polygraph, entitled The Discussion of Questions Between List Repetitions, paren, (Charts), Is Associated With Increased Test Accuracy. And in this paper, Dr. Honts reviews a whole series of published scientific studies that were -- have been available to Dr. Abrams for many, many years and to the whole scientific community. And they're listed in table 1, and there are one, two, three, four, five, six, seven, eight, nine, ten, eleven published scientific

studies in high-quality scientific journals where the comparison questions were discussed between charts. And in the lower part of the table there are one, two, three, four, five, six, seven, eight published scientific studies in high-quality scientific journals which did not discuss the questions between charts. And what the data clearly show is that the discussion between charts enhances the accuracy of the test and it enhances it particularly in terms of its effectiveness in identifying guilty people.

Q And this was with regard to a directed lie test?

A No, this is regard to just the discussion of control questions between tests --

Q Okay. Okay.

A -- and included in that would be our directed lie work, although --

Q Okay.

A -- let's see, these are all -- actually, these are all laboratory studies --

Q Okay.

A -- because what was done here was to make sure there was no question about the ground truth and no argument about the methodology. But the same would be true in the directed lie studies, because we do the same thing in those studies.

MR. McCOY: I'd ask that AA be admitted.

MR. COLLINS: Objection; the -- AA is, as it states, to be submitted. It has not been subject to peer review.

BY MR. McCOY:

Q Is that accurate, sir?

A That's absolutely not accurate. It does not say to be submitted. It says to be published, because it has been subjected to peer review, and it is in the process of being published.

Q Do you know that it has been accepted for publication?

A Yes. Dr. Honts told me that, and Dr. Honts is the one who typed on here "to be published." And one does not put that on there until it's accepted for -- to be published.

Q And do you know, of your personal knowledge, that it's been accepted for publication?

A Well, that's what Dr. Honts told me personally.

Q All right.

MR. McCOY: I'd ask that it be admitted.

THE COURT: Exhibit AA is admitted.

(Defendant's Exhibit AA admitted)

MR. McCOY: I'd also ask, if I failed to ask, that DD be admitted. It deals with the friendly polygrapher issue.

MR. COLLINS: That's not a peer review article, it's -- Dr. Raskin's testified to it, the testimony's on the record.

MR. McCOY: I'd ask that it be admitted. He's relied on it in forming -- formulating his opinions about the friendly polygraphers, is admissible under 703.

THE COURT: Is this something that this expert relied upon in formulating his opinion prior to today's testimony?

MR. McCOY: It's among the materials that he has relied on. That's not the only thing that he's relied on but it's among the materials that he's relied on in formulating the opinion.

MR. COLLINS: These materials were not presented to the government until this morning, Your Honor. The defense went through great effort, and commend them for putting this notebook together which they previously submitted. But these materials were not submitted.

MR. McCOY: Well, I can explain. I had a copy of the *Gilliard* transcript where Mr. -- Dr. Abrams testified, and Dr. Abrams testified that there wasn't a problem with the polygraph -- friendly polygraph issue, and in fact acknowledged that when he published his book in 1977 he was concerned about it, but when he published his complete book, his complete handbook in 1980, he dropped any mention of it. So I mean, I didn't -- I would have -- quite frankly was very surprised by some of the things that he said in light of his past testimony. So that's why it's prepared today.

MR. COLLINS: He didn't cross-examine him, if he was so surprised, if he knew about the material beforehand, Your Honor.

THE COURT: I think it's proper rebuttal. I'll let it in, DD.

(Defendant's Exhibit DD admitted)

BY MR. McCOY:

Q Given the hour, Doctor, have I questioned you about Defendant's Exhibit BB?

A I don't think so. And we may have just had a brief mention, but --

Q Would you tell me what it is and why it's important?

A Well, that is the recently published study from the Department of Defense.

Q And what does it tell us?

A It tells us that their current version of the directed lie test is highly accurate. It's the most accurate test that they have developed for those purposes in counterintelligence work.

Q Does this contradict what Dr. Abrams told us yesterday?

A Yes, it does.

MR. McCOY: I'd ask that BB be admitted.

MR. COLLINS: It's already admitted, Your Honor, as Plaintiff's Exhibit 11.

MR. McCOY: Regardless.

THE COURT: I don't want it in there twice. Where is
11?

MR. McCOY: It's 11 -- all right, that's fine.

THE COURT: Where is it? I haven't compared the two.

MR. McCOY: See, I haven't got -- yeah.

MR. COLLINS: Defense does have a copy, Your Honor.

Here's the actual exhibit.

THE WITNESS: I don't think that's correct.

MR. COLLINS: BB simply has the front page of the --

THE COURT: May --

MR. McCOY: And I think that our proposed exhibit has
the cover where it came from. And I'll just defer to the Court
on whichever's most convenient for you.

THE COURT: Well, they don't match up exactly. The page
numbers are different.

THE WITNESS: Your Honor, if I could help, it -- it is a
completely different article. It is not Exhibit 11 at all.

MR. McCOY: Oh.

THE WITNESS: It's a completely different article. It
was published in the same journal right below the Matte article
which the government utilized, but it is the following article.
It is not any exhibit the government presented.

THE COURT: The objection was that it was already in.
That doesn't appear to be the case.

MR. COLLINS: Excuse me, Your Honor. I may have confused that with the other article that I believe has already been introduced. I believe the version that was previously introduced had Dollsin's [sic] name on it. But if there's a confusion, then there's -- we withdraw the objection. This one has been edited, I believe.

THE COURT: I'll admit BB.

(Defendant's Exhibit BB admitted)

MR. McCOY: Thank you, Your Honor.

BY MR. McCOY:

Q Dr. Abrams talked about a -- an article written by Dr. Matte. Do you recall that?

A Yes.

Q Is that Plaintiff's 11?

A Well, let's see, I'm getting a little confused here. No, the -- the whole series of exhibits we're talking about here and -- to clarify, Exhibit EE, which I think is next in the pile --

Q All right.

A -- is one we haven't talked about. And then there's Dr. Matte, and his exhibit was introduced by the plaintiff. I don't know the number of that exhibit. I didn't have it --

Q All right.

A -- handy.

Q Okay. In terms of talking between -- let's move to Defendant's Exhibit EE then. That makes sense.

MR. COLLINS: Your Honor, to clarify -- I'm sorry to interrupt -- BB which was introduced is Defendant's Exhibit F4.

THE WITNESS: F4.

MR. COLLINS: I knew I'd seen it before, but I'm sorry about the numbering.

THE WITNESS: Oh.

MR. COLLINS: So they repeated it, so I don't think we need to have -- to clarify it for the record --

THE WITNESS: You -- yeah.

MR. COLLINS: -- BB is --

THE COURT: The record is clarified, and --

MR. McCOY: That's fine. As long as it's in.

THE WITNESS: Yes.

BY MR. McCOY:

Q Do you have before you EE?

A Yes, I do.

Q We were talking about talking between charts?

A Yes.

Q Would you tell me what Defendant's EE represents?

A Just dropped the cover. Defendant's EE is a typed transcript of the excerpts from the polygraph examination that I conducted on Constance Walker, the examination at issue in

this case. And it includes all of the discussions following each of the polygraph charts during that examination.

Q What were Dr. Abrams' criticisms of your discussions during the examination?

A Dr. Abrams repeatedly pointed out that my procedures overemphasize the directed lie questions such that the conclusion is that it creates a bias toward making the test come out truthful even if she were not being truthful on the test, by overemphasizing the controls.

Q All right. What does this transcript reflect in terms of that criticism?

A It shows that that is absolutely not possible --

Q And if one were to review --

A -- to draw from this.

Q And if one were to review the transcript, would you hear the voice inflection and all of that stuff as you followed with this transcript?

A You would hear everything. And you would see that -- if you reviewed the tape and you would -- there are a few little typos in here.

Q Right.

A But you would see that, first of all on the tape, there's far more discussion on the tape of the relevant questions and relevant issues than there is of the directed lies.

Q Uh-huh (affirmative).

A Secondly, you would see that following each of the charts, the discussions are generally quite balanced --

Q Uh-huh (affirmative).

A -- between the relevant and control questions, and in some instances there's more discussion of the relevant questions and problems because they were brought up by the subject and her concerns had to be addressed. It is, if anything, the opposite of what Dr. Abrams suggested. And when he said that you can bias it either way, if one were to conclude that there's any bias in this, it would be that the relevant issues were perhaps discussed too much and she would be expected perhaps to fail according to his prediction. But that is not borne out by these transcripts or the tape or the results of the polygraph. So he was just completely wrong.

MR. McCOY: I'd ask that Defendant's EE be admitted.

MR. COLLINS: I object, Your Honor. I do not believe it is an accurate transcription of the tape. Listening to the tape, I -- there are certain conversations were not -- which are not contained in this, conversations I believe that reflect upon the administration of the test. And this is not an accurate transcript.

MR. McCOY: Well, I mean, the Court's a trier of fact. A tape controls the transcripts. They are to aid you. It's

just like we give them to juries. We always know the tape controls. I'd ask that it be admitted.

THE COURT: You just hit it right on the head. The tape controls, and that's what's already in evidence.

MR. McCOY: All right. And I'd ask that that be admitted as an aid in the review.

THE COURT: The Court will probably look at it with that in mind. So it's admitted for that purpose.

(Defendant's Exhibit EE admitted)

MR. McCOY: Thank you.

THE COURT: Realizing that it may not be complete, but it's an aid to following the tape.

BY MR. McCOY:

Q It seems now it's time to move on to Dr. Matte for just a minute?

A Yes.

Q Do you recall the article that Dr. Matte -- that Dr. Abrams presented, Dr. Matte's article that was presented through Dr. Matte?

A Yes. I don't know the exhibit number but do recall the article.

Q All right. And what was it that Dr. Abrams was telling us about this article?

A Well, he was telling us how it shows many of the problems with the directed lie and with the discussion between charts and with the way in which the directed lie is used. And he said it was -- as I recall, he said it was some sort of an insightful analysis, something along those lines.

Q All right. And he recognized that it was not original research?

A That's correct.

Q And that it depended on the accuracy of the information?

A Yes.

Q In particular, is he critical of what -- the -- and you'll have to give me the study that involved the 20 -- the field study with the 25 --

A Yes.

Q Okay. Could you tell us what that field study was about?

A Well, that was one of the F exhibits, I think F --

Q All right.

A -- 1, maybe. And that was the field study where Dr. Honts and I had 25 confirmed cases. And we used primarily confessions, but also some physical evidence and recantations in two instances. And that was the one using one directed lie and two probable lies.

Q Was that in fact F2?

A F2, I'm sorry, yes.

Q Yeah. And what conclusions did you draw and did Dr. Matte draw in terms of F2 and what criticisms did they have?

A Well, one criticism that they claimed was that because 11 of the cases involved sex abuse cases, that therefore that, you know, is a real challenge to the validity of the whole study, because they said recantations are often made by children for other reasons, and that the recantations are not true. And in fact, only two of the cases involved recantations, and those were recantations made in a formal setting where there was good reason to believe that the recantations were valid --

Q But if you remove those from the --

A -- they're made in court, but if -- yes. I was going to say, if you remove those two, it does not affect the results at all. The results stand exactly in the same way.

Q Has Dr. Matte's article been criticized in the literature?

A Yes, it has, very extent- --

Q If -- you have before you Defendant's Exhibit Z?

A Yes.

Q Would you tell me what that is, please?

A That is a -- an article by Dr. Honts that was published in 1998 in Polygraph, entitled A Critical Analysis of -- of Matte's Analysis of the Directed Lie.

Q Okay. And does it go through the other examples that Matte used to criticize the directed lie?

A Yes, it does.

Q And does it point out the deficiencies and the inaccuracies in the information that Dr. Matte had?

A Yes, it points out that the -- Dr. Matte's presentation is filled with inaccuracy, distortions, and misrepresentations.

Q Who is Dr. Matte?

A Dr. Matte is a polygraph examiner who lives in Buffalo, New York, who was trained I believe maybe at the government school. I think he was a former CID or Air Force OSI agent, one or the other, and who claims to have a Ph.D.

Q Do you know where he got his Ph.D.?

A Yes.

Q Where?

A Columbia Pacific University.

Q Does Columbia Pacific University have a campus?

A No. It has offices in San Rafael, California, but no campus that I'm aware of.

Q All right. Does it run for anything?

A Does it run for -- well, it -- it's a profit-making institution. It's listed as a profit-making institution in the --

Q Is it characterized as a distance learning center?

A It's a distance learning center where they have people get degrees by correspondence, including so-called Ph.D.s.

Q Do you consider it a reputable learning institution?

A No. It's not accredited by the Western Association of Colleges and Universities, it's not accredited by the Northwest Association of Colleges and Universities. In my 32 years of being a university faculty member, such institutions have always been a -- a problem for bona fide educational institutions, because they produce so-called Ph.D.s that are really basically known in -- in the academic community as mail-order degrees.

MR. McCOY: I would ask Defendant's Exhibit B -- Z be admitted.

MR. COLLINS: That's --

THE COURT: I need to see your copy. You didn't put paperclips on some of these, and I'm not sure what goes with what.

MR. McCOY: I apologize, Judge. Just given the fact that I was in court all morning --

THE COURT: So was I.

MR. McCOY: -- it's --

MR. COLLINS: So was the government, Your Honor.

MR. McCOY: If I could approach the bench.

THE COURT: Please.

MR. McCOY: This should be -- (indiscernible) cover page. That begins at page 241 and ends at 252.

THE COURT: (Indiscernible), I have it in hand.

MR. McCOY: You have it. Thank you. And I apologize for the inconvenience, Judge.

THE COURT: Any objection to Z?

MR. COLLINS: No, Your Honor.

THE COURT: Z is admitted.

(Defendant's Exhibit Z admitted)

BY MR. McCOY:

Q Plaintiff's Exhibit 11 is the Dollins article; am I correct?

A That's right.

MR. COLLINS: That's correct.

MR. McCOY: And do you have a copy of the -- D here?

MR. COLLINS: D?

MR. McCOY: The original?

MR. COLLINS: The judge --

MR. McCOY: 11.

MR. COLLINS: Judge --

THE COURT: 11 is up here.

MR. McCOY: Could I approach the bench, please?

THE COURT: Certainly.

BY MR. McCOY:

Q Handing you what's been admitted into evidence as Defendant -- as Plaintiff's Exhibit 11.

A Yes.

Q What did Dr. Abrams tell us about that?

A He said yesterday that this article was a report of the research done by the Department of Defense Polygraph Institute showing that the directed lie is not acceptable or accurate and also showing that discussion between questions is inappropriate and not accepted by the Department of Defense.

Q Is that an accurate description of what Plaintiff's Exhibit 11 is?

A No.

Q Would you please tell us what Plaintiff's Exhibit 11 is all about?

A What this is, is something written up by Andrew Dollins, who at the time this was written was the director of research at the Polygraph Institute, DOD Polygraph Institute. And essentially it was a solicitation to the polygraph community and the scientific community, telling them what the institute's role is in research, what their programs are, and what they're interested in having research performed on, what issues. And they are inviting them basically to submit proposals for funding, and it even has at the end, you know, the places to contact to see about getting applications to do research on the problems that they outline. It is not a report --

Q This is not research?

A No.

Q Okay.

A It's a research solicitation.

Q All right. I'd like to move our conversation on to the scoring, if I could, sir. And would you tell us about the scoring that Dr. Abrams used?

A Dr. Abrams testified yesterday that he uses the Backster scoring system.

Q Tell me about that.

A Well, that is the scoring system developed by Cleve Backster. It was the original numerical scoring system developed in the late 1950s by Mr. Backster. It is a system with which I'm very familiar, because I attended the Backster School and received extensive training in how that system is applied and did apply it extensively for research purposes. And it is not published in scientific literature but it is presented in handouts that --

Q Uh-huh (affirmative).

A -- Mr. Backster gives at his school.

Q Is it -- has it been subject to scientific study?

A Yes, it has.

Q Okay. And what -- with what result?

A Well, there are two studies. Dr. Abrams made reference to one of them yesterday as the Webber study. It's actually a

study done by Richard Weaver at the National Security Agency.

Q Yes.

A And that was published -- in fact, he did two papers that were published in the Journal of Polygraph, one in 1980 and one in 1985.

Q Uh-huh (affirmative).

A The exact references are in my book chapter attachment to my affidavit is -- in Exhibit W, I think it is.

Q Uh-huh (affirmative).

A And the research by Mr. Weaver showed that the Backster system -- he compared three different systems: the U.S. system at the time, which was then the DOD system; the Utah system; and the Backster system. And he found the Backster system lacking in comparison to the other two. He described each of the systems in general. And he found that basically it's biased against the innocent person.

Q What does that mean, biased against the innocent?

A What it means is that the test -- the -- the scoring system, the way it's designed, tends to produce deceptive outcomes, regardless of whether the person is telling the truth or deceptive. It's very good at identifying deceptive people, as are the other two systems. But it's very poor at verifying truthfulness. It produces high rates of inconclusive and false positive errors, even among people who are telling the truth.

Q And this research you've attached to your affidavit? Or -- I mean, it -- referred to it in your affidavit and its attachments?

A Right, and the -- and there's another one in there also in that attachment, and that's -- the book chapter that's one of the attachments on page 260 describes Weaver's just briefly.

Q Uh-huh (affirmative).

A And then the Law Review article, which is also an attachment, my Utah Law Review article, on page 38 provides data, a very large piece of data, from a scientific study I conducted where blind reviews of polygraph charts were used using the Utah system and using the Backster system. And it showed that the Utah system and the Backster system were equivalent in correctly identifying people who were engaging in deception. All -- and 100 percent of the decisions were correct for both systems.

Q Uh-huh (affirmative).

A But for the people who are in fact innocent, the Utah system correctly identified them 92 percent of the time, and the Backster system -- and I have to make reference to the article -- as I recall, had a huge number of inconclusives, 40-some-odd percent, and about 26 percent false positive errors. It only correctly identified the innocent people in that sample less than -- let's see, I think it's 30-some-odd percent as

opposed to 92 percent for the Utah system. So it clearly shows that when you use the Backster system, if a person is in fact telling the truth, the most likely result you will get is either that the -- the test is inconclusive or that the person is engaging in deception when in fact they're telling the truth.

Q Right.

A The Utah system doesn't have that bias.

Q And the Backster system has been discredited for those reasons?

A Yes. The government does not use it. In fact, the government took the Backster system in the late '50s, early '60s, and vastly modified it to try to overcome some of the basic biases in it and developed their own system, which they taught at the school and they've modified over the years, as we talked about the other day. And it gets closer and closer to the Utah system.

Q During his testimony yesterday, Dr. Abrams talked -- testified about federal government rules or a federal government rule to score only the adjacent control. Do you remember him testifying to that?

A Yes, I do.

Q What was he telling us then?

A He was telling us that you can't compare a relevant

question to any control other than one that's right next to it in the chart.

Q Is that correct?

A No, it is not correct.

Q Okay. Please explain why that's not true.

A Well, the actual rule is that you compare each relevant question to the stronger of the two surrounding controls, if there are two surrounding controls.

Q Uh-huh (affirmative).

A And depending upon the test format, those controls or comparison questions might be right next to the relevant or they may be one or two questions away. For example, in what's called the Modified General Questions Test, the MGQT, that is very commonly used by federal agents -- in fact, I think it's the most common in the examinations that I've reviewed, and that's many hundreds -- they score -- you have relevant questions that are sometimes two or three questions away from the control question to which they're compared. Or in the -- in many of the Secret Service tests and the Naval Investigative Services test, you have two relevant questions just like I have in the sequence in this case. And on -- around those two relevants you have two comparisons. So you have a comparison, a relevant, a relevant, and a comparison. And each of those two relevants is compared to the stronger reaction elicited by

either of the two comparison questions.

Q So when Dr. Abrams told you that -- told Judge Roberts yesterday that the government only scores adjacent questions, that's incorrect?

A It's just absolutely inaccurate.

Q And the federal government, the federal polygraphers, they do not do that?

A There may be some who do it --

Q Sure.

A -- but the -- the rules as I've read them and also as I've seen them practiced, particularly in the large studies that we've done reviewing government examinations of examiners trained at the Department of Defense Polygraph Institute, they do what I just described, not what Dr. Abrams described.

Q And Dr. Abrams said something about the federal rules being similar to Raskin rules; is that true?

A Well, that's generally true. In fact, as I have testified, they become more and more similar to ours as they drop the ones that are shown by scientific research not to be useful or to be incorrect. And they've been reducing the number and it's getting more and more like our system.

Q Did it appear to you that Dr. Abrams was following anything that resembled the rules followed by the federal government?

A No, he didn't follow the federal rules, he didn't follow

the Utah rules, and he didn't even follow the Backster rules.

Q On cross-examination, Dr. Abrams indicated -- testified that you can score a reaction that precedes a deep breath, but you need to be wary of an apnea that precedes the deep breath.

What --

A Yes.

Q -- was that all about?

A Well, that came up in the discussion with regard to his scoring of the polygraph charts in this case. Because he said there were many deep breaths on the comparison questions, the directed lies, which rendered those unscorable, and therefore he couldn't score in many places, and he's indicated that by dashes and DBs on his score sheet there. And so you, to clarify that, asked him, well, if the deep breath occurs after the reaction, can you score the reaction that precedes the deep breath, and he said yes.

Q Okay. I'd like to look at Dr. Abrams' scoring sheet if I could. Do you have an exhibit number for that?

A That's Exhibit FF, I believe.

Q And does this appear to be a blowup of FF?

A Yes, it is.

Q And would it help you to illustrate the testimony about the scoring that Dr. Abrams did if you used that exhibit?

A Yes, it would.

MR. McCOY: I'd ask that FF be admitted.

MR. COLLINS: That's the scoring sheet of Dr. Abrams?

MR. McCOY: Yes, sir.

MR. COLLINS: No objection.

THE COURT: Admitted.

(Defendant's Exhibit FF admitted)

MR. McCOY: All right.

BY MR. McCOY:

Q If it's convenient for you to step down, and however you feel best to proceed, I'd like you to critique this scoring sheet.

A Well, for now I think I could sit here and then when we get to using the charts and things, I may need to stand up and come --

Q As you wish.

A Yeah. To begin with -- of course, Dr. Abrams failed to fill in the score sheet completely. He didn't put any dates on it, either the date of the exam, nor his name, nor the date that he reviewed it. So --

Q Is that generally professional or unprofessional?

A That's pretty sloppy.

Q All right. What do you see from the chart that causes you to question --

A Well, what I see there is that he says that the result was

inconclusive. And then in the right-hand column -- actually, this is a score sheet that was photocopied from the one we used to use in our laboratory.

Q Uh-huh (affirmative).

A And in the right-hand column it says "comments." And he made a bunch of notations there to indicate what he considered to be problems, and he talked about those things yesterday, so those need some comment. First of all, he said on the first chart that the breathing was erratic. And he didn't really explain that very well, but there are -- there are -- are some changes in the breathing. I wouldn't consider this to be what one would normally call an erratic breathing chart. It's variable. But that's not unusual.

Then he said there were deep breaths on the control, which I think is quite an overstatement, and we'll -- we'll see them when we get to looking at the charts.

Q Okay.

A Then he said that there were instrumentation problems. And what he was referring to, and I think that's best illustrated if we use the exhibit that the government had prepared and asked me about yesterday. I think it's the one behind the bar there.

Q This one?

A Yes.

Q For the record, this is Plaintiff's 8.

A Yes.

Q Why don't --

A I'll use my laser pointer, it's -- help.

MR. McCOY: Madam Clerk, if you have trouble picking me up, please let me know.

THE CLERK: I'm having trouble.

THE WITNESS: There's a --

MR. COLLINS: There's a microphone right here.

THE WITNESS: -- Lavalier (ph) there, if you want to use -- or -- okay. This is one that the government went through with me yesterday. And --

MR. COLLINS: Mr. McCoy.

THE WITNESS: -- what Dr. Abrams was referring to when he talked about instrumentation problems, if we look at chart 1 here and there's this black line that's a bold section of the cardio or blood pressure tracing, he said that was an instrumentation problem, he didn't really know quite what it was. Well, if Dr. Abrams were familiar with the modern polygraphs and the computerized ones, which apparently he's not, he would know that that is an edit. And I even testified to that. This shows on the heading, it says that this is chart 01. And in parentheses, if he had read this, it says, "edits indicated in bold."

BY MR. McCOY:

Q Uh-huh (affirmative).

A And that's why this bold is here, because there was a movement artifact there, as I explained in my testimony the other day -- one of the days; losing track. And because it was a movement artifact it sort of makes it more difficult to interpret the chart. So I edited that out for the presentation that would be made to -- to give these to the government, which would be -- make it easier for somebody to review the charts. Dr. Abrams mistakenly assumed that that was an instrumentation problem. And you can see that that happens in several of the charts, and he pointed out the different places. Those are edits. And they are indicated as so in each. So he just simply misdescribed those as instrument problems.

He also stated that there was a problem with the blood pressure tracings. He said the sensitivity was too small, it was too low --

Q Uh-huh (affirmative).

A -- and that you couldn't interpret them.

Q Could you point at -- point to where you're --

A Well, for example, on chart 2 here, you see the -- the blood pressure tracing here. And he said that it should have had more sensitivity so that you would see the changes more clearly.

Q Uh-huh (affirmative).

A But with this kind of an instrument, in order to make the presentation clear when you print the charts, which is not really what I do when I actually score them; I score them on the computer. But to print them and give them to somebody, those tracings are kept within a specific window which is indicated by horizontal lines. And each -- each measure has its own window.

Q Uh-huh (affirmative).

A Because if you allow those to go overlap each other, it would be very difficult to read the chart, because the --

Q Uh-huh (affirmative).

A -- print would cross each other and be hard to follow the lines, and they'd obliterate each other. So it's kept within the windows. Well, when you do that, what happens is, whatever the total range of those recordings is for that chart, they have to be compressed into that window to be able to print the chart this way. But when you look at it on the computer, you can take the sections of the chart that you're scoring and you can amplify them so that you can see the changes much more clearly, plus the computer calculates the actual size of the changes so that when you apply the rules -- and I testified to this, I believe, on -- on Tuesday -- when you apply the rules, you can have the numbers that are actual measurements, as if

you took a ruler to a blown-up version and measured the millimeters, so that you can actually do the calculations in your head. They're simple calculations, like 2 to 1, 3 to 1, and so on.

Q Well, do you think Dr. Abrams knows this or not?

A Apparently he doesn't. I guess he's just never seen these instruments.

Q All right. We've got a number of exhibits, GG1, GG2, and GG3 and GG4. Do you want to use those now in terms of scoring? Where did you want to go next?

A Yeah, I think that would be the best thing, is -- we prepared those so we could look at them. There are a couple other things actually that needed to be commented about GG1 and GG2, because they have to do with things that Dr. Abrams point out.

Q Well, let's first talk with -- GG1. Tell me what that is.

MR. COLLINS: Your Honor, before we start discussing, these appear to be polygraphy charts. I want to clarify, are these the same ones that were appended to the defense notebook of exhibits?

MR. COLLINS: That's a fair question.

MR. McCOY: Yes, they are, but they were not separately identified. We get back to this dispute about, you know, what *Daubert's* all about and whether it's a -- you know, whether

this is stuff that my position is should be done in front of a jury. But we have to answer his criticisms. And I thought the most convenient way to do it would be with these charts, where we could identify them specifically, because he went through charts specifically.

MR. COLLINS: Your Honor, I want to object at this time to these charts, because it's clear now that the defense exhibits that were provided to the government were edited. And now we have a copy of charts that were submitted to the government on Friday after the government -- Dr. Abrams was asked to evaluate them. And it appears that the defense has not abided by its disclosure requirements in providing the actual charts that the expert used in summary in order to provide the government an opportunity to have them examined.

THE COURT: You can voir dire if you want. I don't know whether your assumption is correct or not.

THE WITNESS: I could clarify, Your Honor, if you'd like.

THE COURT: Yes.

THE WITNESS: These charts, since Dr. Abrams didn't understand about the edits and I explained that, are being presented -- first of all, we did not anticipate having to go through the individual charts. Being a *Daubert* hearing, it was my understanding that the particular test in terms of the

actual scoring was not going to be the subject of great testimony. So we didn't prepare all of that. But the charts were turned over to the government in a form that's most useful for somebody to score them from. In fact, I scored them, and my scoring is based upon the edited charts.

However, to clarify a number of things that Dr. Abrams brought up, and not to be redundant in having done this first before he testified, because we didn't think it was necessary -- I -- I didn't in a *Daubert* hearing -- and then to come back and go through them again a second time would have wasted a lot of the Court's time. So when we saw that Dr. Abrams was doing this, then we decided, well, now we have to clarify all these things. And we provided the government with the unedited. So they now -- they had the edited, which are the ones that I used to score the charts. And now we have the unedited to explain the misconceptions in some of the things that Dr. Abrams put forward in his testimony.

MR. McCOY: Now, do you --

MR. COLLINS: I still object then to this. Dr. Raskin has just stated that the ones that he testified to were the ones that were edited, so those were the ones that were viewed. Now he's attempting to reopen the evidence and introduce other charts which were not the subject of cross-examination, and therefore are not proper for rebuttal.

MR. McCOY: May -- I could I respond?

THE COURT: Sure.

MR. McCOY: He'll have plenty of opportunity to cross-examine when I'm finished.

MR. COLLINS: Well, let's focus on the --

THE COURT: One person at a time.

MR. McCOY: Thank you. It was Dr. Abrams that talked about mechanical problems, some sort of deficiency. I remember him up there with the chart, talking about -- saying here there's some sort of computer malfunction here, computer malfunction here. You know, the question is whether -- the further foundational question that I would ask the doctor right now, are -- the edited charts, are those the standard in the industry?

BY MR. McCOY:

A Yes, but the --

Q And are those the ones that you use when you make a court presentation ordinarily?

A Yes, if we have to use the charts on -- but let me also clarify that the unedited ones are not going to change the picture. They just present the -- the raw data to show what was taken out. So the questions that Dr. Abrams raised can be answered. But it's not substantially different from the other ones other than that it shows that information. The scoring is

going to be the same.

Q Regardless.

A Yes. It's just more illustrative because of the things that Dr. Abrams erroneously brought up yesterday that need to be clarified.

MR. McCOY: And it seems to me that we need to be able to explain this for the record so it's clear.

MR. COLLINS: Well --

THE COURT: You're offering Exhibits GG1, 2, 3, 4?

MR. McCOY: 4, and those should be the charts that are -- these are the charts that we're going to talk about. And these are --

THE COURT: They're --

MR. McCOY: These are the unedited charts.

THE COURT: I understand. They're being offered for rebuttal, and I think it's a proper use. Having gone this far with what we have before us, I'm going to allow a complete record.

MR. COLLINS: If I might state the government's position, Your Honor. In light that the -- this presented testimony with regard to the now unedited charts, because the defense didn't notify the government that there were two versions of the charts, the government would seek an opportunity to have these unedited charts assessed for the

purposes of determining the reliability issue, Your Honor.

THE COURT: He has -- this witness has testified that he scored using the unedited, and these are offered to explain some of the points your expert made. I think I --

MR. COLLINS: I understand, Your Honor. But he's also testified that in essence, there's no need then for these exhibits, because he's testified that these charts are the edited charts, and therefore the unedited -- the edited charts then are the ones that are at issue. And these, he's already explained the difference. He's explained the edit. And these charts are simply new evidence.

THE COURT: Well, they're to illustrate what he's saying. And I think he's entitled to do that at this point. GG's admitted, 1 through 4.

(Defendant's Exhibits GG1 through GG4 admitted)

MR. McCOY: Your Honor, I'm going to ask that 1 through 4 be admitted, so there'll be no interruptions, and we'll just get through it as quickly as we can.

THE COURT: I just admitted them.

MR. McCOY: All right, thank you. I'm approaching the witness.

BY MR. McCOY:

Q Tell me -- we have Plaintiff's Exhibit 8, is that correct --

A Yes.

Q -- in front of us? And there's a chart that is labeled chart 1.

A Yes.

Q What does that correspond to the GG exhibits?

A It'd be GG1.

Q All right. When Dr. Abrams was commenting on chart 1 of Plaintiff's Exhibit 8, what were his criticisms?

A Well, he used transparencies and he didn't actually use this chart, and so it'd be -- I think it'd be easiest to illustrate it with the blowups that we've made. That'd be easier for the Court to see than those transparencies.

Q All right. I'm going to ask for your assistance, Doctor.

A Yes.

Q They're marked in the upper left-hand corner.

A I think at this point it would be easier --

Q I think I'll serve the role as easel.

A -- for me to come over.

Q All right.

A If it's okay.

Q Sure. All right. Tell me what chart 1 is, with this --

A Chart 1 is GG1.

Q And that's chart 1 on Plaintiff's 8?

A Yes, except it's the unedited version, and I can show, once

we get it up there, what the edit was, and also what the problems were with what Dr. Abrams said about this chart.

Q Okay.

A And if we could put it on that easel, it might be easiest.

Q And is that -- all right.

A Because I'd like to -- I need --

Q I understand, thank you.

A -- that -- whatever that number was that's sitting up there. FF, I think it was. Is -- is that correct, is that FF? Just so I keep track here.

Q Sure.

A Yes. Okay. First of all, the only difference between the edited chart, which is shown on Plaintiff's 8 and which Dr. Abrams had a transparency of, is this cardiovascular artifact here caused by a movement. Dr. Abrams commented on that and -- you know, he -- well, no, he didn't comment on that one because he thought that was a computer malfunction. I take that back.

So -- but what this shows is that -- that movement occurred so far out here that it has no impact on the scoring. The scoring deals with the reactions that start from the point where the question starts to five seconds following the answer. The reaction must start in that window to be scored. And this movement way out here, which is a wiggle of the arm. I think Ms. Walker was -- her arm was feeling a little tight, because

that cuff gets tight, and she moved her arm a little bit. So that's all that is, and it doesn't affect the scoring.

Q Can I interrupt you just for clarity?

A Yes.

Q What we're talking about here is GG1; right?

A Yes. And it's not the full chart. I've just put here, starting with the place where you start scoring, which is the first comparison question, D1, so that we could fit it one board.

Q I understand, all right.

A It's the critical portion of the chart. And so what -- what we have is, first of all, Dr. Abrams says that the breathing is erratic. Generally through this chart, the breathing's pretty steady. There is a deep breath here at about, oh, 12 seconds following D2.

Q Uh-huh (affirmative).

A Which I think Dr. Abrams pointed out. But that is long after the scoring window where the question must -- the reaction must start if you're going to use it for scoring. And what I've done is I've taken a green marker and drawn a line down, a vertical line down from where that deep breath started, so we can see where the beginning possible influence of that breath starts. It has to be from that green line to the right. Anything that precedes it would not be affected by that deep

breath.

Q And what do we find?

A And what we find is that Dr. Abrams in his scoring said you couldn't score R3, because this deep breath made it not possible. And yet, he acknowledged when you asked him, you can score all of the stuff that precedes the deep breath. Also, Dr. Abrams did not follow the rule, because in scoring R1 and R2, you can -- and he said you couldn't score R2 for that. He said -- I -- I can't understand why he said you couldn't score R1. He's put a line across that. I don't know what that means --

Q Uh-huh (affirmative).

A -- unless he was using that for a zero.

Q Uh-huh (affirmative).

A Maybe that's what it is. I don't know. He didn't explain that. Normally one puts a zero. So you can score -- according to the rules, the government rules or the Utah rules, you can score R1 and R2 to the stronger of D1 or D2.

Q Okay.

A So if we do that and we look at Dr. Abrams' score sheet and then we look at the score sheet that I generated, and that's on an exhibit down there which maybe would be helpful to put here where the Court can also see it -- we could put it right here. I think Mr. Collins has the printed form of that, don't you?

Yeah.

So if we compare these, what we see is that for the first chart there is -- I assigned a zero to the breathing for R1 and R2, because when you compare it to D1 and D2 and the stronger, there's really basically no difference.

Q Uh-huh (affirmative).

A So those are scored as zero, and Dr. Abrams -- I -- I'm assuming that those horizontal lines means zeroes. I -- I don't know.

Q Okay.

A But the net effect is the same.

Q Okay.

A So there's no problem there in terms of what he indicated. Now, when we go to the electrodermal or galvanic skin response for R1 and R2, again we compare R1 to the stronger of D1 or D2. And we compare R2 to the stronger of D1 or D2. In order for a score to be generated of 1 or more in either direction, one has to be approximately twice the size of the other. Dr. Abrams said that the GSR electrodermal to relevant 2 was twice as large as the comparison question. But when you look at the chart, it's very clear that the reaction to D1 is even larger than to D2 -- to R2, I'm sorry. Which means that it can't be a minus 1, as he put it. It is a zero because it doesn't quite make two to one. One could argue, well, maybe it should be a

plus 1. But conservatively, I scored it as a zero.

Q Uh-huh (affirmative).

A Dr. Abrams scored it as a minus 1, which is a clear, definite, objective error, according to the rules. And what I'm going to do to keep track --

Q Please do.

A -- is circle that one in red. Every time I circle it in red, it is a clear, definite error in the application of the scoring rules.

When we go to the cardiovascular, you again make those comparisons. And we see that the reaction to R1 and to R2 -- to R1 it's actually sort of dropping. To R2 there's a very slight rise. When we compare that to the larger of D1 or D2, if anything, the reaction to D2 is larger. And I assigned both of those zeroes. I could have scored R1 actually as a plus 1. Because there's more there to D2, but I was conservative and I scored it as zero. He has zeroes there also.

Dr. Abrams did not score the plethysmograph, which is the bottom tracing. He testified yesterday that he'd never seen me score it before, which I don't understand how he could say that, because I always score it.

Q Uh-huh (affirmative).

A And every test of mine he's reviewed that has that plethysmograph on it, which is virtually every one --

Q Uh-huh (affirmative).

A -- I have scored. So I don't know where that came from, but it's not correct. So when I scored the plethysmograph, doing the same thing, those are zeroes. So so far there's one difference.

Now when we go to R3 and R4, again, we can compare R3 and R4 to the larger, the stronger of the reactions, to D2 and D3. Dr. Abrams said you couldn't score R3 because of this deep breath on D2. Well, first of all, you -- he admitted later, you could score all of this that precedes it.

Q Uh-huh (affirmative).

A And he also was wrong about the rules, because you can also compare it to D3. So when you do that, in fact, you find that D3 shows a breathing suppression through here, which is stronger than the suppressions to either R3 and R4. And so that deserves a plus 1, which is the way I scored it. And Dr. Abrams erroneously assigned no score, which is equivalent to a zero. So that one's wrong.

Q And when you say rules, you're using rules that the federal government relies on when it's scoring polygraph --

A Federal --

Q -- and the Utah system?

A And the Utah system, that's right.

Q All right. All right. Thank you.

A Now, when we look then at the respiration on R4, again, this suppression is more sustained and stronger than the one to R4, so the comparison is stronger. Dr. Abrams scored it as -- I begin to think now these are definitely zeroes.

Q Uh-huh (affirmative).

A He should have put zero. So that one's wrong. Now, the next thing we have is the electrodermal. He scored both of those, R3 and R4 as zero, and that's correct. Because they are essentially equivalent, R3 and R4 essentially equivalent to D3. So those are correct.

When we come to the cardiovascular, now, for R3 and R4, if we look at R3, it's dropping. When we compare that to D2, since I was conservative before and didn't give her the point when she probably could have gotten it on R1, then you try to balance that out and -- so say, okay, this time she gets it. Because this is definitely a reaction here, and R3 has nothing. So that's a plus 1. Dr. Abrams scored that -- oh, I'm sorry, as a plus 1. He did do that correctly. I was looking in the wrong place. So that's -- that's okay.

When we come to R4, he scored that as a minus 1, because he felt that R4 was bigger than D3. But you also compare R4 to D2, where he said you could score prior to this breath, and when you do that, there's no difference. So that properly is a zero. So another error. So far, we have four points'

difference, just on the first chart.

Q All right.

A Then we go to the second chart.

Q Okay.

A And that will be GG2, I believe. Are we on the GGs?

Q Yeah, we are GG, and it would be GG2.

A Okay. Okay. Now, first of all, I need to clarify something. Dr. Abrams said that I asked a question in the wrong place, that I made an error. I did in fact make an error, but it wasn't an error of asking the question in the wrong place. Again, this computer system, what it does -- and this is sort of some technical stuff and I'll try to make it real brief. But what it does is, it has analog to digital converters in it. The whole polygraph is in a little box with the attachments to it. Everything is crammed in, a lot of electronics that my colleague and I developed, and it's marketed for polygraph examiners by Stolting (ph) Company. It's called the computerized polygraph system. Well, at -- the -- the -- the system has to adjust what are called analog to digital converters --

Q Okay.

A -- to keep them within a range. And when certain range is exceeded, then it has to recalibrate. And we allow it to recalibrate, but not at a critical time. It's allowed to

recalibrate only after 21 seconds have elapsed following a question. And what happened is, at this point right here, about 21 seconds after R2, it went into a calibration on the cardiovascular channel, and I didn't notice it. And I -- I -- because I was busy watching her and other things. And I didn't notice it, and I started to ask the question, and when -- and I pressed the spacebar; that's as you ask, and that's what makes the time mark. But when you do that and it's in calibration mode, it can't respond to it.

Q Uh-huh (affirmative).

A And so I asked the question, I completed it because psychologically that's the best thing to do. I don't want to mess it up from her perspective, because she's sitting there listening and has to answer it. And then I pressed the spacebar as soon as I could, as soon as it would allow me. So the mark is over here. Instead -- and if you'll listen to the tape, which is what I did, and I took out a stopwatch to make sure I got it exactly right, I timed it. And when I asked that question it was 23 seconds after the beginning of R2. And on the charts that I supplied to the government and that Dr. Abrams had, I indicated by an arrow that that question was actually asked there, and I -- with a notation.

Q Okay.

A Dr. Abrams didn't understand that. It was clear to me. So

now what I've done is I've made that very clear on this exhibit. I've drawn a blue arrow right at the point where that question was asked. But when you do that and it's right where the arrow was the -- in the copies that the government was provided that Dr. Abrams used, when you do that, then you have this portion right in here that you can evaluate as being evoked by D3 prior to this deep breath, which I've indicated with a green line there. So we have about 10 seconds of data that are useful there if you're going to compare to D3.

So now when we go to score this, if we look at it, Dr. Abrams indicated deep breath, deep breath, because he said you couldn't score R1 because a deep breath occurred on D2, when in fact, as he acknowledged, you can score all of this before the green line -- I've drawn the green line -- from what he called a deep breath. I do not consider that to be a deep breath. As you can see, it's within the normal range of breathing throughout this chart. The only thing that's a clear deep breath in this chart is the one that -- out here following D3. This is not a deep breath. But I've drawn it there just because if Dr. Abrams said it is, we can see where it occurred. It doesn't affect the scoring on that particular place right there as he acknowledged.

So when we do this scoring, what we find is that when you compare R1 and R2 to the disruptions we see both in D2 and in

D3, they -- and there's no disruption like that in either R1 or R2, both of them get a plus 1. The reactions on either of the comparison questions are larger. So again, instead of not scoring, each of these should be a plus 1. Clearly erroneous.

Now, when we go next to the electrodermal, Dr. Abrams scored both there zero. And in fact, they both are zero, because this reaction, this reaction, and these two don't meet any two-to-one ratio that is required to score. So those two are correct.

Then we go down to the cardiovascular. And Dr. Abrams also scored each of those as zero and I scored each as zero. So those stand. He didn't score the plethysmograph, but both scores were zero. So so far on these two questions, those are the only clear discrepancies.

Now when we go to R3 and R4, we now compare R3 and R4 to the stronger reaction to D3, where it's properly indicated, and D1. Dr. Abrams said again, deep breath, you can't score on R3, the respiration. Well, you can, and basically, if you look at that, this amount of disturbance and the disturbance in R3 is about the same. So I scored that as a zero, and so that's not any different. I could have given her a plus 1 on -- or 4 based upon this disturbance right in here, but I was conservative. So those are the same.

Now we go to the electrodermal. Dr. Abrams has a zero for

R3. I have a zero. That's the same. He scored R4 as a minus 2. In order to be a minus 2, it has to be three times as large as the comparison question.

Q And where does that come from when you say that?

A That's the rule.

Q Okay.

A That is the rule. That's based on scientific research that it works.

Q That the federal government uses?

A Federal government uses it, the Backster system --

Q They use it --

A -- uses it, the Utah system uses it.

Q All right.

A We all use it. But Dr. Abrams didn't apply it correctly. And this is simple measurements. I mean, it's a quantified thing. If you measure these, R4 is a big reaction. But it's not three times as large as D3. So it only qualifies for twice as large. It's a minus 1, not a minus 2, by an objective measurement. And therefore, the minus 1 I put is correct. The minus 2 that he put here is wrong. Just an objective scoring. And as you can see, these rules are quite specified and pretty objective.

Now we come to the cardiovascular. We're now in this section, and Dr. Abrams scored a minus 1 for the cardiovascular

at each of those places. I scored a minus 1 for R3. R3 definitely has a reaction here which is bigger. There's -- there's nothing here, this can't be counted. And this, although there's a reaction, it's not as big as R3. So I scored that as a minus 1, he scored it as a minus 1. But when we look at R4, R4 has essentially the same reaction to it as D1. They're essentially almost identical. So he scored that as a minus 1, I scored it as a zero. There's no question, it's a zero. Another error.

Then the plethysmograph, he did not score. I don't know why. I think -- I don't believe he's familiar with it, frankly. And he's expressed some things about it that have been wrong in the past, and I think he doesn't know how to score it, so he just didn't. If you compare the plethysmograph on D1, we'd have to discount this one over here because of this deep breath, and that could cause this. So we discount the one at D3. So we must use D1. When we compare D1 to both R3 and R4, we see that the pulses here drop noticeably more to D1 than to either R3 or R4. And so those are plus 1s. So if we write in here -- you know, I'll -- I'll just go back and I'll put "PLE" for plethysmograph. These were all zeroes, so it doesn't affect anything. I'll draw a line through to show those are not errors on Dr. Abrams' part, those are my scores.

But here, we have -- should have -- he has a -- he doesn't

score it, but it should be a plus 1 there and a plus 1 there. So two more errors. So in this chart we have one, two, three, four, five, six errors. So far we have 10 errors, 10 clear errors. Then we go to chart 4.

Q Which would be GG3?

A GG3. Starting in the same place with respiration, Dr. Abrams said there was a deep breath, so we can't score R3 -- I'm sorry, R1. Well, if we look at R1 here, we can compare that either to D1, where there is a deep breath about 10 seconds after the question, but we can also score it to D2. Dr. Abrams called this a deep breath; it's clearly not a deep breath. And when you score it, you see that R1 has just a little, tiny disturbance here. R2 has a slight suppression. But when you look at D2, it's suppressed all the way through here. That's a very strong reaction. That could be called a plus 2 for each of these when you compare them, because this one is so strong and so sustained. But I was conservative and I assigned her a plus 1.

So she got a plus 1 for this one. Where he said deep breath, Dr. Abrams did assign the plus 1 for R2, which indicates that he did consider this D2 as a bona fide response and not due to a deep breath. I just drew that -- I can't remember if he said that. I couldn't follow it quite yesterday --

Q Uh-huh (affirmative).

A -- so I did that just to point it out. But it's not a deep breath, and apparently he didn't consider it a deep breath. And so he scored a plus 1 and I scored a plus 1. It could have been a plus 2. So that one we agree on.

Now, when we go to the electrodermal, he scores zero, I score zero. And when you compare these -- this -- all these two, the -- the D1 is slightly larger or maybe the same as R1 and noticeably larger than R2. It's almost a plus 1, but conservatively, I scored it a zero. Dr. Abrams scored them both zeroes.

Now we go to the cardiovascular. We want to score those, R1 and R2, against the larger of D1 or D2. Dr. Abrams scored R1 as a plus 1, and that's because he compared this right here, following R1, to the larger reaction that occurred before this deep breath 10 seconds after D1. And by the way, let me point out that he said these were possibly naive countermeasures. They're so long after the question that anybody that's trying to engage in countermeasures to create a false reaction would never wait that long, 10 seconds. They do it during the question or right after the question. They don't wait till way out there when it's obviously too late.

Q Unimportant.

A Yeah, it's too late. So when we do that and we come to the

electrodermal -- I think I already covered that. It's the cardiovascular we're looking at. So he did give this the plus 1. Well, the same is true then for R2. You compare R2 to D1 or D2. D1 has clearly the biggest reaction, just like he noted on R1. So that should be a plus 1. He gave it a zero. That's another error. Because he was inconsistent there. I mean, he did it one -- because he misapplied the rule. And all the rules say go to the two surrounding controls.

Then we go to R3 and R4. R3, he scored a plus 1 on the respiration by comparing this to this, which is correct, and he scored a plus 1. You could maybe say a plus 2, although there's some suppression in here, so plus 1 is right. And on R4, he scored it as a zero, because he didn't use D2. He used D3. The proper comparison is to D2. So that should be a plus 1. So that's another error.

Then we go to the electrodermal. And on the electrodermal we have -- he has a minus 1 for R3. If we look at R3 and you compare that to either D2 or D3, it does not make the two-to-one. It simply isn't close. So he scored that as a minus zero; it is a zero. Another error.

Then we go to R4. He scored that as a zero. And on my scoring I have it as a zero, because again, this one is about the same as that one, especially when you consider the multiple response, which is one of the criteria. So we agree on that

one.

Then we go to the cardiovascular. And on the cardiovascular he has a minus 1 and a plus 1. And that's exactly what I had. Minus 1 because this reaction here is larger than either to D2, although it's close, or to D3, although it's close. So I gave it the minus 1 as a close call. And Dr. Abrams scored the minus 1. And he scored the plus 1 when we go this one to R4, which has no change. And I scored it also as a plus 1. So we agree on that one.

And the plethysmograph on that one was all zeroes, so there's no -- I won't write it down, because there's no difference. And finally, we go to number 5.

Q Which would be GG4; correct?

A Yes. I should also point out that Dr. Abrams, when he was going through these, said I never warned her about deep breaths. Well, there's really only one instance where she had a deep breath that affected the possible scoring. It was not necessary to say anything to her, because sometimes when you say things like that when it's not necessary, it just makes a person very anxious, they become very conscious of their breathing, they start trying to control it, and it disrupts the test. And in her case it was not a problem, and so I didn't draw her attention to it. I did warn her about movement on her earlier chart. And there's an "I" there. I think we talked

about that the -- the other day. And actually in this one I warned her about wiggling her finger, I think. She was wiggling her finger a little bit. She was sort of nervous. I don't think she was at all aware of it. Most people are not. And it messed up this plethysmograph tracing throughout. I wasn't terribly concerned about that, because the plethysmograph for her was not very productive anyway and so it wasn't going to affect the outcome very much. But I did finally say, "Try not to move your finger," because she was -- you see these in here.

Q Uh-huh (affirmative).

A But they don't affect the other channels. It's just something like that, and it doesn't have any impact on anything else. I try not to make people feel uncomfortable unnecessarily.

Q And why don't you contrast --

A And --

Q -- your scoring with --

A And here we'll go to then chart 5. On my scoring -- for chart 5 on the respiration, Dr. Abrams has a minus 1. Well, if you compare R1 to the stronger of D2 or D3, it's clear that D3 is much stronger. In fact, he -- he acknowledges that when he gets to scoring R3, because he compared R -- I mean R2, because he compared R2 to R3. But he violated the rule and didn't use

the surrounding controls. When you do that, you have a plus 1 instead of a minus 1. That's a two-point difference. Another clear error. But he did do it correctly when he did R2, noticing that D3 is much stronger and sustained suppression. And he gave her a plus 2 on that one, because there's nothing in here, and very clear there. And that's what I assigned. So that's correct.

We go down to the electrodermal. D1 -- D2 and R1, clearly the same. R2, he scored as a minus 1, when in fact it's essentially the same as D2, which would make it a zero. So that's an error.

Then we go down to the cardiovascular. On the cardiovascular, he has a plus 1 for R1. He's compared this to -- as you see here, there's a little bit of a movement there of the arm. But you'll see the tracing going up before any movement occurred. This is a bona fide reaction. And already, it's clearly more than what you see in R1. So he scored that as a plus 1. Taking that into account, just the way I described it, I assume. And that's how I scored it. But on R2, he didn't. He compared R2 to D3 instead of comparing R2 also to D2, which is the rule. And he scored it as a zero, and the proper score is plus 1. Another error.

Then we go finally to the last pair of questions, R3 and R4. He scored a plus 2 in the respiration, which is correct.

No change in the R3, clear change here. He scored plus 2, I scored plus 2. But on R4, he scored that as a minus 1, because he compared R4 to D1. Actually, if I made that comparison I'd score zero. But the proper rule is to score it R4 to D3. And there is some suppression here, but there's definitely more and longer here. So that counts as a plus 1 and not a minus 1. So this is a two-point difference again, a two-point error.

We go down to the electrodermal. He scored R3 as a minus 1, saying that this is twice as large as that, which it is not, nor is it twice as large as D1. It's a -- it scores as a zero when you measure it carefully. So this is an error.

And the last one he scored R4 as a zero in the electrodermal. That's correct. He's compared this to this one, and compared to -- that's the same thing.

Now when you come to the cardiovascular, R3 he compared to D3, and you can compare it to either D3 or D1. And it is a strong reaction. It's the biggest cardiovascular reaction we've seen in the whole test. So he scored it as a minus 2. I scored it as a minus 2. And finally for R4, the cardiovascular, there's only very little if anything there, very little if anything there. We both scored it as zero.

And the plethysmograph I didn't score at all for this chart because of all those movements. So these are the differences.

Q How many errors did Dr. Abrams make?

A One, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen errors. And some of those were two-point errors, so that is what accounts for the difference in his score and my score. Clearly, as you can see, he misapplied the rules, misinterpreted the charts, which --

Q Is Dr. -- was Dr. Abrams' scoring, from your perspective, consistent with the scientific literature on scoring?

A No.

Q Would you please explain that for us?

A Well, as I've explained before, both the federal system -- excuse -- I'm going to sit down.

Q Please do.

A Take this off. Both the federal system and the Utah system are scientifically validated, although the Utah system is the one that has the vast majority of it. Only the Weaver study validates the federal. But there's not a lot of difference.

And --

Q Uh-huh (affirmative).

A -- and our own studies found when the Secret Service examiners scored charts it was pretty much the same as when we scored them. But they're -- they've moved toward ours because I've done a lot of training with them.

Q Uh-huh (affirmative).

A So it's sort of a mixture. But Dr. Abrams just clearly misapplied all these rules that have been validated by a long series of scientific studies that we began in 1970 at the University of Utah, that have been published in the literature repeatedly and repeatedly and repeatedly since then, and have been taught all over the United States and Canada. And he's just way out there, frankly.

Q Did Dr. Abrams present any scientific literature to this Court or have you seen any scientific literature that he's offered or data that suggest that the directed lie test is invalid?

A No.

Q Okay. What about his 1991 study?

A Well, it's not only a poorly designed study but it's irrelevant, because it isn't a directed lie test at all. It's just one thrown in at the end, as I described, and that's a violation of any procedure. I should comment, historically, there was another test called the relevant-irrelevant test in the early days, where they threw in at the end what they called the emotional -- the -- the emotional surprise question to see how big a reaction they could get, and that would make anybody come out truthful. Because right at the end, as I said, unreviewed, "Have you ever in your life" and that kind of thing. And that produces huge reactions. And that's

thoroughly discredited. And Dr. Abrams' directed lie study is the same kind of thing. It's -- to use his term, "It's a setup."

Q All right. There was some discussion yesterday with Dr. Abrams about Dr. Barland and his testimony in the *Galbreth* case. And he said -- remarked that he would be surprised that Dr. Barland would have -- would rate the directed lie and the probable lie as equally accurate. Do you recall that testimony?

A Yes, I do.

Q Were you present when that happened?

A Yes, I was in the courtroom when Dr. Barland testified to that.

Q And what test -- what polygraph technique was at issue in that case?

A The exact same one that we're talking about here. It was a directed lie test conducted by myself using the same format, and that's what Dr. Barland was testifying about.

Q And again, just briefly, who was Dr. -- who is he and what was he doing there?

A Dr. Barland at the time I think was the director of research at the Defense Polygraph Institute. He's since had different positions there. He was the government's witness in that hearing about the admissibility of polygraph, my

polygraph, which was offered by the defense. And he was testifying on those issues and basically testified in favor of the test.

Q Was the test that you've developed and the test that you've given here based on scientific studies?

A Yes. My whole career in terms of working on this problem has been to use scientific research to validate, revise, improve continually, you know, improve as we can polygraph tests, and this is the culmination of all of that work, this test, and it is the most scientifically validated test, in my opinion, that has been developed.

Q Was the Utah system -- the Utah scoring that we've been talking about, was that developed on the basis of scientific studies?

A The exact same process. Twenty-some-odd years, twenty-nine years, twenty-eight years of the research. Widely published in scientific journals and described in one of the exhibits which summarizes all of that.

Q All right. And in your opinion is it the most scientific -- scientifically valid basis for scoring a polygraph?

A I don't think there's any question about it.

Q And is that the system that you applied in this case?

A Yes, it is.

Q Was there any testimony that you heard offered by Dr. Abrams that shows you -- suggests that the test that was administered here or that the scoring that was used here was invalid?

A No. Nothing he said -- although he claimed that it has any merit scientifically.

Q On the basis of the scientific evidence and more than 28 years of academic and scientific and professional experience with polygraph examinations and other forms of forensic evidence --

MR. COLLINS: Your Honor, I want to object. This is not rebuttal. This is -- Mr. McCoy's reading from the affidavit which was admitted. Dr. Raskin previously testified; now he's getting beyond the scope of the government's case.

MR. McCOY: I'm going to ask him if he's got an opinion.

THE COURT: About what?

MR. COLLINS: It's previously been stated.

MR. McCOY: About the accuracy of his test.

THE COURT: Didn't you cover that in --

MR. McCOY: I did.

THE COURT: -- originally?

MR. McCOY: All right, fair objection. I'll withdraw the question.

BY MR. McCOY:

Q Is there anything that you've heard in this courtroom from Dr. Abrams that causes you to question or doubt the validity of the test results that were given in this case?

A Nothing whatsoever.

Q Is there anything that would make it difficult for you to make a presentation to the jury that would be understanding, if this evidence were admitted?

A I don't believe so. It's the same kind of testament I've given before and I think it's very clear to juries.

Q All right. Sir, thank you for your patience with my questions.

A You're welcome.

MR. COLLINS: How does the Court want to proceed? I know the Court's been in -- on the bench since early this morning. It's 1 o'clock now.

THE COURT: Well, if you can finish up in five or ten minutes, fine. If not, we'll take a lunch break.

MR. COLLINS: I would ask we take a lunch break, Your Honor.

THE COURT: An hour? Is that enough?

MR. McCOY: Fine with me.

THE COURT: We'll be in recess for one hour.

THE CLERK: This matter's in recess until 2 p.m.

(Recess at 1:00 p.m., until 2:05 p.m.)

THE CLERK: His Honor the Court, this United States District Court is again in session. Please be seated.

THE COURT: Looks like everyone is here. Are we ready to continue and hopefully wind up this hearing? Mr. Collins, you may begin your --

MR. COLLINS: Thank you, Your Honor.

THE COURT: -- cross-examination.

CROSS-EXAMINATION

BY MR. COLLINS:

Q Dr. Raskin, the polygraph is a machine that measures various physiological reactions; correct?

A Correct.

Q It's not a lie detector?

A No.

Q The testing that's done, the examination, is to determine the subject's perception of truth?

A Their subjective belief, yes.

Q In field studies, I believe you've admitted establishing ground truth as one of the difficulties --

A That is the --

Q -- that is studied.

A -- major difficulty with field studies.

Q And you have to admit that even in sex abuse cases where the victim has recanted prosecutions have proceeded and

defendants have been found guilty?

A Oh, yes.

Q In the exhibits that were admitted today you presented an article written by Dr. Hounts --

A Honts.

Q Honts, excuse me. He's a gentleman that you respect in the field of polygraphy?

A Yes.

Q And this may be a personal question. Does he have as much knowledge of the field, the subject of polygraphy, as you do?

A Yes. He may not have the seasoned wisdom, because he's a lot younger than me, but he has more energy. But he's certainly very knowledgeable. He's an outstanding expert.

Q And so when he testifies that he, you, the Arizona School of Polygraphy, and perhaps the Arizona Police and four other individuals are the only ones that use the hybrid technique, the technique that you used in this case, he was testifying truthfully?

A Well, I haven't seen testimony to that effect. I don't believe that that is his exact testimony, but if you could show it to me I could examine that. I believe he may have been asked to identify individuals. But --

Q So you are --

A -- but -- excuse me. But I know he's taught that technique

at the Canadian Police College, so certainly that's not consistent with those facts.

Q And so it's your belief that that's not true?

A I don't think it's complete.

Q Even if it's cited in a written published opinion, you do not believe that's true?

MR. McCOY: Judge, I don't know if that's a fair way to impeach the man. I think what he should do is present him with the testimony and review it that way. Someone else's rendition of what they heard is not proper impeachment.

THE COURT: I think it's fair for him to know where it's coming from.

BY MR. COLLINS:

Q Coming from a decision I believe in the *Gilliard* matter, or one of the published -- no, I'm sorry, maybe it's in the *Orions* (ph).

A It couldn't be in *Orions*, because --

Q No, I'm sorry. I --

A -- didn't testify there.

Q -- misrepresented. It would be the *Gilliard* case. In any event, you would not believe that to be a true representation?

A Well, I think we discussed this on cross-examination yesterday in the same detail, and as I recall, my answers at that time are the same that they are now: that first of all,

that was a few years ago, so, you know, what he may have said then is probably not reflective of what he would answer now to the same questions; but secondly, I don't believe that it's complete. I think that is perhaps what the court opinion drew from his testimony, but I think it's not quite complete by any means.

Q And when you have been -- your professional opinion has been criticized, it's your practice to make personal attacks against the critic?

A I don't know what you mean by that.

Q When your testimony is contained in a court decision -- I believe in this hearing you've probably testified that the judge put that in there to fulfill his own purpose?

A I -- well, you're being a little vague, so I don't know what you're referring to exactly. If -- could you tell me more specifically, so I could respond appropriately?

Q Do you recall testifying in this court when I was asking you a question about one of the cases in which you testified that you stated, "The court put that in there to fulfill its own purpose"?

A Can you tell me which case you're talking about?

Q You don't remember your testimony?

A Yes, but I don't remember which case you're referring to. And I don't --

Q Have you ever said that?

A I said something to the effect that that was the court's -- the court did that because the court had a purpose in writing that opinion, and chose to say that. I don't believe that you will find that the record supports that statement.

Q Court decisions are subject, in essence, to peer review; the individuals involved are able to appeal those decisions, subjecting its review on appeal; or if it's a district -- if it's a magistrate court's decision, reviewed by the district court, the district court's decision is reviewed on appeal by the Court of Appeals, and all the way up to the Supreme Court if necessary. Correct?

MR. McCOY: I'm going to object, as to relevance to what he knows what happens to the appeal process.

THE COURT: Sustained.

BY MR. COLLINS:

Q Dr. Honts wrote an article in which you submit is to be published with regard to the testing -- or the questioning between charts?

A Yes.

Q And in that article it refers to the research that he's done?

A In part. It refers to a large body of research. If you look at the list of studies, I think we counted them up earlier

today, and it's far in excess of 20. And there are many other people listed as authors of studies in addition to Dr. Honts. It's -- it's a collection from a large body of scientific literature.

Q You would admit the Department of Defense Polygraph Institute is perhaps one of the largest, most respected research institutes or research facilities reviewing the question of the application of polygraph?

A It certainly is the largest. They have the -- they have basically just about all the federal budget to do polygraph research now. It's been progressively concentrated there.

Q And you've relied upon the Department of Defense in the presentation of the defense theory in this case?

A In part. It's a -- a small part of it, I think. The published scientific literature comes mostly not from the Department of Defense. They are, I would think -- I think they're a little lax in publishing their work for, you know, public dissemination. A lot of it's in-house publications. But -- so it's -- it's not always out there in the scientific literature, it's a little harder to get ahold of.

Q You've testified the Department of Defense uses the directed lie technique?

A Many agents -- agencies and divisions of the DOD, as well as other agencies such as Treasury Department, IRS, the DEA.

Q And the Department of Defense uses a directed lie where there's no discussion between charts?

A That's my understanding of the current PES.

Q And the Department of Defense, who've you've represented used the directed lie, would be familiar with the research in support of that?

A I would hope so.

Q Dr. Honts's report has yet to be published; is that correct?

A It's in the process of being published. I think he had to send back this final copy to be then published. It was -- that was after some revision, I think, after the peer review.

Q And the Department of Defense Polygraph Institute in 1988 in the Polygraph issue at Defense Exhibit 11 has issued a request. The institute --

A Excuse me. It's 1998, isn't it?

Q 1998.

A Yeah.

Q The institute would like to support controlled systematic investigations regarding the question of stimulation between tests?

A I think that was one of their research areas that they want people to submit applications.

Q And they were interested in the question of whether or not

that had an effect upon the polygraph examination?

A That's my understanding, yes.

Q And Dr. Honts's article simply compiles research that was already published well before this Polygraph article was published?

A Right.

Q So the government is still looking for reports analysis on the question of stimulation, because they haven't made up their mind yet?

A I don't know whether they made up their mind or what, or whether they feel they need more because perhaps they think that their position's been wrong. And, you know, it takes the government an awful lot in order to change their position, especially the Department of Defense.

Q You've represented that the Air Force, the Army, the Navy -- I notice that the Marines are not listed; they seem to be always forgotten.

A Poor Marines.

Q Use the directed lie control test?

A That's what Dr. Yankee put in his letter, pursuant to a Freedom of Information request.

Q And you're relying upon that to make your statement that the Department of Defense uses the directed lie control test?

A In part, and also that Dr. Barland and others talk about

it, and Dr. Barland's even, you know, analyzed stuff done by them, so --

Q The Department of Defense does not use the hybrid directed lie control test?

A The one that has probable lies and directed lies? Is that --

Q The --

A -- what you mean by the hybrid?

Q The test that you and Dr. Honts have administered in the past.

A Before we went to the complete directed lie, you mean? I want to make sure it's clear that -- what we're talking about.

Q That's correct.

A No, I don't believe that they use a test that has probable lies and directed lies in the same test.

Q The military is subject to the Military Code of Justice?

A I assume so.

Q And the Military Code specifically precludes the use of polygraph in criminal investigations?

MR. McCOY: Objection; relevance.

THE COURT: Want to respond?

MR. COLLINS: It is relevant, Your Honor, because the subject of the *Shephard* (ph) decision or the *Shephard* decision was in the context of use of the polygraph against an

individual, a member of the armed services; the provision, the evidence rule, which was the Military Code 707, there's no counterpart in federal rules, was the subject of whether or not it should come in; that the Supreme Court ruled that that rule was valid, the majority opinion precluding the admission of polygraph examinations in a criminal trial.

MR. McCOY: It's apples and oranges, Judge. What the *Shepard* opinion holds is that it -- it's not a violation of due process to have a rule that says you can't do it. It's a plurality opinion. I don't -- the question was phrased, is there military regulations that preclude the use of polygraphs in criminal investigations, and the answer to that question is, not -- no regulations that I'm aware of. It's irrelevant.

MR. COLLINS: I'll rephrase the question.

BY MR. COLLINS:

Q There are rules that preclude the admission of polygraph in a military criminal trial?

MR. McCOY: Relevance.

THE COURT: Overruled. At some point some of this is argument more than it is questions for the witness, but I certainly will allow the expert to be tested to some extent. It might shed some light on this, when you talk about polygraph exam, there are different types of exams, and certainly there are different purposes for which it is used. So as far as

relevancy's concerned, I'll overrule it.

BY MR. COLLINS:

Q It's true that the Military Code of Criminal Justice does not allow the use of polygraph in any trial, criminal trial?

A I'm not sure that that's quite accurate. I think that -- yeah, I guess they finally did come up with -- by executive order, President Bush, after the highest military appellate court upheld the defendant's right to have a polygraph as part of the defense on a constitutional basis, then the executive branch, at the request of the military prosecutors, issued a directive saying, "No, you can't do that." And that's what was tested in the *Shephard* case. It was not the court's decision so much as it was the executive order.

Q And the court -- the Supreme Court did discuss the issue of whether or not an individual was entitled to put on --

MR. McCOY: Same objection.

MR. COLLINS: -- relevant evidence --

MR. McCOY: I'm sorry for interrupting. Same objection, as well as well beyond the scope of the rebuttal.

THE COURT: Does this go beyond the scope?

MR. COLLINS: I'll move on, Your Honor. I think the *Shephard* decision can stand on its own without further input by Dr. Raskin.

THE WITNESS: I hope so.

BY MR. COLLINS:

Q The -- Dr. Abrams is an expert in the field of polygraphy?

A Yes.

Q He's testified in a number of courts as an expert on polygraphy?

A That's correct.

Q He has testified as an expert in response to the question of the directed lie test, the directed lie control test that you and Dr. Honts administer?

A Yes.

Q And in those cases it has been thrown out?

A Thrown out?

Q The polygraph was not admitted?

A In some cases it was not admitted. In other cases it has been admitted. I think that if you examine the ones where he has testified in opposition, in my experience with him, one, two, and then about two -- I think it's about 50-50.

Q Dr. Matte has been cited by the United States Supreme Court as an authority on the subject of polygraphy?

A I don't know.

Q Dr. Abrams has been cited by the United States Supreme Court as a expert on the subject of polygraphy?

A I don't know. I'd have to see what the citation says.

Q The purpose of the pretest is to familiarize the subject

with what's going to happen; correct?

A That's one purpose. It serves many purposes.

Q To familiarize them with the questions they're going to be asked?

A That's another purpose.

Q There's a discussion about how the apparatus is going to be attached and what it's recording?

A Sometimes.

Q In this case, during the pretest interview, Mrs. Walker raised an issue about borrowing money?

A I may have raised that issue. I think I raised the issue.

Q And you told her -- the tape speaks for itself, but the -- not to worry about that, because that's not what she's being charged with?

A I don't think that's quite correct. I remember one point I -- this came up yesterday and I went back and checked the tape, where you said I said between charts that she shouldn't worry about that, and that's incorrect. I was referring to her general nervousness about the whole situation. And I told her, "Don't worry about that. That's not why you're here."

Q You told her --

A If that's what you're referring to, then your statement is not correct.

Q In this pretest interview, you told her, do not worry about

that, because employees do that all the time?

A Is that an exact quote?

Q It's not an exact quote. It's --

A Well --

Q -- the subject about which you were -- what -- well, let's -- what did you say then?

A Well, I'd have to listen to the tape to see exactly what I said, and I'm not going to accept your construction of what you admit is not an exact quote. What I did tell her in substance, and I don't know the exact words, my memory's not quite that good, but I did tell her that the relevant questions were not concerned with whether or not she had borrowed \$20. The relevant questions were concerned with what she was accused of doing, which is a far more serious act than that: the theft of approximately \$3,000. And she's accused of doing that and using that for -- to pay her bills and things like that. And I said, "And that's what we're here for, is to test you on that. So if you're concerned about once having borrowed \$20, that is not the issue of this test, and that is not what these relevant questions are concerned with. So I want you to be sure you understand the difference."

Q And you emphasized the \$3,000?

A Well, the accusation. I think I went over the indictment with her and I discussed with her, you know, what the specific

allegations were. We even went over this statement that she was pressured into signing, and including her corrections --

Q That's your opinion.

A Well, that was what she told me. And including -- she had written it and she was told she had to alter it. I think that's clear from the document itself. And we discussed that. We discussed all the particulars, because that's what a polygraph has to do, is to discuss all the particulars. And a purpose of the pretest interview is not only for me to clarify to her what questions I'm asking, but for her to express to me what she understands them to mean so that we can make sure we're talking about the same thing.

Q The difference between borrowing and stealing is a matter of intent; correct?

MR. McCOY: Judge, I hate to interrupt, but this is well beyond the scope and it's irrelevant to the rebuttal.

THE COURT: You can test him on what he did. But I think to get into the hypotheticals here does go beyond the scope of the --

BY MR. COLLINS:

Q You asked Mrs. Walker if she stole -- to paraphrase it, "Did you steal?"

MR. McCOY: Same objection.

THE COURT: Overruled.

BY MR. COLLINS:

A I prefer, Mr. Collins, not to paraphrase. If you're going to ask me what it is I asked her, then let's get exactly what I asked her.

Q You don't remember?

A When you start telling me one thing and then you tell me it's a paraphrase, let's just get it accurate. It's easiest that way.

Q Well, you would know whether or not I was being accurate or not, wouldn't you?

A Well, you told me it was a paraphrase, so obviously it's not accurate.

Q "Did you steal" -- relevant question number 2 -- "Did you steal" --

MR. McCOY: Can I have -- excuse me for interrupting. I have an objection, Judge. The content of the questions were not discussed either during Dr. Abrams' testimony -- in fact, I was -- I specifically attempted to get him to construct some questions and the Court --

MR. COLLINS: Your Honor, he's testifying now.

MR. McCOY: I'm -- can I finish?

MR. COLLINS: Well --

MR. McCOY: Can --

THE COURT: You have the floor. Let's hear it.

MR. McCOY: Thank you. Okay. I asked Dr. Abrams to -- offered to have him construct some relevant questions, and there was an objection made and it was sustained, and I respect that. There was no discussion during Dr. Abrams' testimony about the quality of the questions or the nature of the questions that were asked. Now what counsel's trying to do is do something that perhaps he should have done when he challenged -- when he cross-examined Dr. Abrams -- Dr. Raskin the first time. This is beyond the scope and it's irrelevant.

MR. COLLINS: My response is, one, Mr. McCoy's offering; two, Dr. Raskin just testified his perception of truth is subjective belief.

MR. McCOY: And the Court sustained an objection and said you're not to get into those areas.

THE COURT: Well, the difficult thing here is that it's a relevant discussion, but one of the objections is it's beyond the scope. And I don't think that's why he was put on for rebuttal. It appears to be going beyond the scope. So I'm not ruling that it's not relevant to the determination, but just simply that at this point in time, that's -- that it's not proper to go into that.

MR. COLLINS: I don't have any other questions of Dr. Raskin. Previously the government moved for admission of Exhibit 5. Mr. McCoy stated he would make his position known

at some later time. I think this is the appropriate time now to have that --

THE COURT: Let me get a copy of it in front of me.

MR. COLLINS: Plaintiff's Exhibit 5 is the transcript of the *Cordova* hearing, Your Honor.

MR. McCOY: May I have a moment to speak with Dr. Raskin about that?

THE COURT: Yes, you may.

MR. McCOY: Thank you. (Pause) Your Honor, I do object on hearsay grounds and also on confrontation grounds. This transcript includes the testimony of people that have not appeared in this courtroom. So I object on relevance grounds and confrontation grounds.

THE COURT: What is the government's purpose in offering this?

MR. COLLINS: The defense has offered transcripts in its own case. The hearsay was not -- no concern there. We would only offer those portions with regard to Dr. Raskin's testimony, Your Honor. The Court is -- has more knowledge than I do, has more experience than I do in the field, and is able to filter out those portions which are irrelevant. We only offer that --

THE COURT: He testified the second day, well, that's on the 9th. Was there testimony that -- before that? Let me --

that's July the 16th.

MR. COLLINS: It was a multi-day. I don't recall offhand the length of his --

THE WITNESS: I could answer that question. I think, Your Honor, I believe -- I believe the whole hearing took place in a day. But the transcript that I was shown has two other witnesses that have not appeared in this proceeding at all. And I think that's what Mr. McCoy was talking about. There is my testimony and there are testimony from two government witnesses that are not part of this proceeding.

THE COURT: Dr. Raskin testified on direct beginning at page 58 and it goes through redirect on page 201.

THE WITNESS: Your Honor, there actually -- I did -- I didn't have direct. It started with cross-examination based upon a -- a brief declaration.

THE COURT: I see the transcript -- the transcriber has indicated direct at 58 --

THE WITNESS: It may --

THE COURT: -- and cross at 59.

THE WITNESS: Yeah, it's -- it was just like to lay the foundation for the -- the affidavit. So there really wasn't what you would call direct.

THE COURT: Well, I -- my point is that the government -- I need to consider it as to the testimony of Dr.

Raskin which is part of this exhibit.

MR. COLLINS: The exhibit is the complete exhibit. It's noted which portions relate to Dr. Raskin. Is the Court satisfied that it is with -- if the portion is extracted from the transcript.

THE COURT: Do you intend to highlight or rely on any particular questions, answers in this transcript? Or is it just background reading for the Court?

MR. COLLINS: It's background. It's background material, Your Honor. If the Court feels it has enough before it, then we can.

THE COURT: I think I have enough to read. If it doesn't have a particular purpose, then I guess the relevancy objection has validity. The confrontation might be of some concern, but Mr. McCoy could examine his witness. The testimony has not concluded. But if the government is not going to ask him portions of this, then I suppose it's not relevant. So I will not admit it. But if you can show me where something that Mr. McCoy has admitted is on the same footing, I might reconsider. Is there any other transcript that's been offered and admitted at this hearing?

MR. COLLINS: The defense has submitted transcripts, Your Honor.

THE COURT: Of what?

THE COURT: Of Dr. Barland's testimony in I believe the *Galbreth* case.

THE COURT: Was that something that this expert relied on and was that the purpose of it?

MR. McCOY: Yes. That was -- it was one of the F exhibits and it was specifically discussed as to whether he relied on it. If you'll recall, Dr. Abrams said that he couldn't believe that someone from the Department of Defense would say they have the same accuracy rates, and in rebuttal Dr. Raskin indicated that it was in fact a directed lie test that --

THE COURT: So that came in for a limited purpose. I --

MR. McCOY: It did, yeah.

THE COURT: I think if you wanted to ask him questions, did he give certain answers or were asked certain questions, et cetera, then that's one approach. But to just submit all this for the Court's reading --

MR. COLLINS: The Court -- the government accepts the Court's ruling.

THE COURT: All right. Then you have no further questioning at this time?

MR. COLLINS: No.

THE COURT: Redirect.

MR. McCOY: Just very briefly.

REDIRECT EXAMINATION

BY MR. McCOY:

Q Counsel asked you some questions about 50-50 between you and Mr. -- and -- Barland in terms of appearances be --

A Abrams.

Q Abrams in terms of appearances before juries?

A Yes.

Q How many times have you appeared before juries in regard to a polygraph result?

A About 50 times.

Q And how long typically does the presentation take, considering testimony and cross-examination from both experts?

A Usually --

MR. COLLINS: Your Honor, Dr. Raskin offered that up in his answer. It was not a question, so it's not a subject of recross examination, unless he's questioning his statement as to that, of whether or not it's accurate. Now he's going into other aspects which were not the subject of cross-examination.

MR. McCOY: My recollection is different. I want to establish -- there was discussion about him appearing in court with Abrams before juries. And all I'm interested -- and I think the Court's entitled and --

THE COURT: Objection's overruled.

MR. McCOY: All right. Thank you very much.

BY MR. McCOY:

A How long does the --

Q A typical presentation when there's competing experts in front of a jury?

A A total of about four hours for both experts.

Q Thank you, sir.

MR. McCOY: That's all I have, Your Honor.

THE COURT: Mr. Collins?

MR. COLLINS: No other questions, Your Honor.

THE COURT: The witness may step down.

THE WITNESS: Thank you, Your Honor.

THE COURT: Does that conclude your evidence?

MR. McCOY: It does, Your Honor. Thank you.

THE COURT: All right. I need to talk about the gathering of the exhibits and the summations. As I indicated informally, the Court is going to request written summations, and we'll set some deadlines for that. There are two approaches. One is to have simultaneous submission with each side having a chance to comment on the other's. That might save some time in the long run to do it that way. Are you going to be ordering a transcript, either of you?

MR. McCOY: I'm certainly -- I will if Mr. Collins isn't. It'll happen.

THE COURT: Did you want to rely on the transcript in

part to prepare your summation?

MR. McCOY: I would, Your Honor. And since I carry the burden, we could ask for -- I'll prepare and ask for it on an expedited basis. I would prefer that we follow the format, opening, reply, and answer, in that fashion.

MR. COLLINS: Opening statement, response, and then reply.

MR. McCOY: That's what I'm trying to say.

THE COURT: All right. That's -- we'll follow that.

MR. McCOY: Maybe -- perhaps Madam Clerk can give us a ballpark as to how long it would take to get an expedited transcript for about a two-and-a-half-day hearing? Would you --

THE CLERK: If you order it expedited, then it's seven days from the day the transcriber receives it.

MR. McCOY: I guess I would like seven days after a transcript -- there's time, since trial is June 3rd.

THE COURT: So you want about 20 days?

MR. McCOY: I think so, yeah.

(Pause)

THE COURT: Somewhere around March 24. And the government?

MR. COLLINS: Depending upon how long it takes for the defense to get their transcript, the government would be

requesting a copy. I think that if the Court were to grant -- the 24th -- it would -- falls on which day, Your Honor?

THE COURT: Wednesday.

MR. COLLINS: Two weeks after that.

THE COURT: Let's see, then that would put it April 7th.

MR. McCOY: And if I'd get seven days for reply.

THE COURT: April 14. All right. March 24, April 7, April 14. Now, as far as the exhibits are concerned I would like to have copies of all exhibits. Of course, I have this big booklet full right here, so that's already one set. Except for the big charts. I don't need to have those. But most of them have been furnished. Perhaps the government may not have provided copies to the Court.

MR. COLLINS: Of what?

THE COURT: Of some of your exhibits.

MR. COLLINS: I have copies -- they -- now that it's become known that the exhibits which are attached at the back of the notebook are different than the ones that the government attached to Defense Exhibit 8, we'd ask permission to submit copies of those actual exam -- the graphs that were submitted by the defense to the government.

THE COURT: Want a reduced size?

MR. COLLINS: Yes.

THE COURT: Sure. And so 8 is different than what's

here?

MR. COLLINS: Yes, Your Honor.

THE COURT: That --

MR. McCOY: And actually, that's Plaintiff's 8.

MR. COLLINS: Plaintiff's 8.

THE COURT: That's Plaintiff's 8 --

MR. McCOY: Oh, I'm --

THE COURT: -- and this is GG.

MR. McCOY: Right. And if -- in -- perhaps I can --

THE COURT: Well, we have copies --

MR. McCOY: -- clarify --

THE COURT: -- in the back. These probably weren't marked.

MR. McCOY: The -- X are copies of Plaintiff's 8. Does the Court follow me?

THE COURT: That's what these are.

MR. McCOY: Correct. The GG exhibits were the unedited versions. Am I be -- making myself clear?

THE COURT: My point -- my -- yes. My point is that I already have a copy of 8 submitted by --

MR. McCOY: Yes, you do. That -- yes, you do.

THE COURT: -- the defense.

MR. COLLINS: Yes.

THE COURT: Unless the government's would be any

different than this.

MR. COLLINS: Well, I'm submitting the Plaintiff's Exhibit 8, which is on the record, which is different than the GG series. And there was a series submitted in the --

THE COURT: This is the X -- these are the X --

MR. McCOY: But same as the X.

MR. COLLINS: Yes.

THE COURT: If you want to go ahead and --

MR. COLLINS: So I just --

THE COURT: -- submit them, if it makes it easier so you can refer to it, that's fine with me.

MR. COLLINS: Just clarifying for the record, because we referred to 8 and then we had GG and then we have another set, so that -- the Court now has X, which is plaintiff --

THE COURT: Maybe it'll be helpful on review then to submit a reduced version of 8, and Mr. McCoy can approve and inform.

MR. McCOY: That'd be fine.

MR. COLLINS: Okay, yes, sir.

THE COURT: Anything else?

MR. McCOY: Yes, Your Honor, a housekeeping matter. As to --

THE COURT: Transportation?

MR. McCOY: Yes, please.

MR. COLLINS: The Court should already have Plaintiff's Exhibit 4A and B, which are the audiotapes; is that correct?

THE COURT: I do have a -- tapes. Yeah, there are three sides; right?

MR. COLLINS: Three sides, right.

THE COURT: Yes.

MR. COLLINS: And it's -- if I may require, was the Court able to determine if it was a good-quality copy?

THE COURT: They appear to be, and I have listened to 98 percent of it. Mr. McCoy will need to sign his motion.

MR. McCOY: Oh, I apologize, Your Honor.

THE CLERK: Mr. Collins, did you move for the admission of Plaintiff 8?

MR. COLLINS: No, we're just clarifying for the record that Plaintiff's 8 is similar to the graphs that were incorporated into the notebook. And there were other graphs of the same thing, unedited, raw, GG.

THE CLERK: So you're not submitting Plaintiff 8?

MR. COLLINS: No, it's just for clarifying that Plaintiff's 8 is the same as.

MR. McCOY: These -- what I'm trying to do is get her to travel tomorrow, Judge. Is that what that one says? I apologize, (indiscernible).

THE COURT: The lodged order says --

MR. McCOY: (Indiscernible).

THE COURT: -- provide transportation after the hearing concludes on Wednesday.

MR. McCOY: Okay. Probably -- I don't know what's happened here. Probably if the Court -- we're asking that she be allowed -- it's not practical to do it today. If you wouldn't mind interlineating the order to get her -- Ms. Walker to be able to travel home tomorrow.

THE COURT: Well, this simply says provide transportation after her hearing concludes --

MR. McCOY: So that --

THE COURT: -- on Wednesday, so that doesn't say --

MR. McCOY: That should work then.

THE COURT: It should work. That --

MR. McCOY: That's fine.

THE COURT: I'm not happy with this popcorn stain here on this lodged order.

MR. McCOY: Well --

THE COURT: Perhaps we can photocopy it and use something that looks a little cleaner.

MR. McCOY: Let me see if I -- I apologize.
(Indiscernible) there's a cleaner copy.

THE COURT: Thank you.

MR. McCOY: Yeah, (indiscernible).

THE COURT: All right. This one reads after the hearing on Tuesday the 23rd.

MR. McCOY: It should still accomplish its purpose.

THE COURT: Well, I'll have to put the links together. I (indiscernible).

MR. McCOY: All right, thank you.

THE COURT: I assume the government has no objection?

MR. COLLINS: To the transportation order?

THE COURT: Correct.

MR. COLLINS: No, Your Honor.

THE COURT: Anything else?

MR. COLLINS: Not that I'm aware of, Your Honor.

MR. McCOY: No. Thank you, Your Honor. No.

THE COURT: This will conclude this hearing, and the Court will prepare in due course a written recommendation and that'll be served on counsel of record. If the clerk will assist in collecting one set of the exhibits as I've discussed, except for the big charts.

MR. COLLINS: Excuse me, Your Honor. Does the clerk -- do you want a photocopy of the exhibits?

THE CLERK: That is for my own purpose. It's not for the Court.

THE COURT: Would that be --

THE CLERK: These are plaintiff's exhibits, Your Honor.

THE COURT: You want a copy of the exhibits? You can borrow mine if you --

THE CLERK: Oh, I've got one.

THE COURT: -- review it for your notes.

THE CLERK: I have one.

THE COURT: Okay.

MR. McCOY: The only --

MR. COLLINS: (Indiscernible) make a copy of it?

MR. McCOY: The only exhibits that Madam Clerk would need that she doesn't have, Your Honor, are the ones that we admitted today.

THE COURT: Correct.

MR. McCOY: All right. And I just -- I wanted to make sure that she knew that.

(Side conversation)

MR. McCOY: Your Honor, is there a way to get a copy of Plaintiff's -- because I know Mr. Collins has been gracious enough about handing them over, but just in the confusion of the hearing, I'm not sure if I have a complete set. I wonder if we could arrange to have a complete copy of defend -- plaintiff's exhibits?

MR. COLLINS: I may have copies of -- which ones are -- to which are you referring? You should have a --

MR. McCOY: Just --

MR. COLLINS: -- a copy of Dr. Abrams' CV already.

THE COURT: You can use these to see if you have a complete set and what you need to prepare or run.

MR. McCOY: Or if I could have access to get them copied. That -- that's the easiest way for me, Judge, to -- just to copy them. But if it's inconvenient, I'll look for some other way to --

THE COURT: Right. No, I'm not going to going to be marking on (indiscernible). I just want them by the end of this week.

MR. McCOY: All right.

THE COURT: So --

MR. McCOY: So if I'd ask Madam Clerk to -- for a copy, is that possible?

THE COURT: Well, you can borrow these --

MR. McCOY: Or --

THE COURT: -- and run a copy.

MR. McCOY: If I could borrow them and then return them; is that agreeable to you?

THE COURT: Do they have a -- can they run copies upstairs, or do they --

THE CLERK: In the -- on the machine.

MR. McCOY: Uh-huh (affirmative). We can.

MR. COLLINS: Maybe -- I can take them upstairs, copy

them, and submit them to Madam Clerk, Your Honor.

MR. McCOY: That would be fine.

THE COURT: Why don't you do that.

(Side conversation)

THE COURT: I'll return Plaintiff's Exhibit 5, lest I be tempted to start reading it. It's not in evidence. Believe that concludes the hearing.

MR. McCOY: Thank you, sir.

THE CLERK: This matter is adjourned. This court now stands adjourned, subject to call.

(Proceedings concluded at 2:45 p.m.)

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Teresa K. Combs, Transcriber

Date

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