

AFFIDAVIT OF CHARLES R. HONTS

I, CHARLES R. HONTS, Ph. D., state that the following facts are true and correct:

Concerning My Expertise:

1. I am Department Head and Professor of Psychology at Boise State University, 1910 University Drive, Boise, Idaho 83725-1715. I hold a Ph. D. degree in Experimental Psychology with a concentration on human psychophysiology. My central area of study and research has been in credibility assessment and in polygraph testing in particular. I have attached a copy of my Curriculum Vitae to this Affidavit as Exhibits A. That Curriculum Vitae accurately lists my education, publications, professional presentations, expert witness testimony, and other professional activities.

Concerning the polygraph examination of Arnold R. Beverly conducted by Earl A. Rawlins:

2. On 8 May 2001 Attorney Marlene Kamish contacted me about evaluating a polygraph examination conducted on Arnold Beverly by Earl A. Rawlins. Ms. Kamish arranged to have materials from that examination sent to me via FAX.
3. On 8 May 2001, I received the following materials by FAX:
  - 3.1. A two-page report captioned, EXAMINER'S REPORT, Subject: ARNOLD R. BEVERLY. The report was dated April 9<sup>th</sup>, 1999. A true copy is attached here as Exhibit B.
  - 3.2. Seven pages of polygraph recordings that appear to contain two repetitions of a polygraph question series. A true copy is attached here as Exhibit C.
4. The report indicates that a polygraph examination was conducted with the following three relevant questions:
  - 4.1. Did you shoot the police officer?
  - 4.2. Was Mumia at the scene before the officer was shot?
  - 4.3. Did Mumia shoot the police officer?
5. The examiner, Earl A. Rawlins, concluded the following, "It is this examiner's opinion that when the subject answered "no" to the critical questions, he was truthful."
6. Based on my evaluation of the materials provided, I am of the opinion that the polygraph conducted by Mr. Rawlins on Mr. Beverly is without probative value. That conclusion is based on the following:
  - 6.1. The most egregious problem with the materials provided to me was that no respiration recordings were made. Standard practice in the polygraph profession<sup>1</sup> is to make physiological recordings of at least three physiological systems. The standard polygraph recordings include measures of respiration, the electrodermal (galvanic) skin response, and relative blood pressure (commonly referred to in the polygraph profession as cardio). Recordings of respiration are critically important for two reasons:

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<sup>1</sup> American Polygraph Association, Standards of Practice, section 3.4.1 (2001). Available online at <http://www.polygraph.org/apal.htm#code>

- 6.1.1. Respiration provides important information for discriminating truth tellers from deceivers.
- 6.1.2. Respiration recordings are critical for a valid evaluation of the other two recordings. Deep breathing can cause reflexive responses in the electrodermal and blood pressure recordings that cannot be distinguished from the valid phasic responses associated with deceptive answers. Without an accurate recording of respiration, it is impossible to validly interpret responses in the electrodermal and blood pressure systems.
- 6.2. The examiners report contains the following statement. "The subject exhibited a heavy breathing pattern (probably from a stated cold) and therefore I discounted the need or usefulness of the chest breathing component of the actual examination." This statement amplifies the concerns I stated above at 6.1.2. If the subject was exhibiting a heavy breathing pattern, then it was all the more important that respiration be recorded so that the heavy breathing could be correlated with responses in the other two parameters. The absence of the respiration recording makes such an evaluation impossible. Moreover, if the subject was suffering from a cold to the point that the respiration recording was unusable, then the subject was by definition not a suitable subject for a polygraph examination. Standards in the polygraph profession would dictate that the examination not be conducted until such a time as the subject was not ill<sup>2</sup>.
- 6.3. The lack of the respiration recordings is an uncorrectable flaw in the Rawlins examination, which deprives it of any scientific validity or probative value. However, there are other problems with the Rawlins examination that provide further evidence that it was not conducted according to accepted scientific and professional standards.
- 6.4. The examination in questions fails to meet minimum standards for a valid polygraph examination within the polygraph profession. Honts and his colleagues<sup>3</sup> have noted that the greatest challenge facing polygraphy is the generally poor training of many polygraph examiners. However, Honts and Perry suggest that New Mexico Rule of Evidence 707<sup>4</sup> remedies most of the problems associated with poor examiner practice.<sup>5</sup> The results of polygraph tests have been admissible in the New Mexico courts since 1975. The success of New Mexico has been generally attributed to the quality of the evidentiary standards established under Rule 707. It is my opinion that the requirements of New Mexico Rule 707 are generally accepted standards with the polygraph profession as a whole.
  - 6.4.1. Technical problems with Rawlins' polygraph examination of Mr. Beverly indicating substandard practice include:

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2 American Polygraph Association, Standards of Practice, section 3.3 (2001). Available online at <http://www.polygraph.org/apa1.htm#code>

3 Charles R. Honts & Mary V. Perry, Polygraph Admissibility: Changes and Challenges, 16, L. & HUM. BEHAV. 357 (1992) at 369; Charles R. Honts & Bruce D. Quick, The Polygraph in 1995: Progress in Science and Law, NORTH DAKOTA LAW REVIEW, 71, (1995) at 998.

4 New Mexico Rule of Evidence 707 (1983).

5 Honts and Perry, supra note 3 at 372.

- 6.4.1.1. Question onset and offset are not properly marked on the charts. With such markings it is not possible to properly associate the subjects responses with the questions<sup>6</sup>.
  - 6.4.1.2. The amount of time between questions is inadequate. Scientific and polygraph practice standards indicate that there should be a minimum of 20 seconds between a subject's response to one questions and the asking of the next question. Question pacing of the Rawlins questions is frequently 10 to 15 seconds<sup>7</sup>.
  - 6.4.1.3. The galvanic skin response appears to have been run in Automatic Centering mode. The use of this recording mode distorts the tracings by selectively attenuating the amplitude of slow rise/recovery responses. Use of the Automatic Centering mode has been considered to be an unacceptable practice in the scientific community and by the federal polygraph schools in the United States and Canada for at least 15 years<sup>8</sup>.
  - 6.4.1.4. No question list was provided with the test materials. Without that list it is not possible to make any evaluation of the acceptability of the comparison questions used in the test.
  - 6.4.1.5. The standard for a valid polygraph examination is that the questions are asked at least three times while the subject's physiology is recorded<sup>9</sup>. The Rawlins' examination included only two repetitions of the questions.
7. In summary, the Rawlins polygraph test of Arnold Beverly does not meet the minimal standards of the polygraph profession or the scientific community. Moreover, the lack of the respiration recordings renders the test meaningless and without probative value.
  8. I was not provided with Mr. Rawlins' curriculum vitae. Once I review the same, I may have additional opinions with regard to whether or not he is qualified to act as a polygraph examiner.
  9. It is presently unknown whether the documents presented to me for review constitute the complete file of Mr. Rawlins with regard to the polygraph examination of Mr. Beverly on April 9, 1999. Once this is ascertained and any additional documents are provided for my review, should there be any such documents, I may have additional opinions with regard to the probative value of this polygraph examination and/or the qualifications of the examiner. However, based upon my review to date and the admitted failure by Mr. Rawlins to record the respiratory responses of the examination subject, as discussed above, it is my opinion that this polygraph examination is irremediably flawed and without probative value.

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6 American Polygraph Association, Standards of Practice, section 3.8.7 (2001). Available online at <http://www.polygraph.org/apa1.htm#code>

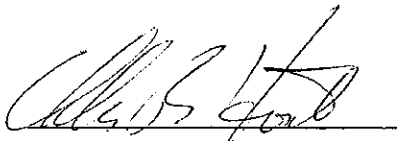
7 Id., at 3.8.4

8 Don C. Fowles, Margaret J. Christie, Robert Edelberg, William W. Grings, David T. Lykken, and Peter H. Venables, Publication Recommendations for Electrodermal Measurement, 18 *Psychophysiology*, 232 (1981).

9 David C. Raskin, Polygraph Techniques for the Detection of Deception, in D. C. Raskin (Ed.) *Psychological Methods in Criminal Investigation and Evidence*, 258 (1989).

10. Nothing in my evaluation of the materials described above at 3.1 and 3.2 has caused me in any way to alter or modify the statements give in my Affidavit of 18 May 1999 in this matter.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct and was executed by me on 10 May 2001 at Boise, Idaho.



Charles R. Honts, Ph. D.  
3105 Sweetwater Drive  
Boise, Idaho 83716

17 MAY 2001

Date

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Fax 212 222 7187

**EXAMINER'S REPORT**

April 9th, 1999

Subject: **ARNOLD R. BEVERLY**  
Address: 1321 South 54th Street  
Philadelphia, Pa. 19143  
Marital: Married (no children)  
Prior Poly?: No  
Employment: Self-Auto Mechanic  
Education: 12th grade  
D.o.b. : 11/1/51

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Scope of Examination:

Subject appeared in examiner's office to verify stated information concerning the shooting death of Police Officer Daniel Faulkner, which took place on December 9th, 1981 in Philadelphia, Pa. It appears that one Mumia Abu-Jamal was tried and convicted of causing the death of Officer Faulkner.

The subject related that he was at the scene of the shooting when it occurred.

The subject advises that he, along with another male, was paid the sum of \$4,000.00 to kill the officer. He alleges that the person that hired him was a member of the Philadelphia Police Department. He furthered that on the date of the incident he arrived at the scene (13th and Locust) and was watching out for the officer. He spotted Faulkner about 50' from where he was. Subject's associate was separated from him at the time when he saw the officer. A shot rang out and subject saw officer fall to his knees. Subject then ran up to the officer to make sure he was actually shot. In the interim subject was also shot and was bleeding from his shoulder. He was standing over the officer when the officer fell to the ground. He next went into the subway station and went to a police pre-arranged meeting place and was driven to his automobile by members of the police department. He furthered that his girlfriend was waiting for him in his car and they drove off together. Subject refused to give the name of his girlfriend and his associate. He gave the name "Boston" as the police officer involved.

Mr. Beverly stated that the convicted person, "Mumia", arrived in an automobile **immediately after** the shooting, did not have a pistol in his hands, and apparently could not have shot the officer.

This polygraph examination focused on subject's truthfulness when admits to planning the shooting of officer Faulkner, that it was he and another who planned the shooting and that "Mumia" arrived at the scene after the shooting.

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Subject admitted to having used a small amount of marijuana 12 hours before the examination and had a couple of shots of alcohol some 14 hours prior to the examination.

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## PROCEDURE

Pre-testing interview and questioning involved defining terms such as shooting, the identity of "Mumia", members of the Philadelphia Police Department, the actual shooting scene and the date in question, as well as who Police Officer Faulkner was. The examiner and subject went over the proposed examination question, which included a pre-test examination to demonstrate to subject that the process indeed is effective.

The subject exhibited a heavy breathing pattern (probably from a stated cold) and therefore I discounted the need or usefulness of the chest breathing component of the actual examination. As it was, the GRS and Cardio were consistent with each other and probative.

The critical questions were:

5. Did you shoot the police officer
7. Was Mumia at the scene before the officer was shot
9. Did Mumia shoot the police officer  
(subject concluded that since the officer was shot point blank in the face and since Mumia arrived after the shooting he did not shoot the officer)

Control questions were formed to demonstrate subjects major area of concerned.

Subject was fully shown the instrument and advised as to how same functioned.

He signed a release absolving examiner from liability and was attached to a four pen polygraph instrument (Chest and Stomach Breathing were excluded ) using Cardio tracing and Galvanic Skin Response).

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It is this examiner's opinion that when the subject answered "no" to the critical questions, he was truthful.

Respectfully submitted,

Earl A. Rawlins  
examiner