

1 THE COURT: Let the record reflect  
2 that everybody is here. You may  
3 proceed with your next witness, Mr.  
4 Moses.

5 MR. MOSES: Is Mr. Calhoun present in the courtroom?

6 MR. CALHOUN: Yes.

7 MR. MOSES: Come forward and be sworn please.

8 WHEREUPON,

9 MR. ALFRED CALHOUN

10 having been called as a witness on behalf of the Defendant,  
11 and being first duly sworn upon his oath, testified as  
12 follows:

13

14 DIRECT EXAMINATION

15 By Mr. Moses:

16 Q State your name please?

17 A Alfred Calhoun.

18 Q And where do you live, Mr. Calhoun?

19 A West Monroe, Louisiana.

20 Q And what is your occupation, Sir?

21 A Deputy Sheriff, Ouachita Parish.

22 Q And do you have any particular position in the  
23 sheriff's office in that parish?

24 A I am the Commander of Criminal Investigation.

25 Q That means you are in charge of the criminal  
investigation for that parish?

1           A           Yes sir.

2           Q           Out of the Sheriff's office?

3           A           Yes sir.

4           Q           How big is Monroe, Louisiana?

5           A           It is about 70,000 people.

6           Q           And what is the population within the parish,  
7 which is a county isn't it?

8           A           Yes.

9           Q           Like we have up here?

10          A           That's correct. Probably in excess of 200,000.

11          Q           How long have you been a law enforcement  
12 officer?

13          A           Twelve years sir.

14          Q           And how long have you been connected with the  
15 Deputy Sheriff's office?

16          A           Twelve years.

17          Q           Do you have some sort of training, or some  
18 schooling that you had?

19          A           Yes Sir, I had attended four years at the State  
20 University in Criminal Justice program, and I have also  
21 attended various specialized schools.

22          Q           Officer Calhoun, you know that Mr. McCarvel who  
23 is an attorney in Glasgow, Montana has testified in open  
24 court concerning a visit that he made to Monroe, Louisiana  
25 and were you in the courtroom when he gave his testimony?

1 A Yes I was.

2 Q Do you recall that he came to your office on  
3 the 14th day of February, 1983?

4 A I recall that he came, yes sir.

5 Q And do you know what his purpose was?

6 A At that time he informed us what his purpose  
7 was in coming.

8 Q Did you know previously what his purpose was?

9 A Not that I remember, no.

10 Q Arrangements had not been made in your office  
11 to talk with the law enforcement officers that had taken the  
12 statement of Barry Beach prior to his arrival?

13 A I do not recall any such conversation with any  
14 person, no sir.

15 Q You have any notes or memorandum which could  
16 help you recollect that?

17 A No sir I do not.

18 Q Well don't you take and make a record of your  
19 conversations that you have with people so that you can have  
20 them recorded for later testimony?

21 A Those conversations that are significant to a  
22 particular case, yes. Ordinary conversations or day to day  
23 conversations, no sir.

24 Q Let's see, the answer that I wanted, Mr. Calhoun,  
25 I take it then that you make a subjective judgement as to

1 whether you think a conversation is significant or not and  
2 you will record it if you think that it is significant but if  
3 you don't think that it is significant then you will make  
4 no notes or memos of it?

5 A That is correct.

6 Q And that has always been your practice?

7 A Yes sir.

8 Q Now he wanted to talk to law enforcement  
9 officers in connection with a statement that was given by Mr.  
10 Barry Allan Beach on January 7thn, 1983?

11 A Among other things, yes.

12 Q I will get to the other things after a bit, but  
13 right now I am asking you about 'did he want to talk to the  
14 law enforcement officers about that subject'?

15 A He made that request, yes.

16 Q And were you one of the officers that assisted  
17 or participated in the interviews of Barry Allan Beach?

18 A Yes sir.

19 Q So that you were one of the officers that he  
20 wanted to talk to?

21 A I would assume so, yes.

22 Q And did you tell him that you were willing to  
23 talk with him about that subject matter?

24 A No sir, I did not.

25 Q You said you were unwilling to do it?



1 A No sir, I didn't say that either.

2 Q Did you tell him that you were one of the  
3 officers that interviewed Barry Beach?

4 A No sir I don't think I told him that I was one  
5 of them.

6 Q It was clear from his question that he wanted  
7 to interview the officers that participated in the investi-  
8 gations and interviews resulting in the statement given by  
9 Barry Allan Beach, that was what he was there for, right?

10 A Amongst other things, yes sir.

11 Q Your answer is yes?

12 MR. RACICOT: I would object, he answered the question.

13 Q And when he said he wanted to talk to the  
14 officers that participated in the taking of the -- or the  
15 investigation, you were one of those officers?

16 A Sir, I don't recall that he told me that  
17 statement. As I recall I think he told me he wanted to talk  
18 with Sgt. Via and I, at that point, referred him to Sgt. Via  
19 and I informed him that Sgt. Via was working the evening  
20 shift that week and would be in at three PM. That is my  
21 recollection of the conversation.

22 Q I take it your recollection is that you did not  
23 or did take part in the interviews of Mr. Beach?

24 A Yes I did take part.

25 Q And what periods of time did you take part?

1           A           On January the 7th, 1983, from approximately  
2 3:15 PM until approximately 7:48 PM I believe.

3           Q           Continuously in the room with Barry Allan Beach?

4           A           No sir.

5           Q           You were out of the room on occasions?

6           A           That's correct, Yes sir.

7           Q           Who else was in the room with you at that time?

8           A           Sgt. Jay Via.

9           Q           And I take it that you were in the process of  
10 interviewing and it was that period of time, or over that  
11 period of time of four or five hours, that you participated  
12 in the interview of Barry Allan Beach which resulted in him  
13 giving you a statement?

14          A           Yes sir.

15          Q           Did you tell Mr. McCarvel that you participated  
16 in that?

17          A           No sir, I did not.

18          Q           You did not tell him about your participation  
19 then with respect to your contact with Barry Allan Beach?

20          A           No sir, my memory serves me correct, I referred  
21 him to Sgt. Jay Via who was assigned the case.

22          Q           In your interview with Mr. Beach, did you tell  
23 him that you would see him fry in the electric chair?

24          A           No sir I did not.

25          Q           You have notes of your interview?

1           A           No sir I do not.

2           Q           You did not think it then, that it was  
3 significant that anything that Mr. Beach said there in the  
4 course of the four to five hours that you talked to him, that  
5 there was nothing significant that he said that you would make  
6 a note of?

7           A           There was a recorded statement taken, which  
8 summarized the whole discussion, at the conclusion of the  
9 interview.

10          Q           Excuse me. I understand there was a tape  
11 recording made later, but during the time that you talked to  
12 him, there was not a recorded statement?

13          A           No sir. It was an oral interview without a  
14 recording.

15          Q           Did you make any notes of that oral interview?

16          A           No sir, other than for the psychological stress  
17 evaluation examination.

18          Q           Did you -- my question is: Leaving out the  
19 psychological stress evaluation, we will get to that in a  
20 moment, did you make any notes with respect to your interview  
21 of Barry Allan Beach during the period of time that you saw  
22 him?

23          A           None that I recall.

24          Q           And I take it that you did not, during that  
25 period of time, tell him, or threaten him that he would be  
charged in Louisiana and that you would see that he would fry

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1 on one of these charges?

2 A No sir, I did not.

3 Q Did you say words to that effect?

4 A No sir, I did not.

5 Q Did you make any threats to him?

6 A No sir, I did not.

7 Q Mr. Via, he was the nice guy, right, to him?

8 A In my present he was, yes sir.

9 Q And you were being mean to him?

10 A No sir I was not.

11 Q You know what the Mutt and Jeff routine is?

12 A Yes sir, I do.

13 Q And as a matter of fact, Mr. Calhoun, you were  
14 the person that made the demands and threats and Mr. Via was  
15 the nice fellow who was going to help Mr. Beach?

16 A No sir.

17 Q Had you discussed the nature of your conversation  
18 or approach to Mr. Beach with Mr. Via prior to your present  
19 there?

20 A Are you referring to the method or technique  
21 of interrogation?

22 Q Sure.

23 A No sir, I had not.

24 Q In other words, you just went in blind and had  
25 not decided on anything of what questions to ask him?

1           A           At the time I went into the room I was  
2 introduced to Barry Allan Beach, with the expressed purpose  
3 of me administering to him a pre-test interview and a  
4 psychological stress evaluation.

5           Q           Now I take it that you did not in preparing that  
6 type of investigative tool as they call it, you have to know  
7 sufficient information about the case to be able to conduct  
8 those tests?

9           A           Yes sir.

10          Q           You have to formulate questions?

11          A           Yes sir.

12          Q           And you have to do them in a certain fashion  
13 so that those questions can be appropriately worded so that  
14 you can have a fair test on the stress evaluation?

15          A           Yes sir.

16          Q           So that in that connection you had spent some  
17 time with somebody finding out about this case?

18          A           I had knowledge of the case, yes sir.

19          Q           You had spent some time with someone finding  
20 out about this case, isn't that true?

21          A           I had knowledge, yes sir, gained in discussions  
22 with Sgt. Via over a period of time.

23          Q           And that was prior to the time that you entered  
24 the room on January 7th, 1983?

25          A           Yes sir.

1 Q How long a period of time did you discuss the  
2 matter with Sgt. Via?

3 A I really have no idea, Sir.

4 Q Approximately?

5 A Intermittantly over a period of two days, off  
6 and on. I am responsible for and oversee of all cases under  
7 investigation within our court.

8 Q I understand that, and I appreciate that, but  
9 there was this period of time, when you did discuss, off and  
10 on, with Sgt. Via the process of interrogation?

11 A No sir, over a period of a day or two. Sgt.  
12 Via informed of facts in the case and the progress that he  
13 had made.

14 Q And he was attempting to secure a statement  
15 from Mr. Beach?

16 A He was attempting to secure or obtain facts  
17 from Mr. Beach.

18 Q Well he intended to get a statement, right?

19 A Yes sir, he wanted to get what information that  
20 was relevant.

21 Q His purpose was to get a statement; he wanted  
22 Mr. Beach to give a statement, either oral or written?

23 MR. RACICOT: Objection, Your Honor, these questions have been  
24 asked and answered and I think he is getting a little  
25 argumentative. He has answered the question.

1 MR. MOSES: I will withdraw the question then.

2 Q Was the purpose of Sgt. Via over this day or  
3 two to secure a statement from Mr. Beach?

4 A The purpose of Sgt. Via talking to this  
5 individual or any other, was to determine facts concerning  
6 his violation of the law and if any violations were determined,  
7 to properly record those violations.

8 Q He wanted to secure a statement from him?

9 MR. RACICOT: Objection, Your Honor, that question has been  
10 answered.

11 MR. MOSES: He could answer that yes or no, Your Honor.

12 THE COURT: I think he just did that,  
13 that he was trying to find out if there  
14 were any violations of the law, and  
15 if there were, to record them.

16 MR. MOSES: That's fine.

17 A Your Honor, I can't answer what Sgt. Via was  
18 thinking, what his thinkings were.

19 MR. MOSES: That is even better, thank you, Sir.

20 Q It was your intentions, however, to give a  
21 stress test, the purpose is to determine certain questions  
22 and see what the mechanical responses is, right?

23 A The purpose of the examination, well, yes sir.

24 Q And did you at any time tell Mr. Beach that as  
25 a result he was being deceptive with respect to the questions?



1           A           I told him that he was being deceptive, yes.  
2           Q           Now do you have a record of that so that it  
3 could be examined by a professional?  
4           A           I believe that we have the charts, yes sir.  
5           Q           And you have those charts available here?  
6           A           I believe that we do, yes sir.  
7           Q           Now was there also a polygraph examination?  
8           A           Later there was a polygraph examination, yes  
9 sir.  
10          Q           And when you say later, what period of time  
11 are you talking about?  
12          A           It was after counsel was obtained, that counsel  
13 secured an operator for a polygraph examination in regard to  
14 non-related matters, that is my understanding of it.  
15          Q           Excuse me, I am sorry. Prior to the time that  
16 Mr. Beach made his statement, his recorded statement, was  
17 there a polygraph examination administered?  
18          A           Well when you say 'polygraph examination, you  
19 mean literally, an instrument examination, not a psychological  
20 stress evaluation.  
21          Q           I am talking about getting the black box out  
22 and actually having a pre-interview, a polygraph examination,  
23 and a post-interview as a part of the entire process of  
24 giving a polygraph examination?  
25          A           Sir, I would like to differentiate between a

1 polygraph instrument and a psychological stress evaluating  
2 instrument. In response to your question, Mr. Beach did take  
3 a psychological stress evaluation examination, did a pre-test  
4 and a test and a post-test interview, but not on a polygraph.

5 Q So that when we talk about the test, we are not  
6 talking about, strictly speaking, the polygraph examination  
7 where you fasten up the machine in three different ways to  
8 show his heart beat and things of that kind?

9 A No sir, we are not.

10 Q So that to your knowledge, so that we under-  
11 stand each other, he was never given a polygraph examination  
12 as such?

13 A Yes sir, he was.

14 Q But before he made his statement?

15 A No sir, not before he made the statement, no  
16 sir, not to my knowledge.

17 Q So the polygraph examination was not a part of  
18 the investigative tool that you used in connection with  
19 securing information from Mr. Beach?

20 A No sir, the psychological stress evaluation was ---

21 Q Excuse me, could you answer the question please.  
22 The polygraph examination was not given, and so your answer  
23 is no?

24 A My answer is no.

25 Q All right, now then, we will go to the stress

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1 examination. How was that conducted, Officer?

2 A It is conducted -- the subject is seated at a  
3 table across from the operator, the subject speaks into a  
4 microphone, there is nothing attached to his body, and a  
5 pre-test is done in which you go over the circumstances  
6 surrounding the case and you determine from the individual  
7 his responses to certain questions; all of the questions on  
8 the examination are gone over in detail so that the subject  
9 understands those questions, and then those questions and the  
10 subject's responses are taped, and the subject's taped  
11 responses -- there is a second instrument from which a chart  
12 emerges.

13 Q Have you ever determined if that stress test  
14 has been admitted in Court?

15 A The stress test is admitted in the state of  
16 Louisiana in Court if both the prosecution and the defense  
17 agree on its admissibility.

18 Q If the defendant does not agree or if the  
19 prosecution does not agree it is not admissible?

20 A That is correct.

21 Q Okay. Now do you keep a record of the questions  
22 that you ask in the pre-interview of a stress test?

23 A No sir, but the general questions include the  
24 basic questions that would be asked on the test.

25 Q The question is, do you keep a record of the

1 conversation or the questions you are going to ask in the  
2 pre-interview?

3 A In the pre-interview, no sir, there is no  
4 written record, no sir.

5 Q With respect to the test itself, the mechanical  
6 operation of the test, do you have certain questions where  
7 there is a record other than the taping?

8 A Repeat that please, Sir?

9 Q With respect to the mechanical process of the  
10 stress test, do you keep a record of the specific questions  
11 that you ask other than the tape recording?

12 A The list of questions will be with the chart,  
13 Yes sir.

14 Q Okay, and then your post-interview, do you  
15 keep a record of the statements made by the defendant or by  
16 you in any recorded fashion?

17 A If a subject gives information, acknowledging  
18 their involvement in a violation of law, and if that subject  
19 is willing, a recorded statement is taken, which contains  
20 the information that have been discussed over.

21 Q In this particular case, was a record kept of  
22 the post-interview?

23 A No sir, not the oral discussion.

24 Q So then I take it that based upon your own  
25 testimony here, that the pre-interview and the post-interview

1 did not contain any substantial information which would  
2 justify you making a record of it?

3 A Would you repeat that question?

4 AT THIS TIME, the Court reporter was having some  
5 difficulty reading the question to the witness.

6 MR. MOSES: Well, please strike that whole question, and  
7 I will start over.

8 Q Mr. Calhoun, you testified that you only  
9 recorded matters and make notes of it when the information  
10 is substantial, right, you testified to that?

11 A That is correct.

12 Q And I take it with respect to the pre-interview  
13 and the post-interview, you also testified that you did not  
14 make any record or any notes or memoranda of those two  
15 conversations?

16 A There was no record made of the pre-test;  
17 insofar as the post test, at the conclusion of the post-test  
18 with the subject, a recorded statement was taken which  
19 contained the facts, the same as in the post interview.

20 Q Excuse me, I understand that, Mr. Calhoun; and  
21 perhaps my question was not clear. With respect to the  
22 questioning on the pre-interview there was no record made?

23 A That is correct.

24 Q So that there was nothing substantial there  
25 that you felt needed to be recorded?

1 A That is correct.

2 Q Did you ever record it?

3 A No sir, not that discussion.

4 Q Now the post-interview, that post-interview  
5 of what you said to Mr. Beach and what he said to you, was  
6 not a part of any memoranda or notes that you made?

7 A It was not.

8 Q Okay. So that when you are talking about a  
9 recorded statement that was later made, that was based upon  
10 what you had previously talked to Mr. Beach about?

11 A The recorded statement contained information  
12 that we discussed previously with him in the post-test  
13 interview.

14 Q So that you had gone over this statement in the  
15 post-interview and gone over all of the material that was  
16 relevent according to you, and got it all lined up and then  
17 you had a recorded interview, right?

18 A Basically, that is correct.

19 Q Okay. Now in that connection were you  
20 investigating the contributing to the delinquency of a minor  
21 case?

22 A No sir, I was not.

23 Q Were you investigating the Montana case?

24 A Yes I was.

25 Q Were you investigating any deaths that had  
occurred in Louisiana?

1           A           I was not at that time, No Sir.

2           Q           Was there any questions asked about that?

3           A           Not during the interview that I had with Mr.  
4 Beach, No sir.

5           Q           Was information of that kind conveyed to you  
6 by Mr. Via as to whether he was doing, -- that he was a  
7 suspect in three or two murder cases in Louisiana?

8           A           It is my understanding from Mr. Via that he  
9 did discuss non-related cases with the subject.

10          Q           And accused him of committing those murders?

11          A           That is not my understanding, no sir.

12          Q           To you knowledge, did he tell you that he  
13 accused Mr. Beach of committing the crime in Montana?

14          A           You're asking me if Sgt. Via ever told me that?

15          Q           Yes sir.

16          A           That he was accused him of murder in Montana?

17          Q           Yes.

18          A           I don't specifically remember being told that,  
19 No sir.

20          Q           Well you were the head of the department that  
21 was investigating these murders in Louisiana, weren't you?

22          A           Yes sir.

23          Q           And there were search warrants issued?

24          A           With certain locations and number as to dates.

25          Q           I understand, all you have to do is say Yes,  
there were search warrants issued?



1 A Yes sir.

2 Q And there was also a search warrant directed  
3 against Mr. Beach in connection with these murders in  
4 Louisiana, right?

5 A Yes.

6 Q Have you solved those murders in Louisiana?

7 A Two of the three.

8 Q Mr. Beach was not involved, was he?

9 A No sir.

10 Q He was accused however?

11 A I did not accuse him, Sir, and he was not accused  
12 in my presence.

13 Q Well were you aware of the search warrant that  
14 was issued involving Mr. Beach in your discussions with Mr.  
15 Via?

16 A I was aware of the search warrant was requested,  
17 issued and executed, yes.

18 MR. MOSES: No further questions, thank you very much.

19

20 CROSS EXAMINATION

21 By Mr. Racicot:

22 Q Commander Calhoun, have you had a chance to  
23 review Sgt. Via's report in this particular case?

24 A I believe that was the one this morning, yes sir.

25 Q And does that report reflect a record of the

1 discussions that you had with Sgt. Via and also the points  
2 of time it began, the interview process, what took place  
3 during the pre-test interview of the defendant, why he was  
4 called in, in the first place, the questions that were  
5 formulated by you to ask the defendant, and essentially all  
6 of your participation that took place when you were involved  
7 in this investigation involving the defendant?

8 A Yes, that report contains that information.

9 Q So when we talk about no record having been  
10 made, that is not true because it is reflected in Sgt. Via's  
11 report?

12 A True, but I did not make no written record  
13 myself.

14 Q Now as to Mr. McCarvel, had you been contacted  
15 ahead of time by anyone that a defense attorney from Montana  
16 would be coming down to talk to you about this case?

17 A I don't recall. If there was anything about  
18 that, it had to be between myself and Mr. Kidd, the attorney,  
19 and as I remember it, he had asked me if an attorney from  
20 Montana came down would he be able to see Barry Allan Beach  
21 and I told him, yes, that he would, and in my memory I have  
22 not any recollection that this attorney wanted to talk to me  
23 or to anyone in our office.

24 Q Now, the policy is, for Ouachita Parish Sheriff's  
25 office, concerning talking with the defense attorney, would  
you tell us about that?

1 Q Now when you participated in the interview of  
2 the defendant on -- well before that, let me ask you a  
3 preceding question: You were out of town on January 6th,  
4 1983, correct?

5 A Correct, I was over in Mississippi.

6 Q And what time did you return from that trip?

7 A Approximately 4:30 PM.

8 Q And how long had you been gone?

9 A Since approximately four o'clock in the morning.

10 Q So you didn't discuss anything with Sgt. Via  
11 on the 6th?

12 A No sir I did not.

13 Q Until you got back?

14 A That's correct.

15 Q Now on the 7th, you were called in for a very  
16 specific purpose to talk to the Defendant, correct?

17 A That's correct.

18 Q You were informed by Sgt. Via that his  
19 evaluation of the defendant on a psychological stress  
20 evaluator, which is a machine that measures voice variations,  
21 correct?

22 A That's correct.

23 Q You were told by him that in his opinion, the  
24 defendant was being deceptive, didn't he?

25 A That's correct.

1 Q You were called in specifically to either  
2 confirm or deny Sgt. Via's report in that regard, is that  
3 correct?

4 A That's correct.

5 Q You were not going to act on the opinion of one  
6 investigator or operator of the PSE?

7 A Correct.

8 Q And so really there was no reason to discuss  
9 the interrogation techniques or anything else?

10 A No sir.

11 Q Now the report of Sgt. Via also reflects the  
12 exact questions you discussed with the Defendant that you were  
13 going to during the PSE, correct?

14 A That is correct.

15 Q And did you go over those with the defendant?

16 A Yes I did.

17 Q Now prior to ever talking to the defendant,  
18 Commander Calhoun, did you advise him of his rights?

19 A Yes I did.

20 Q And so regardless of whether he was advised of  
21 that before, at that point when you walked into the room,  
22 you readvised him?

23 A That is correct.

24 Q Orally?

25 A That's correct.

1 Q Could you tell us what you told him?

2 A Yes I advised him; number one, that he had a  
3 right to remain silent which meant he did not have to talk to  
4 me or any other person unless he so desires; number two that  
5 if he so desired to make any statements to me, that it could  
6 be used against him in a court of law which meant that if he  
7 made any admissions to me that I could testify in court as  
8 to those admissions; number three that he has the right to  
9 have an attorney present during questioning, and that if he  
10 could not afford an attorney, that the court would appoint  
11 one for him and that he had an absolute right to an attorney  
12 at any time that he wanted one, and number four that if he  
13 waived the presence of a lawyer and made a statement he had  
14 a right to quit talking at any time and he did not have to  
15 justify for quitting, if he wanted to stop, he could just  
16 quit.

17 Q And did the defendant understand that he under-  
18 stood those rights?

19 A Yes he did.

20 Q And you have conducted a number of investigations  
21 throughout your lifetime as a law enforcement officer, have  
22 you not?

23 A That is correct.

24 Q And was the defendant cooperative?

25 A He was.

1 Q Was he calm?

2 A He was.

3 Q Did you threaten him in any way?

4 A No sir I did not.

5 Q Did you withhold food, or other pleasures  
6 suddenly in any way that would not be appropriate under the  
7 circumstances?

8 A No.

9 Q Cigarettes, coffee, cold drinks?

10 A No sir, I did not.

11 Q As a matter of fact, you were the one that went  
12 out and secured some food from a fast food place to give to  
13 him during the interview process, is that correct?

14 A That's correct.

15 Q Did he ever hint that he wanted a lawyer?

16 A No sir he did not.

17 Q Did you threaten him in any way?

18 A No sir I did not.

19 Q Promise him anything?

20 A No sir I did not.

21 Q Now when he came in, did he appear to be free  
22 of intoxicants?

23 A He did.

24 Q Did he appear to be overly stressful?

25 A No sir he did not.

1 Q Now when you came in to run a second psychological  
2 stress evaluator, which is an electrical lie detector test?

3 A Yes sir.

4 Q It is one brand?

5 A That's correct.

6 Q Which measures voice rather than like a  
7 polygraph which measures heart beat, blood pressure and  
8 something else?

9 A Yes sir, sweating.

10 Q Yes. That is the way it is done?

11 A Yes.

12 Q And in your department, you use it as a primary  
13 investigative tool with a lie detector test that is a  
14 psychological stress evaluator rather than a polygraph?

15 A That's correct.

16 Q Now when you came in, you do follow the same  
17 process, which is my understanding, as a pre-test with the  
18 subject?

19 A That's right.

20 Q And in the pre-test, you collect background  
21 information?

22 A We do.

23 Q And you inform the subject of the exact  
24 questions you are going to ask?

25 A That's correct.



1 Q Surprise has absolutely no part of this test?  
2 A That's right.  
3 Q You do not want to surprise him?  
4 A We do not.  
5 Q Otherwise you get distorted results?  
6 A Yes.  
7 Q And you formulate the exact questions you are  
8 going to ask the subject?  
9 A Yes sir.  
10 Q And you also tell him the order they are going  
11 to be in when you ask them?  
12 A That's right.  
13 Q And so you do nothing during the test process  
14 other than what you told the subject what was going to happen  
15 during the pre-test?  
16 A That's right.  
17 Q And did that occur in this case?  
18 A Yes it did.  
19 Q Now the testing process, the pre-testing lasts  
20 how long?  
21 A It varys. It can last from a hour to two or  
22 three hours, depending on what kind of a case it is, the  
23 subject you are talking to and so on.  
24 Q It depends on what kind of decore you have with  
25 the subject and the extend of information that you have to  
formulate fair questions?

11

1 A That's right.

2 Q And also questions that are probative?

3 A Yes.

4 Q Now the test itself, I would imagine takes a

5 very short period of time in comparison to the pre-test?

6 A That's correct.

7 Q And you ask each question once, when you go

8 through it?

9 A On the stress examination given to Mr. Beach

10 on that date by myself, I would ask each question twice,

11 the type of test technique wherein the subject answers

12 truthfully the first time he is asked the question and the

13 second question he deliberately lies.

14 Q And that is an approved technique used for PSE?

15 A Yes sir.

16 Q And then you conduct the post test interview?

17 A Yes.

18 Q Now during the test, that I would assume that

19 we have some questions that are non-relevant?

20 A Yes sir.

21 Q In other words it doesn't have anything to do

22 with the crime?

23 A That's right.

24 Q It is just used as a yardstick to measure your

25 truthful responses?

1 A That's right.

2 Q And then we have anywhere from two to several  
3 relative questions that are asked?

4 A Yes that's right.

5 Q And then you can see the responses to those  
6 questions and by trying him again, the answers to the known  
7 questions, or the non-relevant questions, you can determine  
8 the stress?

9 A Right.

10 Q And then a third way you do it is with the  
11 truth versus lie, because by telling the truth, and then a  
12 deliberate lie you can also chart the indications of the  
13 stress in that way?

14 A Right.

15 Q There are three different factors involved in  
16 the calculations of your opinion?

17 A Yes.

18 Q Okay. Now during the post-test interview,  
19 during this particular interview of the defendant, in your  
20 opinion, as a qualified PSE operator, -- how long have you  
21 been doing that by the way?

22 A Seven and a half years.

23 Q And have you attended any specialized training  
24 for that?

25 A Yes I have.

1 Q And a basic kind of school to begin with?

2 A I attended a two week basic course and I attended  
3 a week advanced course and I attended several -- we are  
4 licensed by the State of Louisiana and we have a state  
5 board, and the state board, periodically throughout the year,  
6 hold work shop seminars and I last attended one this January  
7 20th of this year for three days.

8 Q And bow many of these examinations do you think  
9 you have done over the past seven years?

10 A Several thousand.

11 Q Now, in your opinion, after you did the PSE  
12 evaluation on the defendant, you also felt that he was being  
13 deceptive, didn't you?

14 A I did, sir.

15 Q To the answers to the questions that you asked?

16 A Yes sir.

17 Q And you informed him of that?

18 A I did.

19 Q And normally, when a post-test interview is  
20 conducted, if a subject refuses to discuss something further,  
21 or he doesn't change his answers from the main part of the  
22 test, there isn't much sense to recording anything, is there?

23 A No sir.

24 Q If everything remains the same?

25 A Yes, that's right.

1 Q At that point of time, you produce a paper  
2 for nothing?  
3 A That's right.  
4 Q If he does give you what you think is relative  
5 information, it is not too hard to figure out if it had  
6 anything to do with the crime?  
7 A Correct.  
8 Q And then you take a tape recording?  
9 A That's correct.  
10 Q But there is no sense recording everything  
11 until you determine whether or not some of this information  
12 is going to be relevent?  
13 A That is correct.  
14 Q And that is what happened here?  
15 A That's right.  
16 Q When you confronted the defendant with the  
17 results of your, in your opinion, of the PSE, at some point  
18 in time you received an admission from him, did you not?  
19 A Yes I did.  
20 Q Concerning this crime in Montana?  
21 A That is correct.  
22 Q And at that point of time, the defendant  
23 requested Sgt. Via to become re-involved in the investigation,  
24 is that correct?  
25 A He requested Sgt. Via, yes.

1 Q And that is where you stopped?

2 A Yes.

3 Q Did you respect his wishes in every regard  
4 throughout this entire examination that you conducted?

5 A I did.

6 Q And after he requested Sgt. Via, did you leave?

7 A I did.

8 Q Now you were present, I believe, during the  
9 recorded statement taken from the defendant?

10 A I was, yes.

11 Q Now when you spend time with a defendant or  
12 subject, excuse me, at one of these examinations, is it a  
13 rush, rush, rush proposition?

14 A No it is not.

15 Q You try to approximate a normal living conditions  
16 or normal treatment of people type conditions that would  
17 occur on the street in every day life?

18 A Yes sir.

19 Q And by the time -- during this period of the  
20 examination, was the defendant allowed to use the restroom?

21 A Sir, I don't really recall, but if he had  
22 requested he would have been allowed to do so.

23 Q Did he smoke and have coffee and all those  
24 sorts of things?

25 A As I remember it he had coffee, but I don't  
think that he smoked.

1 Q Now you were present, you stated, when a full  
2 recorded statement was taken?

3 A That is correct.

4 WHEREUPON at this time, STATE'S EXHIBIT NUMBER 1 was  
5 marked.

6 Q And the reason you took a full recorded  
7 statement is because of what he told you during the course  
8 of the interview?

9 MR. MOSES: Your Honor, I am going to object to these  
10 questions as being leading and suggestive to this witness,  
11 as he is just putting words in the witness's mouth.

12 MR. RACICOT: Yes, but it is also cross examination.

13 THE COURT: All right, try not to be  
14 suggestive.

15 Q What was the reason for taking a full recorded  
16 statement?

17 A The subject gave information that was relevent  
18 to the crime that had been committed in the state of Montana.

19 Q I am handing you what has been marked as State's  
20 Exhibit Number One for identification and I would ask you if  
21 you can identify that?

22 A This is a notarized true copy of a waiver of  
23 rights that was filled out by Sgt. Jay Via on January 7th,  
24 1983 and this was read to Barry Allan Beach by Sgt. Jay Via  
25 and Barry Allan Beach signed it in my presence and Sgt. Via's  
presence.



1 Q Okay that is a waiver or rights form that is  
2 typically used by the Ouâchita Sheriff's office?

3 A That is correct, Sir.

4 Q And that is a copy of the original, is that  
5 correct?

6 A That is a notarized true copy, yes sir.

7 Q And do you recognize your signature on there?

8 A Yes I do.

9 Q And it appears to be exactly, except for the  
10 fact that it is a copy, exactly the same form that was  
11 utilized at the time you took a full recorded statement of  
12 the defendant on January 7th, 1983 at 19:08 PM?

13 A Yes it does.

14 MR. RACICOT: We would move for admission of State's Exhibit  
15 Number One.

16 MR. MOSES: I would like to ask some questions on Voir Dire,  
17 Your Honor.

18 THE COURT: Go ahead.

19 VOIR DIRE EXAMINATION BY MR. MOSES:

20 Q I am handing you what has been marked for  
21 identification as State's Exhibit Number One, and I take it  
22 from your testimony in laying a foundation that you were  
23 present when that document was made out, and you were present  
24 when it was signed?

25 A That's right.

1 Q And so you can attest, Sir, that that is a true  
2 and correct copy of the document signed by Barry Beach at  
3 the time indicated?

4 A Would you explain to me what you mean by "I  
5 can attest to"?

6 Q You can say truthfully that it is a true copy  
7 of the statement that was made at the time indicated which  
8 was the 7th day of January, 1983, at 7:08 PM?

9 A Yes, this is a true copy of the waiver that  
10 was executed and made at that time.

11 Q I see there are certain markings on the document,  
12 for instance, at the top there is some squibbly lines or a  
13 signature line or something, what is that?

14 A Sgt. Jay Via's initials, Sir.

15 Q And that which has been circled?

16 A Denotes that at that time the subject had not  
17 been charged with the offense he was being questioned about.  
18 The waiver is a two way form, he is either under arrest or  
19 not under arrest.

20 Q Okay. The other marks or signatures that  
21 appear, what are they?

22 A Well on the line where it states regarding  
23 offense, and is handwritten by Sgt. Via "Homicide"; there is  
24 the defendant's initials where there is written in "and  
25 Montana".

1 MR. MOSES: All right, thank you. For the purpose of this  
2 hearing, I have no objection to State's Proposed Exhibit  
3 number 1.

4 THE COURT: All right, State's number  
5 One is admitted.

6 Cross examination now conducted by Mr. Racicot:

7 Q Commander Calhoun, you participated in the  
8 taking of the statement thereafter, is that correct?

9 A That is right.

10 WHEREUPON a document was marked as STATE'S EXHIBIT  
11 NUMBER 2.

12 Q I hand you what has been marked as State's  
13 Exhibit 2 and could you identify that please?

14 A Yes sir, it is a transcription of the recorded  
15 statement received from Barry Allan Beach on January 7th,  
16 1983.

17 Q And the one that you were present at during?

18 A Yes, that's right.

19 Q And is that a true and accurate copy of the  
20 statement taken from the Defendant?

21 A It appears to be, yes sir.

22 MR. RACICOT: We move for admission of State's Exhibit number  
23 2 for identification.

24 MR. MOSES: For the purposes of this hearing, I have no  
25 objections to the introduction of the Proposed Exhibit Number  
2 of the State. Your Honor, I am not waiving any right to

1 make further objections at a later time when it becomes  
2 necessary with other matters.

3 THE COURT: All right, it will be  
4 admitted.

5 MR. RACICOT: Your Honor, for the record, I might state that  
6 I am offering this exhibit to demonstrate to the Court the  
7 character and kind of questions that were asked during the  
8 interview and it will save a considerable amount of time if  
9 we admit the document instead of illiciting it from Commander  
10 Calhoun.

11 THE COURT: Okay.

12 MR. RACICOT: Nothing further from Commander Calhoun.

13  
14 REDIRECT EXAMINATION

15 By Mr. Moses:

16 Q Directing your attention to the bottom, the  
17 line next to the bottom line, on the right side of State's  
18 Exhibit 1, is shows DOB, what does that mean?

19 A Date of birth.

20 Q And who put that in there?

21 A Normally the officer that fills out the form.

22 Q Is that the date of birth of Mr. Beach?

23 A No sir, it is not.

24 Q Okay. Now the first part of the waiver says,

25 "I, the undersigned, have been informed that I have not been

1 arrested"?

2 A That's correct.

3 Q "And that I am being questioned regarding an  
4 offense of homicide"?

5 A That's right.

6 Q Was he under arrest at the time this statement  
7 was taken?

8 A Not in connection with the crime of homicide,  
9 No sir.

10 Q That was not my question. My question was,  
11 was he under arrest?

12 A He was under arrest, yes.

13 Q And when had he been arrested?

14 A To my knowledge, on January 4th, 1983.

15 Q So that he was not able to leave from January  
16 4th, until the time the statement was taken because he was  
17 under arrest?

18 A That's correct.

19 MR. MOSES: All right. May I have a moment, Your Honor,  
20 I am about done, I believe.

21 THE COURT: All right.

22 Q I would like to have you simply explain to me  
23 the first time that you saw Barry Beach?

24 A The first time that I saw him, or the first  
25 time that I spoke with him in an interview type situation, Sir?

1 Q That you saw him?

2 A I don't specifically recall that I saw him  
3 until January 7th.

4 Q And where did you see him?

5 A At the Ouachita Parish Courthouse Annex Building.

6 Q And is that a law enforcement building?

7 A Yes it is.

8 Q And is it devoted for that purpose?

9 A Yes, the building is for law enforcement.

10 Q And it was in the interview room?

11 A No, I saw him in the hallway going going to  
12 the room, Sir, or it could have been the interview room, I  
13 am not sure which.

14 Q And how big is the interview room?

15 A I would say approximately ten by ten.

16 Q And how many people were in there at the time  
17 you were there?

18 A When I spoke with Mr. Beach, on the first  
19 occasion, it was myself and Mr. Beach and Sgt. Via.

20 Q And what time was that on the 7th?

21 A 3:15 I believe, Sir.

22 Q And when did you last see Mr. Beach?

23 A Sir I am not sure of the last time, but it  
24 would have been after 7:48 PM that evening when the recorded  
25 statement was concluded, it was sometime after that.

1 Q He was -- there was no further discussions with  
2 him after 7:48?

3 A Sir, I am sure that there were, but I don't  
4 specifically recall. I had had a rather hectic date that  
5 day and so I would imagine I excused myself, having been up  
6 before daylight.

7 MR. MOSES: I have no further questions.

8  
9 RECROSS EXAMINATION

10 By Mr. Racicot:

11 Q Commander Calhoun, you are required, are you not  
12 to advise a suspect when you are taking his statement,  
13 specifically what crime you are going to talk about?

14 A That's correct.

15 Q And so your form when you say he was not under  
16 arrest, he was not under arrest for the specific crime that  
17 you were going to talk about?

18 A That's correct.

19 Q Okay, and that is what that is referring to?

20 A That's correct.

21 Q Now after the statement was taken, did the  
22 Defendant appear to be relieved?

23 A He did.

24 Q Questions about other cases, or other murders,  
25 were not asked at all by you, of this defendant?

A No sir.

1 Q You are aware that three days later, that  
2 questions were asked?

3 A I am.

4 Q With his lawyer present?

5 A That's right.

6 Q And you are aware that a polygraph was run  
7 concerning those other cases sometime subsequent?

8 A That's correct, Sir.

9 Q At the request of his counsel?

10 A That's correct.

11 MR. RACICOT: I have no further questions.

12

13 RE-REDIRECT EXAMINATION

14 By Mr. Moses:

15 Q With respect to the questions asked by Mr.  
16 Racicot, you say he appeared to be relieved. There has been  
17 testimony here that Mr. Beach was in need of a psychologist  
18 or a psychiatrist and had psychological problems as related  
19 by Mr. Via and others. Did you find that to be true?

20 A I don't believe I am qualified to answer that  
21 question as to whether or not any individual is in need of  
22 psychological help.

23 Q So no law enforcement officer then would  
24 conscientiously say that a person is in need of psychological  
25 help because he wouldn't be qualified?



1           A           Well ---

2           Q           Isn't that true, Sir?

3           A           He might express his opinions there, but it

4 would be simply that, an opinion.

5           Q           Well you were making a judgment of Mr. Beach

6 as to his attitude of being relieved?

7           A           Yes sir, I was.

8           Q           And I take it then that you did not discover

9 in the course of your several hours with Mr. Beach, any

10 psychological or psychriatric problems that needed or

11 required attention?

12          A           I saw nothing about Mr. Beach, psychologically

13 that required any action on my part.

14          Q           So that you would not have asked him to sign

15 a waiver, for instance, if you thought that he was not

16 capable of making an appropriate decision?

17          A           If he was not aware and able to, himself, waive

18 his rights, no sir, I would not let him execute the waiver.

19          Q           And so that if Mr. Via had told these people

20 that he needed psychological help and the doctor would see

21 that he got psychological help, then that information was not

22 conveyed to you so that you could determine whether Mr. Beach

23 was a proper candidate to take this stress test?

24          A           No such information was related to me, no.

25          Q           And finally, there has been testimony here that

1 Mr. Via said that Mr. Beach would be released on the 7th,  
2 by both Tim Beach and Mrs. Clincher. You heard that testimony,  
3 didn't you?

4 A I did, Sir.

5 Q And did Mr. Beach ever tell you during the time  
6 you were present, or complain to you about not being  
7 released?

8 A No sir he did not.

9 Q Did he ever give any indication at all that  
10 anyone ever told him that he was going to be released on  
11 January 7th, 1983 after the statement was made by Mr. Via?

12 A To me, he made no such statement, No Sir.

13 Q And so it would be a fair conclusion that he  
14 didn't know anything about it, or nothing was conveyed to  
15 him that he was going to be released and the case was going  
16 to be dismissed?

17 MR. RACICOR: Objection, Your Honor, that calls for a  
18 conclusion of the witness, "Beach knew or thought" and I  
19 don't see how Commander Calhoun could testify to that.

20 MR. MOSES: Well let me withdraw that.

21 Q You did not have any information that Mr. Beach  
22 knew he was going to be released and the charges of  
23 contributing dropped?

24 A I had no such information.

25 Q Well did you find out from Mr. Via whether that  
was going to be done?

1           A           I was never told by Sgt. Via that that was going  
2 to be done.

3           Q           Was it done?

4           A           No sir, it was not done.

5           Q           And he is still under the charge of contributing  
6 to delinquency of a minor?

7           A           At the time I talked with him, he was, yes.

8           Q           That wasn't my question, Mr. Calhoun.

9           A           Well then repeat your question.

10          Q           My question is: Has the charge of contributing  
11 to the delinquency of a minor ever been dismissed?

12          A           Yes it has been since that time.

13          Q           And when was it dismissed?

14          A           Sir, I am not sure of the exact date.

15 MR. MOSES:    Thank you, no further questions.

16 MR. RACICOT:  Nothing further.

17                           THE COURT: Thank you, you may step  
18 down.

19           WHEREUPON this witness was EXCUSED.  
20  
21  
22  
23  
24  
25

1 MR. RACICOT: We wish to recall Commander Calhoun at this  
2 time.

3 WHEREUPON,

4 COMMANDER ALFRED CALHOUN

5 having been recalled as a witness on behalf of the State of  
6 Montana, and having been previously sworn upon his oath,  
7 testified as follows:

8

9 DIRECT EXAMINATION

10 By Mr. Racicot:

11 Q You are the same witness, Commander Alfred  
12 Calhoun who testified earlier in this case?

13 A That is correct.

14 Q And you realize you are still under oath?

15 A Yes sir.

16 Q And you have been present during the testimony  
17 of the defendant and all of the other witnesses?

18 A Yes sir.

19 Q You heard the defendant state that you told him  
20 you had enough evidence to fry him in the electric chair?

21 MR. MOSES: Your Honor, I am going to object as not proper  
22 rebuttal testimony. I asked him the same question on my case,  
23 and he denied it and Mr. Beach testified to it, and now there  
24 is going to be a reaffirmation of what his original testimony  
25 is and that is not proper rebuttal testimony. He ~~has~~ already

1 testified to it and he is definitely not entitled to testify  
2 to it twice.

3 THE COURT: I really think that is  
4 right. I know the answer, and so do  
5 you so go ahead and answer it.

6 A No sir, I made no such statement.

7 MR. RACICOT: Thank you, Commander.

8 MR. MOSES: I have no questions of Commander Calhoun.

9 WHEREUPON this witness was EXCUSED.  
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1 MR. RACICOT: We have no further evidence to present.

2 MR. MOSES: I have nothing further to present insofar as  
3 evidence is concerned. I do have some matters to present to  
4 the Court which would take me four or five minutes in  
5 connection with the Motion to Suppress and I think it should  
6 be addressed to the Court's attention these other matters.

7 MR. RACICOT: Your Honor, I did fail to mention one thing.  
8 I would like the Court's permission to obtain certified copies  
9 of the Advise of Rights and report forms that were utilized  
10 on January 11th, 1983 in the interview of the defendant  
11 and I would also like permission to obtain certified copies  
12 of the court documents pertaining to the extradition when  
13 the defendant appeared on those charges, and I would like  
14 the Court's permission to secure the certified copies of  
15 records from the correctional facilities, in Louisiana  
16 pertaining to when the defendant was checked out of those  
17 facilities on January 6th and 7th and returned, and also to  
18 get the radio logs from the Ouachita Parish Sheriff's office  
19 concerning the same thing, and perhaps we could reach some  
20 kind of a stipulation concerning their admissibility.

21 MR. MOSES: I have no objection in securing those things,  
22 that information or evidence which he has just described and  
23 I would think that I could discuss the matter with Mr.  
24 Racicot and perhaps we can stipulate, but I couldn't agree to  
25 it at the present time.

1 THE COURT: Okay, go ahead and get  
2 those records.

3 MR. MOSES: Your Honor, it would take me about four or  
4 five minutes and my purpose is simply to advise the Court that  
5 I do have some briefs on this matter and rather than making  
6 an oral argument to the Court, I am willing to submit briefs  
7 here on this issue and it will take me four or five minutes  
8 to get all of that material together.

9 MR. RACICOT: Your Honor, I frankly don't want -- until the  
10 material comes from Louisiana it would be difficult to assess  
11 to the creditability of some of the people that testified in  
12 this particular hearing.

13 MR. MOSES: I understand that.

14 THE COURT: Commander Calhoun, can you  
15 estimate how long it would take to  
16 get those records up here?

17 COMMANDER CALHOUN: Within a week.

18 THE COURT: And you want to respond  
19 after that?

20 MR. RACICOT: I would just like to incorporate that into our  
21 argument and we would need a little time after we receive  
22 that information to respond.

23 THE COURT: I have no objection to that.

24 MR. MOSES: Do you want my briefs now or a week from now?  
25 That is the only question that I have.

1 IN THE COURTROOM, following recess - 4:06 o'clock PM

2  
3 THE COURT: Court is in session,  
4 please be seated. Make a note in the  
5 record that the defendant and his  
6 attorney is present, the jury is in  
7 the jury box, and the state's counsel  
8 are present. You may proceed.

9 MR. RACICOT: Call Commander Calhoun.

10 WHEREUPON,

11 COMMANDER ALFRED CALHOUN

12 having been called as a witness on behalf of the State of  
13 Montana, and having been first duly sworn, upon his oath,  
14 testified as follows:

15  
16 DIRECT EXAMINATION

17 By Mr. Racicot:

18 Q Please state your name?

19 A Alfred Calhoun.

20 Q And could I have your occupation?

21 A Deputy Sheriff, Ouachita Parish, Monroe,  
22 Louisiana.

23 Q And that is also where you live?

24 A That's right.

25 Q I would like to have you speak up, Commander.

A All right.



1 Q And your rank is Commander, correct?

2 A That is correct.

3 Q I would ask that you speak up, Commander Calhoun,  
4 and slowly, so that we can all hear you. Do you know the  
5 defendant in this case?

6 A Yes sir, I do.

7 Q And what are your duties, as a commander in the  
8 Ouachita Parish Sheriff's office?

9 A I am commander of criminal investigation, who  
10 conducts the initial investigation in regard to felony crimes,  
11 and follow up investigations in regards to any crime.

12 Q I would like to direct your attention to January  
13 7th, 1983, at approximately three o'clock Pm., in the afternoon,  
14 and did you have an occasion to participate in the interview  
15 with the defendant Barry Allan Beach?

16 A Yes I did.

17 Q Were you aware of the fact that an investigation  
18 was taking place?

19 A Yes I was.

20 Q And in fact, are you Sgt. Via's supervisor?

21 A Yes sir, I am.

22 Q And were you aware of all criminal investigations  
23 that were taking place in the Ouachita Parish Sheriff's office  
24 at that time?

25 A Yes sir, I was.

1           Q           When you discussed this case with the defendant,  
2 at the time you went in to see him, did you advise him of his  
3 rights?

4           A           Yes I did.

5           Q           Did you advise him orally of his rights?

6           A           Yes I did.

7           Q           Would you relate to us of what rights you  
8 advised him of?

9           A           I advised him One, that he had the right to  
10 remain silent and he did not have to talk to me or any other  
11 police officer if he so desired; number two, anything that he  
12 did say, could and would be used in a court of law, which  
13 meant I could testify to anything that he related to me; number  
14 three, he had the right to have an attorney present, and the  
15 attorney could be of his choosing, and if he desired an  
16 attorney and could not afford one, the court would appoint one  
17 for him, without cost to him, and last but not least, if he  
18 started to talk to us, and if he desired to quit talking to  
19 us, he had the right to quit talking at any time, without any  
20 explanation as to why.

21          Q           Did you ask the defendant if he understood  
22 those rights?

23          A           Yes sir, I did.

24          Q           And what was his response?

25          A           He advised me that he did understand them.

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- 1 Q And do you know, in your opinion, if the  
2 defendant was free of any intoxicants?
- 3 A Yes sir, he was.
- 4 Q And was he coherent and rational?
- 5 A Yes sir.
- 6 Q And how would you describe his demeanor?
- 7 A Calm.
- 8 Q And did you have any difficulty in understanding  
9 him?
- 10 A No sir.
- 11 Q Was his answers to your questions that you  
12 posed to him, appropriate to the question asked?
- 13 A Yes sir.
- 14 Q And did you threaten him in any way?
- 15 A No sir I did not.
- 16 Q Did you make any promises to him?
- 17 A No sir I did not.
- 18 Q Did you employ any kind of questionable  
19 interrogation techniques, or tricks of any kind?
- 20 A No sir I did not.
- 21 Q Now, during this interview process with the  
22 defendant, -- how long did this last?
- 23 A I talked to him, on and off, for a period of  
24 approximately four to five hours.
- 25 Q Now all of that time wasn't by yourself, was it?
- A No sir, it was not.

1 Q And sometimes were you talking to him in the  
2 presence of Sgt. Via?

3 A Yes sir, I was.

4 Q During the period that you were there, with him,  
5 were any necessities of life kept from Mr. Beach?

6 A No sir.

7 Q Would you describe for us what he was allowed  
8 to do, even though he was in custody, as far as having the  
9 availability of coffee, soft drinks, snacks, cigarettes; could  
10 you tell us what your policy is and what your recollection is  
11 concerning Mr. Beach?

12 A Everytime that I drank anything, Mr. Beach was  
13 offered the same type of refreshment, coffee or coke, whatever  
14 it happened to be; he did drink coffee on two occasions, I do  
15 believe during the period of time that I was with him; I do  
16 not recall that he smoked but normally if I am with a subject  
17 and he does smoke, and he does not have any cigarettes, I  
18 furnish cigarettes.

19 Q Do you smoke also?

20 A Yes sir I do.

21 Q Now, Commander Calhoun, at the conclusion of  
22 your interview, did the defendant make admission to you  
23 concerning the homicide in Montana?

24 A Yes sir, he did.

25 Q Now at that time, did his demeanor change?

1           A           Yes sir it did.  
2           Q           Can you tell us how?  
3           A           Tears formed in his eyes and he asked to see  
4 Sgt. Via.  
5           Q           Did you accomodate him in that request?  
6           A           Yes sir I did.  
7           Q           And did you summon Sgt. Via?  
8           A           I did.  
9           Q           And did he come back in?  
10          A           Yes sir he did.  
11          Q           And when Sgt. Via came back in, were there any  
12 further admissions of guilt made by the defendant?  
13          A           Yes sir, there was.  
14          Q           And do you recall what that was?  
15          A           The defendant admitted that he had killed  
16 Kimberley Nees in Wolf Point, Montana in June of 1979.  
17          Q           And at that point in time, did you make  
18 preparations to record his statement?  
19          A           Yes sir we did.  
20          Q           And were you present when any statement was  
21 made?  
22          A           Yes sir I was.  
23          Q           And were you present when he was advised of  
24 his rights again on a tape recorded statement?  
25          A           Yes I was.

1 Q And did you again, when the tape recorded  
2 statement was taken, did you again ask him if he realized  
3 that he was not promised anything, or threatened him, -- any  
4 threats made against him and all of those things that are  
5 contained in the rights form, were you present when those  
6 things were done?

7 A Yes sir, I was Sir.

8 Q Did the defendant appear to you to understand  
9 the warning of his rights again?

10 A Yes sir he did.

11 Q And did you make any threats or promises to him?

12 A No sir I did not.

13 Q I am handing you what has been marked as State's  
14 Exhibit Number 39 and ask if you would take a look at that  
15 and identify it for us?

16 A Yes sir, it is a transcription of a statement  
17 made by Barry Allan Beach on January 7th.

18 Q And have you had occasion to review that  
19 statement on a number of occasions?

20 A Yes sir I have.

21 Q And does that statement contain verbatim question  
22 and answers posed to Barry Allen Beach on January 7th, 1983,  
23 at approximately 7:08 PM in the evening?

24 A It does.

25 Q And those are accurate responses?

1 A That's correct.

2 Q Now during the entire process of that inter-  
3 view, how would you describe the defendant's demeanor?

4 A I would say he was somewhat apprehensive, however,  
5 at the conclusion of the interview with him, he did seem to  
6 be somewhat relieved.

7 Q Did he have any desire to discontinue the  
8 interview at any point in time?

9 A No sir he did not.

10 Q Now at the conclusion of that statement being  
11 taken, Mr. Calhoun, did you secure a meal for the defendant?

12 A Yes I did.

13 Q As well as yourself and Sgt. Via?

14 A That's correct.

15 Q Now Commander Calhoun, I would like to direct  
16 your attention to January 11th, 1983. Were you present  
17 during, or part or all of the interview of the defendant  
18 arranged by his lawyer?

19 A Yes I was.

20 Q And were you present through all of it?

21 A Part of it.

22 Q And during that particular interview do you  
23 recall the Defendant's lawyer being present?

24 A Yes sir he was.

25 Q And who else do you recall being present?

1 A Sgt. Via.  
2 Q And was Lt. Cummings prese.  
3 A Not during the time that I  
4 Q During this period of time  
5 there, did the Defendant make any admissi  
6 death of Kimberley Nees?  
7 A He made a statement to the e that the only  
8 homicide that he was involved with was the one in Montana.  
9 Q Now were you present at a subsequent occasion  
10 and had a conversation with the Defendant's lawyer, Mr. Paul  
11 Henry Kidd, and I direct your attention to the date of January  
12 20th, 1983?  
13 A I do not recall the subsequent interview session  
14 with Mr. Kidd on the 20th.  
15 Q That may be my fault. I may have you confused  
16 with someone else. Commander Calhoun during this entire  
17 process of questioning the defendant, -- how many years of  
18 experience have you had?  
19 A I have been in the department a little over  
20 twelve years.  
21 Q And during the entire process of questioning the  
22 defendant, was there any doubt in your mind that he was  
23 proceeding voluntarily?  
24 A No sir there was not.  
25 MR. PACICOT: No further questions of Mr. Calhoun.



CROSS EXAMINATION

1  
2 By Mr. Moses:

3 Q Commander Calhoun, my name is Timer Moses and  
4 I am the lawyer for Mr. Beach and I have met you before?

5 A Yes sir.

6 Q Can you tell me, Commander Calhoun, was any  
7 search warrant issued against the property of Mr. Barry Allan  
8 Beach in connection with the homicides in Louisiana?

9 A Yes sir, there was.

10 Q And I take it that these murders have been  
11 solved?

12 A Subject has been charged in two of those  
13 murders, yes.

14 Q And I think you said that Mr. Beach was not  
15 involved?

16 A To my knowledge, that is correct.

17 Q Did you have any information concerning his  
18 mental condition prior to the time that you talked to Barry  
19 Allan Beach?

20 A I am not sure, Mr. Moses, what you mean by  
21 mental condition.

22 Q Well, did you have any information about his  
23 mental condition as to whether he had a mental problem, prior  
24 to the time you conducted this interview that you described?

25 A No sir, not that I recall.

1 Q Do you recall a report from the Sheriff of  
2 Roosevelt County in which he advised as to what the mental<sup>7</sup>  
3 health association advised? Do you recall? Did you see  
4 that information prior to the time of taking his statement,  
5 from the Sheriff of Roosevelt County?

6 A No sir, I did not.

7 Q Where did that information come from then?

8 MR. RACICOT: Your Honor, we object to that ---

9 MR. MOSES: Let me withdraw that question.

10 Q I take it then that if that information was  
11 conveyed it would have to be conveyed to someone else than  
12 you?

13 A If it was conveyed by somebody, it would have  
14 been to someone else.

15 Q And who would that be?

16 A Sir, I have no idea.

17 Q Okay, well, would it have been Sgt. Via?

18 MR. RACICOT: Your Honor, we will object, he said he had no  
19 idea.

20 Q You simply don't know?

21 A I do not know.

22 Q In any event, any information as to Barry Allan  
23 Beach's mental condition, recent mental condition, at that  
24 time, on January 7th, 1983, was not conveyed to you by anyone?

25 A Not that I recall, no sir.

1 Q As a matter of practice, is it true that you  
2 and Sgt. Via deal independently of each other when you  
3 examine or interview prospective defendants?

4 A For the most part we operate independently, yes.

5 Q You don't confer about information that one has  
6 so that it can be used in connection with questions that are  
7 asked the prospective defendant by the other interviewer?

8 A We do share information, but normally we  
9 operate independently.

10 Q But would you normally share information about  
11 a prospective defendant's mental instability?

12 MR. RACICOT: Your Honor, this question we are going to  
13 object, it is totally irrelevant. He testified that he had  
14 no idea of such a thing existed, let alone conveying it to  
15 anybody. How could he possibly testify of what Sgt. Via or  
16 somebody else did or didn't do.

17 THE COURT: I agree.

18 MR. MOSES: Well he is talking about the procedure that he  
19 uses in conveying of information and I simply want to know  
20 whether information concerning the mental health of a  
21 prospective defendant is communicated as a general proposition,  
22 that is all that I want.

23 MR. RACICOT: Your Honor, the question is completely without  
24 foundation; there has been no proof that there is any such  
25 information.

1 THE COURT: I agree again. He says  
2 he doesn't know.

3 MR. MOSES: Okay.

4 Q In your examination, Commander Calhoun, do you  
5 make it a point to determine the emotional makeup of the  
6 prospective defendant?

7 A I don't know, Sir, I don't know how to answer  
8 that question, Sir. If a person seems to be in control of  
9 his faculties, and knows where they are at, what they are  
10 doing, then that is all that I am concerned with at that time.

11 Q I take it then that you simply make an  
12 observation, that he seems all right and therefore I can take  
13 his statement, that's the bottom line?

14 A I have no professional way of knowing whether  
15 a person is all right or not.

16 Q So that you would not be able to recognize  
17 whether a person was all right or not, I take it then?

18 MR. RACICOT: Your Honor, objection, that question has been  
19 asked and answered already.

20 THE COURT: Yes.

21 Q Have you ever had any training in that area?

22 A To determine if a person is emotionally stable  
23 or not?

24 Q Sure?

25 A No special training, no.

1 Q You would not want to take a statement from any  
2 person where you had some reservations about his mental  
3 condition, that would be unfair, right?

4 A Mr. Moses, I don't think that I am qualified  
5 to determine a person's mental state, and my job is to  
6 secure from anyone who is willing to give it, any information  
7 they may have.

8 Q So that would that also be true if your  
9 relationship with Mr. Via, that he would not be qualified  
10 either, since you are his supervisor?

11 MR. RACICOT: Objection, Your Honor, that calls for a  
12 conclusion that he can't reach.

13 THE COURT: Sustained.

14 Q Do you have a procedure or process with any of  
15 your investigators as a Commander, to be able to determine  
16 the mental condition of a person before taking his statement?

17 MR. RACICOT: Objection, Your Honor, it is irrelevant,  
18 repetitive and he has answered the question as best as he can.

19 THE COURT: Agreed.

20 Q Do you make any attempt to determine mental  
21 condition in taking a statement?

22 MR. RACICOT: Your Honor, we object to Mr. Mose's question,  
23 it is very repetitive. He has asked that question and it has  
24 been answered.

25 THE COURT: Sustained.

1 Q Did you make any conclusion with respect to  
2 the mental condition of Mr. Barry Beach in this particular  
3 examination?

4 A You're asking me if I made any conclusion as to  
5 his mental condition?

6 Q During the course of this examination that you  
7 conducted?

8 A In my mind he appeared rational. ✓

9 Q Did you have information that was conveyed  
10 either to you, or to Mr. Via, and thereafter conveyed to you,  
11 as to the factual circumstances surrounding the incident in  
12 Poplar, Montana so that you could ask informed and intelligent  
13 questions of Mr. Beach?

14 A I believe I had the basic information necessary  
15 for an interview, yes sir.

16 AT THIS TIME, a document was marked by the Court  
17 Reporter as DEFENDANT'S EXHIBIT D. ✓

18 Q I am going to hand you what has been marked as  
19 Defendant's proposed Exhibit D for identification, and ask  
20 you if you have ever seen that document before?

21 A I don't recall seeing that document before, no  
22 sir.

23 Q Thank you, very much. What was the source of  
24 the information that you obtained with respect to the  
25 Montana events?

What  
15 if

1           A           That information I received was from Sgt. Via  
2 during his discussion with Bob Beach in Monroe, Louisiana  
3 at the time I interviewed Barry Beach.

4           Q           Was Caroline Beach ever in Poplar, Montana?

5           A           I have no way of knowing.

6           Q           Was Bob Beach ever in Poplar, Montana during  
7 that period of time?

8           A           I have no way of knowing.

9           Q           Do you know what the Mutt and Jeff routine is?

10          A           Yes I do.

11          Q           Would you explain it to the jury please?

12          A           In police work, the Mutt and Jeff routine is  
13 normally when one officer is the good guy and the other one  
14 is the bad guy.

15          Q           There is no need for two officers to interview  
16 a prospective defendant in an ordinary case, is there?

17 MR. RACICOT: Objection, Your Honor, and I would like to be  
18 heard on this subject in Chambers.

19 MR. MOSES: That would be fine.

20                       THE COURT: All right. The Jurors can  
21 just remain in their seats and we will  
22 be right back.

23 IN CHAMBERS, with the defendant and his counsel present, Mr.  
24 Racicot and Mr. McCann present, outside the hearing of the  
25 Jury.

1 THE COURT: Go ahead.

2 MR. RACICOT: Our objection, Your Honor, is that at this point  
3 in time, Mr. Moses is talking about whether or not there is  
4 any reason for ever having more than one person involved in  
5 an interrogation of a particular defendant, and it touches  
6 specifically upon the reason for Commander Calhoun being called  
7 in there in the first place, namely, to consult on the lie  
8 detector, and we would like an order of this court forbidding  
9 that line of inquiry or allowing us, with specific recommend-  
10 ations, to - on redirect, to clear up the matter, that he was  
11 in fact, consulted on the lie detector test.

12 MR. MOSES: Again, I am not getting into the question of a  
13 lie detector test, I am asking him a general question as to  
14 whether it is necessary to have two interviewers in there to  
15 interview a prospective defendant and that is all, and he can  
16 answer that with a yes or no.

17 MR. RACICOT: Well I can understand the question ---

18 MR. MOSES: He is advised that he not going to bring up the  
19 lie detector.

20 THE COURT: Be real careful on that.

21 MR. RACICOT: How could he answer that question, when you ask  
22 him if there is ever any necessity of utilizing more than  
23 one officer.

24 MR. MOSES: Well sometimes they use two. I will use my  
25 judgment and not ask him about the lie detector test, anything



1 of that sort. I don't see any problem with that, with that  
2 question.

3 MR. RACICOT: The response from us is to explain, that is  
4 what I am saying.

5 MR. MOSES: All right, I have avoided the question of the  
6 lie detectors and the risk -- at the risk of saying I can't  
7 do it because there is that possibility that he will blurt  
8 it out.

9 MR. RACICOT: No he won't blurt it out. I am not worried  
10 about him blurting it out, we talked to him very carefully .  
11 about that, in order to avoid that, but if the conversation  
12 is left that one more officer never examines a defendant in  
13 the investigative process, I want to be able to explain the  
14 reason for this, and that was because he was consulted on  
15 the lie detector examination.

16 THE COURT: That would be a problem.  
17 You will have to be real careful on  
18 that. Well, let's get back in there,  
19 it is getting pretty late.

20 IN THE COURTROOM, with the defendant, and his counsel, and  
21 the counsel for the State of Montana, and the Jury all being  
22 present, the following proceedings were had:

23 THE COURT: You may proceed.

24 CROSS EXAMINATION continued by Mr. Moses:

25 Q Commander Calhoun, there was some testimony by

1 Mr. Via in this case, in which he said that Barry Allan Beach  
2 had requested to see him, Mr. Via, and talk to him. Do you  
3 remember that request being made?

4 A Yes I do.

5 Q And was that made after you had interviewed  
6 the witness for two three hours?

7 A That's correct.

8 Q So that his relationship with Mr. Beach, that  
9 is, Mr. Via, was one of confidence. He wanted to talk to Mr.  
10 Via?

11 A He requested to see Mr. Via, yes sir.

12 Q He did not, for instance, request to continue  
13 the examination by you? He wanted to see Mr. Via?

14 A He wanted and requested to see Mr. Via, yes sir.

15 Q And in the Mutt and Jeff routine, Jeff must  
16 instill confidence, be a nice guy, right?

17 A If Jeff has that part, yes.

18 Q Okay, if Jeff gets that part, he is the nice  
19 guy and he instills confidence in the defendant and is the one  
20 that is really going to serve his best interests, isn't that  
21 correct? That is the ploy?

22 A Right.

23 Q And then the other person should be the fellow  
24 who is not the nice guy but is going to see that he gives  
25 the defendant the impression that he is going to get the

1 defendant, and have him fry in the electric chair for  
2 instance?

3 A I suppose that could vary, depending on the  
4 answers.

5 Q And did you, during any part of your examin-  
6 ation of Mr. Barry Allan Beach, say to him words to the  
7 effect that you were going to see that he was convicted, if  
8 not in Montana, surely in Louisiana?

9 A No sir I did not.

10 Q You have a different routine that you use as  
11 opposed to Mr. Via in asking questions?

12 A I speak the truth, Mr. Moses.

13 Q I speak the truth, too, Mr. Calhoun, and that  
14 is why I am wondering whether you use a different approach  
15 than Mr. Via?

16 A I don't know how it is defined, but it is a  
17 process.

18 Q Well I take it that you have a certain  
19 approach that you use in terms of interviewing prospective  
20 defendants?

21 A I normally would tell a defendant ---

22 Q Do you have one, you can say yes or no to that?

23 A Yes.

24 Q Have you been trained in that respect?

25 A I have experience in that respect.

1 Q Have you been trained in that respect, other  
2 than experience, I will get to experience in a moment?

3 A Yes I have attended interragation schools, yes.

4 Q Okay. When was that?

5 A I believe in 1980.

6 Q Okay and how long was the school?

7 A Three days.

8 Q And where was that?

9 A University of Louisiana, Baton Rouge, Louisiana.

10 Q Now in connection with interrogation, is it your  
11 purpose to gain the trust of the prospective defendant?

12 A It is my purpose to illicit the truth.

13 Q Well I understand that, but is it one of your  
14 purposes to gain the confidence of the defendant?

15 MR. RACICOT: Your Honor, I will object to that, it has  
16 already been answered.

17 THE COURT: Yes it has been answered.

18 MR. MOSES: He answered that he wants the truth, and I  
19 want to ask him about the fact of gaining his confidence.

20 Q I will rephrase it, Mr. Calhoun. Do you  
21 conduct these interviews in a closed room?

22 A Yes sir we do.

23 Q And the size of the room?

24 A Approximately ten by nine, or ten by ten.

25 Q And is there a desk there in the room?

A There is.

1 Q And are there chairs in the room?

2 A Yes sir.

3 Q And is it an interior room, without windows?

4 A It is.

5 Q And do I understand that Mr. Beach was in this

6 room from one o'clock until right around seven o'clock, --

7 six or seven o'clock? That would be right around seven hours?

8 A I think he arrived at the Annex right around

9 one o'clock, close to that time, and went into that room

10 and then most of the time he was in there, but in and out to

11 the bathroom.

12 Q When he had to go to the bathroom, did you let

13 him go to the bathroom?

14 A Yes sir.

15 Q Did he have to request it?

16 A I wouldn't know unless he told me. (Laughter

17 in the courtroom)

18 Q I understand that and I appreciate that, Mr.

19 Calhoun, but do you have a rest break, like the jury has where

20 they can go to the bathroom, or do you just wait untill

21 somebody makes a request "that I have to go to the bathroom"

22 that is what I was getting at?

23 A Mr. Moses, I don't ask anybody if they have to

24 go to the bathroom. Sometimes if I have to go to the bathroom

25 I will ask them if they have to go.

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1 Q How about smoke breaks, does the same thing  
2 occur there, if he wants to smoke is the interview terminated  
3 for that?

4 A If they want a cigarette they can have one.

5 Q But the interview is not terminated though?

6 A Well it depends on what you call termination.

7 Q Is there a smoke break, I just want to know  
8 your process. Do you say, "let's take a break and have a  
9 smoke"?

10 A Yes sir, if they want a smoke we let them smoke.

11 Q Well Okay. Now during that six hours or seven  
12 hours, did Mr. Beach have anything to eat?

13 A He had had lunch just prior to arrival at the  
14 annex.

15 Q That wasn't my question. Did he have anything  
16 to eat during that period of time?

17 A I don't remember if he had anything to eat, but  
18 I distinctly remember having two occasions -- he had coffee on  
19 two occasions.

20 Q Okay. And the first time that he had anything  
21 to eat was that at 8:30, when you went out to get something?

22 A About that time, yes sir.

23 Q Okay. Were there any other officers that were  
24 there in this room during the period of time that you were  
25 there, Mr. Calhoun?

1           A           The only officer that was in the room with Mr.  
2 Beach during the time I was there was Sgt. Via, on that date.

3           Q           So that I am clear, how long were you in the  
4 room alone with Mr. Beach?

5           A           From somewhere around 3:30 until 6:30, about.

6           Q           Completely alone?

7           A           I was there completely alone, yes sir, with  
8 Mr. Beach.

9           Q           And were you in that room with any other law  
10 enforcement officer at any other time?

11          A           With Sgt. Via.

12          Q           When was that?

13          A           When Mr. Beach asked to see Sgt. Via, I stepped  
14 out of the room and asked Sgt. Via to step in and I stepped  
15 in with him, and then left.

16          Q           And how long did Sgt. Via talk to him?

17          A           If my memory serves me, about fourteen or  
18 fifteen minutes until he asked me to come back into the room.

19          Q           And that was after 6:30?

20          A           Yes.

21          Q           And now do you have any knowledge of any other  
22 law enforcement officer being in the room during the course  
23 of the interview, that you know about?

24          A           On January 7th?

25          Q           Sure?

1           A           I think that prior to my being asked to talk  
2 to Mr. Beach, that Lee Wolburn, one of my deputies was in the  
3 room with Sgt. Via. I believe that is correct.

4           Q           When you conduct those interviews, I take it  
5 that you go over the factual circumstances, based upon  
6 information that you have obtained?

7           A           Yes sir, I would say so.

8           Q           Is there any recording of that information?

9           A           Not until it is determined that that information  
10 is relevent.

11          Q           Well, I take it then that there is no tape  
12 recording of what was said for your period of time, this  
13 three to three and a half hours, there is no recording, there  
14 was no tape recording?

15          A           No sir, there is not.

16          Q           And I take it that there were no notes taken  
17 or kept by you?

18          A           I did not take any notes, no.

19          Q           So that if he said, during that period of time,  
20 I am certainly not involved, or I am involved, you would not  
21 make a note of it?

22          A           I did not, No Sir.

23          Q           To you knowledge, as a Commander, did Mr.  
24 Beach confess to the three murders of the people down in  
25 Louisiana?



1 A To my personal knowledge?

2 Q I didn't ask for personal knowledge.

3 MR. RACICOT: Your Honor, we would object to the question.

4 It has got to be his personal knowledge or there is no  
5 proper foundation to ask the question.

6 THE COURT: That's right.

7 Q Well you are the supervisor of the activities,  
8 right?

9 A That's right.

10 Q And you read the reports and help prepare the  
11 reports?

12 A That is correct.

13 Q So that you participated in the process or the  
14 progress of the activities involving Mr. Beach and allegations  
15 made as to him being involved in the murders of Sherry Alfred,  
16 Cathy Horton and Angela Hill?

17 A Not to the extent that I would the normal cases  
18 of our department, Mr. Moses.

19 MR. MOSES: That's all the questions I have, Commander,  
20 thank you.

21

22 REDIRECT EXAMINATION

23 By Mr. Racicot:

24 Q Commander Calhoun, were those cases special  
25 task force cases?

1       A           That is correct.

2       Q           They weren't your cases at that point in time?

3       A           No sir.

4       Q           Commander Calhoun, did you have anything to

5 eat from noon until 8:30?

6       A           I had not.

7       Q           And could you tell me, Commander Calhoun,

8 whether it would be possible or feasible in your view, to

9 record every single conversation that you had with any person

10 irregardless of whether or not the information was relevent

11 or irrelevant?

12      A           No sir.

13 MR. MOSES:     I object to the question upon the ground that

14 it is self serving, and I object to the form of the question

15 as it is always possible to record anything, so that the

16 question is misleading.

17 MR. RACICOT:   I will rephrase it.

18      Q           How long do you think you could operate down

19 there doing such a thing, Commander Calhoun, without it being

20 such a nightmare that you couldn't proceed any further?

21 MR. MOSES:     I object to the form of the question and the

22 language used.   It is also irrelevant.

23 MR. RACICOT:   I will rephrase it, Your Honor.

24      Q           Why don't you record every single irrelevant

25 conversation that you would have down there in Louisiana?

1           A           I believe the staff is three or four days  
2 behind as it is on relevant material and if we had to do all  
3 that as to irrelevant material, within a short period of time,  
4 they would all threaten to quit.

5 MR. RACICOT: No further questions, Commander.

6  
7                           RECROSS EXAMINATION

8 By Mr. Moses:

9           Q           I take it that you don't in response to the  
10 question that was finally composed by Mr. Racicot, you don't  
11 record irrelevant information, right?

12          A           I try not to, Sir.

13          Q           So that you could say with a great deal of  
14 .....that with respect to the seven hours that Mr. Beach was  
15 interviewed by either you, or Mr. Via, that it was all  
16 irrelevant information and had no bearing upon the issues of  
17 this case? The questions were irrelevant, and didn't even  
18 deserve to be recorded, is that what you are saying?

19          A           The information was recorded at the completion  
20 of the interview.

21          Q           You notice that I talked about the period of  
22 time of the interview. Did you consider anything prior to  
23 that time as completely irrelevant and immaterial?

24 MR. RACICOT: Your Honor, I am going to object as being  
25 argumentative.

1 THE COURT: It is argumentative. Can  
2 you answer that?

3 A Your Honor, many things in a conversation are  
4 irrelevant unless there is other information is developed  
5 to make it relevant.

6 Q I understand that, and the Judge is aware of  
7 that, but we are talking simply about a policy of recording  
8 and you are saying that everything that is deemed by you as  
9 being relevant or irrelevant is not recorded?

10 A If it is deemed irrelevant, it is not recorded,  
11 no sir.

12 Q So if Mr. Beach makes a statement that he  
13 thinks is relevant and important, and you decide that it is  
14 not relevant and important, then that important statement that  
15 Mr. Beach thinks is important and relevant never gets into  
16 the record, right?

17 MR. RACICOT: Objection, Your Honor, that is a compound  
18 question to the point of being ludicrous.

19 THE COURT: It is getting close.

20 Q You make the decision as to whether it is  
21 important or not, not Barry Beach, that is what I am asking?

22 A Is that a question?

23 Q That is a question?

24 A I do make that determination, yes sir.

25 Q And not Barry Beach?

1           A           That's right.

2   MR. MOSES:       No further questions.

3   MR. RACICOT:   That's all I have, thank you.

4           WHEREUPON this witness was EXCUSED.

5                       THE COURT: It is almost five o'clock  
6                       and we will quit for the day and ask  
7                       that you return here tomorrow morning  
8                       and be here by 9:00 o'clock. (Court  
9                       Admonishes the Jury)

10  
11           AT THIS TIME, the court adjourned for the day at the  
12           hour of 4:45 o'clock P.M., to reconvene on April 12th,  
13           1984 at the hour of 9:00 A.M.

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